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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2005–19411; SFAR No. 105]

RIN 2120–AI47

Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; extension of expiration date.

SUMMARY: This action extends the expiration date of Special Federal Aviation Regulation (SFAR) No. 105 through October 31, 2008. This action is necessary to maintain the reservation system established for unscheduled arrivals at O'Hare International Airport consistent with the newly adopted limitations imposed on scheduled operations at the airport.

DATES: This final rule is effective on October 28, 2006, and SFAR No. 105 published at 70 FR 39610 (July 8, 2005), as amended at 70 FR 66255 (November 2, 2005), 71 FR 16219 (March 31, 2006), and in this rule, shall remain in effect until October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Gerry Shakley, System Operations Services, Air Traffic Organization; Telephone: (202) 267–9424; E-mail: *gerry.shakley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

Authority for This Rulemaking

The U.S. Government has exclusive sovereignty over the airspace of the United States.[1] Under this broad authority, Congress has delegated to the Administrator extensive and plenary authority to ensure the safety of aircraft and the efficient use of the Nation's navigable airspace. In this regard, the Administrator is required to assign by regulation or order use of the airspace to ensure its efficient use.[2]

The FAA's broad statutory authority to manage the efficient use of airspace encompasses management of the nationwide system of air commerce and air traffic control. To ensure the efficient use of the airspace, the FAA must take steps to prevent congestion at an airport from disrupting or adversely affecting the air traffic system for which the FAA is responsible. Inordinate delays of the sort experienced at O'Hare in late 2003 and much of 2004 can have a crippling effect on other parts of the system, causing significant losses in time and money for individuals and businesses, as well as the air carriers and other operators at O'Hare and beyond. This rule facilitates the Agency's exercise of its authority to manage the safe and efficient use of the navigable airspace.

Background

Since November 2003, O'Hare has suffered an inordinate and unacceptable number of delays as the result of over-scheduling at the airport, which was also having a crippling effect on the entire National Airspace System. In August 2004, the FAA intervened by ordering a limit on the number of scheduled arrivals at the airport during the peak operating hours of 7 a.m. through 8:59 p.m., Central Time, effective November 1, 2004, so that the system could return to a reasonably balanced level of operations and delay.[3]

On October 20, 2004, we published a notice of proposed rulemaking (NPRM) seeking public comments on a proposed reservation system for unscheduled arrivals at O'Hare (69 FR 61708). Effective November 1, 2004, and while this rulemaking was pending, we implemented a corresponding voluntary reservation program for unscheduled arrivals using the general procedures followed during Special Traffic Management Programs and the High Density Rule.

On July 8, 2005, the FAA published SFAR No. 105, ''Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport'' (70 FR 39610). As stated in SFAR No. 105, the benefits achieved by the FAA's August 18 Order would dissipate if certain operations at the airport remained capped but other operations were permitted to grow. SFAR No. 105 maintained the historical level of unscheduled operations at O'Hare and supported other agency actions at O'Hare that address congestion and delay until additional capacity exists at the airport.

In SFAR No. 105, we discussed that it may be necessary to extend this rule limiting unscheduled arrivals at O'Hare to coincide with a final rule addressing scheduled arrivals, if adopted, or with an extension of the August 2004 Order. The NPRM addressing scheduled arrivals at O'Hare was published on March 25, 2005 (70 FR 15520).

[1] 49 U.S.C. 40103(a).

[2] 49 U.S.C. 40103(b)(1).

[3] Operating Limitations at Chicago International Airport. Docket No. FAA–2004–16944.

On November 2, 2005, we extended the expiration date on SFAR No. 105 until March 31, 2006. On March 31, 2006, we extended the expiration date on No. 105 through October 28, 2006,[4] to maintain the current operating environment at the airport while we considered comments to the proposed rule for scheduled arrivals.

On August 29, 2006, the FAA published the ''Congestion and Delay Reduction at Chicago O'Hare International Airport'' final rule. That final rule codifies the limit on scheduled arrivals initially imposed under the FAA's August 2004 Order and will expire on October 31, 2006. The rationale supporting SFAR 105 remains valid, in that the benefits achieved under the August 2004 Order and now expected to continue under the Congestion and Delay Reduction final rule would dissipate if other operations at the airport were permitted to grow. Consequently, it is imperative to maintain the limits imposed by this SFAR, during the same timeframe as the Congestion and Delay Reduction final rule, until additional capacity is available at the airport.

Therefore, we find that notice and comment procedures under 5 U.S.C. section 553(b) are impracticable and contrary to the public interest. We further find that good cause exists to make this rule effective in less than 30 days.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements(s) in this final rule to the Office of Management and Budget (OMB) for its review. OMB approved the collection of this information and assigned OMB Control Number 2120–0694.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid OMB control number. The OMB Control Number for this information collection is 2120–0694.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually adjusted for inflation). This portion of the preamble summarizes the FAA's analysis of the economic impact of this SFAR extension.

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a rule does not warrant a full evaluation, this order permits a statement to that effect. The basis for the minimal impact must be included in the preamble, if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for that determination follows:

In the preamble of SFAR No. 105, the FAA stated that we might consider extending SFAR 105 for a time period that would coincide with a final rule limiting scheduled operations. The FAA is extending this SFAR through October 31, 2008, to maintain the current level of operations at O'Hare consistent with the final rule published on August 29, 2006, that addresses scheduled operations at the airport. In the final economic assessment of SFAR No. 105, the FAA found that the rule provided system delay benefits at a minimal cost. The FAA finds that this extension is cost beneficial and will continue to provide system delay benefits at minimal cost.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies consider flexible regulatory proposals, to explain the rationale for their actions, and to solicit comments. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule extends the expiration date of SFAR No. 105, which provides for fewer airport delays at a minimum cost. Just as in the initial and final regulatory flexibility analyses, the FAA expects there will be a substantial number of small entities affected by the extension of this final SFAR, however, the economic effect will continue to be insignificant. Therefore, as the FAA Administrator, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where

[4] The limits on unscheduled arrivals do not apply on Saturdays.

appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of the extension of this final rule and determined that it will not have an effect on foreign commerce.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f, and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The Amendment

■ For the reasons set forth above, the Federal Aviation Administration is amending chapter I of title 14 Code of Federal Regulations as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

■ 2. Section 9 of Special Federal Aviation Regulation (SFAR) No. 105 is revised to read as follows:

Special Federal Aviation Regulation No. 105—Operating Limitations for Unscheduled Operations at Chicago's O'Hare International Airport

* * * * *

Section 9. *Expiration.* This Special Federal Aviation Regulation expires at 9 p.m., Central Time, on October 31, 2008, unless sooner terminated.

Issued in Washington, DC on October 26, 2006.

Marion C. Blakey,

Administrator.

[FR Doc. 06–9000 Filed 10–27–06; 12:36 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–108]

RIN 1625–AA–09

Drawbridge Operation Regulations; Potomac River, Between Maryland and Virginia

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the new Woodrow Wilson Memorial (I–95) Bridge, mile 103.8, across Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. This deviation allows the new drawbridge to remain closed-to-navigation each day from 10 a.m. to 2 p.m. beginning on October 25, 2006 until and including December 24, 2006, to facilitate completion of the Outer Loop portion for the new Woodrow Wilson Bridge construction project.

DATES: This deviation is effective from 10 a.m. on October 25, 2006, until 2 p.m. on December 24, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: In June 2006, the southernmost portion of the bascule spans for the new Woodrow Wilson Memorial Bridge, at mile 103.8, across Potomac River between Alexandria, Virginia and Oxon Hill, Maryland was publicly placed into service, switching I–95 Northbound traffic onto the new Outer Loop portion of the bridge. The newly-constructed portion of bridge will be required to open for vessels in accordance with the current drawbridge operating regulations set out in 33 CFR 117.255(c).

While the drawbridge is operational, coordinators for the construction of the new Woodrow Wilson Bridge Project indicated that the bascule span is not yet fully commissioned and the work continues through the rigorous testing phase. Opening the new bascule span for a vessel at this time would take approximately 45 minutes in a best case scenario. This has the potential to have a significant impact upon I–95 traffic, especially during the 10 a.m. to 2 p.m. bridge-opening time frame currently available for commercial vessels, in accordance with 33 CFR 117.255(c).

Coordinators requested a temporary deviation from the current operating regulation for the new Woodrow Wilson Memorial (I–95) Bridge set out in 33 CFR 117.255(c).

Though good progress has been made regarding commissioning of the north and south drawbridges (both now carrying I–95 vehicle traffic), the coordinators are requesting an additional two months of the 10 a.m. to 2 p.m. restriction of bridge operation to

proceed with commissioning activities through December 24, 2006. From a river-user standpoint, the coordinators have received no requests from boaters or mariners to open during the 10 a.m. to 2 p.m. timeframe since the restriction was issued in late June 2006. In fact, no requests have been received for an opening of the new bridge at all since July 3, 2006. Finally, the coordinators have received no complaints on the 10 a.m. to 2 p.m. restriction.

The coordinators requested that the new Outer Loop portion of the new drawbridge not be available for openings for vessels each day between the hours of 10 a.m. to 2 p.m. from Monday, October 25 through December 24, 2006 or until the bridge is properly commissioned, whichever comes first. The temporary deviation will only affect vessels with mast heights of 75 feet or greater as the existing drawbridge is able to open in accordance with the current operating regulations set out in 33 CFR 117.255(a). Management of the Federal and auxiliary channels will continue to be closely coordinated between the coordinators for the construction of the new Woodrow Wilson Bridge Project, the Coast Guard and vessels requesting transit through the construction zone. Furthermore, all affected vessels with mast heights greater than 75 feet will be able to receive an opening of the new drawbridge in the ''off-peak'' vehicle traffic hours (evening and overnight) in accordance with 33 CFR 117.255(c). Maintaining the new drawbridge in the closed-to-navigation position each day from 10 a.m. to 2 p.m. on October 25, 2006 through December 24, 2006 will help reduce the impact to vehicular traffic during this phase of new bridge construction.

The Coast Guard has informed the known users of the waterway of the closure period for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 20, 2006.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E6–18332 Filed 10–31–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Sector St. Petersburg 06–195]

RIN 1625–AA00

Safety Zone; Caloosahatchee River, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Caloosahatchee River, Florida in the vicinity of the Cape Coral Bridge while repair operations are being conducted. This rule is necessary to ensure the safety of the construction workers and mariners on the navigable waters of the United States.

DATES: This rule is effective from 6 a.m. on September 18 through 6 p.m. on December 22, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP 06–195] and are available for inspection or copying at Coast Guard Sector St. Petersburg, Prevention Department, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Ronaydee Marquez at Coast Guard Sector St. Petersburg (813) 228–2191 Ext 8307.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard received notification of the construction only fourteen days prior to the start of the construction, which was not enough time to publish an NPRM. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to minimize potential danger to the construction workers and mariners transiting the area. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and a local law enforcement vessel on scene will advise mariners of the restriction.

Background and Purpose

Kelly Brothers construction was contracted by Lee County Department of Transportation to replace the fender system on the Cape Coral Bridge on the Caloosahatchee River. The replacement will include demolition of the existing fender piles, installation of new fender piles, and installation of the fender timbers. The replacement will require a tug and barge to be placed in the navigable channel partially blocking the channel. The unaffected portion (approximately 45 feet) will remain unobstructed and open for traffic. The nature of this work and the close proximity of the channel present a hazard to mariners transiting the area. This safety zone is being established to ensure the safety of life on the navigable waters of the United States.

Discussion of Rule

The safety zone encompasses the following waters of the Caloosahatchee River, Florida: all waters from surface to bottom within 5 feet of the construction barge and accompanying tug that are working on the bridge fender system during the repair hours of 7 a.m. to 6 p.m. Monday through Friday. Vessels and persons are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Sector St. Petersburg or his designated representative. The zone is effective from 6 a.m. on September 18 through 6 p.m. on December 22, 2006. Enforcement of the zone will be from 7 a.m. to 6 p.m. every Monday through Friday during the effective period. On-scene notice will be provided by local law enforcement marine units enforcing the safety zone.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The rule will only be enforced for a limited amount of time. Moreover, vessels may still transit the unaffected portion of the channel.

Small Entities

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

whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit near the Cape Coral Bridge from 6 a.m. on September 18 through 6 p.m. on December 22, 2006. The nature of the operation will require the channel to be partially blocked, however the unaffected portion (approximately 45 feet) will remain unobstructed and open for traffic. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be enforced in a place where marine traffic is expected to be minimal.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which 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, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new temporary § 165.T07–195 to read as follows:

§ 165.T07–195 Safety Zone; Caloosahatchee River, Florida.

(a) *Location.* The Coast Guard is establishing a temporary safety zone on the waters of the Caloosahatchee River, Florida, in the vicinity of the Cape Coral Bridge, that includes all the waters from surface to bottom, within a 5 foot radius of the construction barge and accompanying tug that are working on the bridge fender system.

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

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP) St. Petersburg, Florida, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may anchor, moor or transit the safety zone without the prior permission of the Captain of the Port St. Petersburg, Florida, or his designated representative.

(d) *Date.* This rule is effective from 6 a.m. on September 18, 2006 through 6 p.m. on December 22, 2006 and will be enforced from 7 a.m. to 6 p.m. every Monday through Friday during the effective period.

Dated: September 15, 2006.

J.A. Servidio,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg, Florida.

[FR Doc. E6–18333 Filed 10–31–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP St. Petersburg 06–219]

RIN 1625–AA00

Safety Zone; Sanibel Island Bridge Span A, Ft. Myers Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of San Carlos Bay, Florida in the vicinity of the Sanibel Island Bridge span ''A'' while bridge construction is conducted. This rule is necessary to ensure the safety of the construction workers and mariners on the navigable waters of the United States.

DATES: This rule is effective from 6 a.m. on October 16, 2006 through 9 p.m. on March 31, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP 06–219] and are available for inspection or copying at Coast Guard Sector St. Petersburg, Prevention Department, 155 Columbia Drive, Tampa Florida 33606–3598 between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Waterways Management Division at Coast Guard Sector St. Petersburg (813) 228–2191, Ext 8307.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The bridge contractor did not provide the information about the bridge construction with sufficient time to publish an NPRM. The Coast Guard did not receive the scope of work for the remaining construction until September 28, 2006 at a meeting held with the contractors. Publishing an NPRM would have been contrary to the public interest since immediate action is needed to minimize potential danger to the construction workers and mariners transiting the area. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and local law enforcement vessels will be in the vicinity of this zone to advise mariners of the restriction.

Background and Purpose

Boh Brothers Construction will be performing construction work on the Sanibel Island Bridge between October 2006 and March 2007. This work will involve setting girders, setting the deck, setting overhangs, placing resteel, pouring the bridge deck, and wrecking the old bridge's deck on the Sanibel Island Bridge span ''A''. These operations will require placing a barge in the navigational channel. The nature of this work and the close proximity of the channel present a hazard to mariners transiting the area. This safety zone is being established to ensure the safety of life on the navigable waters of the United States.

Discussion of Rule

The safety zone encompasses the following waters of San Carlos Bay, Florida: All waters from surface to bottom, within a 400 foot radius of the following coordinates: 26°28′59″ N, 082°00′52″ W. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Sector St. Petersburg or his designated representative.

This rule is effective from 6 a.m. on October 16, 2006 through 9 p.m. on March 31, 2007. However, the safety zone will only be enforced from 6 a.m. until 9 p.m. daily on certain dates during that time while construction operations are occurring. The Coast Guard does not know the exact dates of the construction operations at this time, but Coast Guard Sector St. Petersburg will give notice of the enforcement of the safety zone by issuing Broadcast Notice to Mariners 24 to 48 hours prior to the start of enforcement. On-Scene notice will be provided by Coast Guard or other local law enforcement maritime units enforcing the safety zone as designated representatives of Captain of the Port Sector St. Petersburg.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This rule will only be enforced when vessel traffic is expected to be minimal, and traffic will be allowed to enter the zone with the permission of the Captain of the Port Sector St. Petersburg or designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit near the Sanibel Island Bridge span ''A'' from 6 a.m. on October 16, 2006 through 9 p.m. on March 31, 2007. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be enforced when vessel traffic is expected to be minimal, and traffic will be allowed to enter the zone with the permission of the Captain of the Port Sector St. Petersburg or designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the office listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which 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, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165–REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T07–219 to read as follows:

§ 165.T07—219 Safety Zone; Ft. Myers Beach, Florida.

(a) *Location.* The Coast Guard is establishing a temporary safety zone on the waters of San Carlos Bay, Florida, in the vicinity of the Sanibel Island Bridge span ''A''. This safety zone includes all waters from surface to bottom, within a 400 foot radius extending from the center portion of span ''A'' at the following coordinates: 26°28′59″ N, 082°00′52″ W. All coordinates referenced use datum: NAD 83.

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

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port Sector St. Petersburg, Florida, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may anchor, moor or transit the Regulated Area without the prior permission of the Captain of the Port Sector St. Petersburg, Florida, or his designated representative.

(d) *Dates.* This rule is effective from 6 a.m. on October 16, 2006 through 9 p.m. on March 31, 2007.

(e) *Enforcement period.* This regulated area will only be enforced during specific periods between the dates specified in paragraph (d), while construction operations are taking place. The Coast Guard does not know the exact dates of the construction operations at this time, however Sector St. Petersburg will announce each enforcement period by issuing Broadcast Notice to Mariners 24 to 48 hours prior to the start of enforcement. Additionally, on-scene notice will be provided by Coast Guard or other local law enforcement maritime units enforcing the safety zone.

Dated: October 16, 2006.

J.A. Servidio,

Captain, U.S. Coast Guard, Captain of the Port Sector St. Petersburg, Florida.

[FR Doc. E6–18392 Filed 10–31–06; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

New Standards for Mailing Sharps and Other Regulated Medical Waste Containers

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service revises the standards for mailing sharps and other regulated medical waste containers. The new standards include improvements to the packaging, the package testing, and the process for authorizing and suspending authorization.

DATES: *Effective Date:* November 9, 2006.

FOR FURTHER INFORMATION CONTACT: Bert Olsen, 202–268–7276.

SUPPLEMENTARY INFORMATION:

Background

We published a proposed rule in the **Federal Register** (71 FR 19840, April 18, 2006) to revise the standards for mailing sharps and other regulated medical waste containers. Our proposal included the following changes:

1. To require container vendors to provide the Postal Service with the names and addresses of their distributors and to provide updates on a quarterly basis.

2. To revise the process for authorizing and suspending authorization for mailing sharps and other regulated medical waste containers to enhance monitoring and control of medical waste in the mail.

3. To revise container standards and container testing standards to ensure that container testing is performed on a consistent basis for all sharps and other regulated medical waste containers.

Comments Received

We received comments from four authorized sharps container vendors and one potential vendor. All commenters supported the concept of revising the rules to promote uniform testing methods and to ensure the integrity of mailpieces containing sharps and other medical waste.

Documentation Requirements

Three commenters objected to the requirement that vendors provide a list of distributors to the Postal Service. All three commenters argued that requiring vendors to provide a quarterly list of distributors could lead to disclosure of sensitive proprietary vendor information. We agree that the Postal Service can identify a vendor's distributors, if needed, by requiring vendors to provide this information on request. Therefore, the final rule requires vendors to provide the names, addresses, and telephone numbers of their distributors to the Postal Service only on request.

Packaging

One commenter objected to a minimum size limit for the biohazard symbol placed on the outer shipping container. The commenter stated that requiring a 3 inch by 4 inch symbol would be excessively large on a small mailpiece. The Postal Service notes that currently no approved medical waste mailpieces are so small as to not easily accommodate a 3 inch by 4 inch biohazard symbol. The new standard will clarify that the 3 inch by 4 inch label requirement applies to the outer shipping container. For safety reasons, medical waste containers must be easily identified as containing biohazardous materials. Therefore, this final rule adopts the standard as published in the proposal.

Three commenters did not want the Postal Service to eliminate the use of outer shipping containers with interlocking bottoms. All three commenters stated that current requirements that allow for the use of shipping containers with interlocking bottom flaps reinforced with tape are more than adequate, especially considering the overall rigorous testing mandates. After further consultation with package testing professionals, we conclude that interlocking bottom flaps sufficiently contain the primary receptacle, particularly when reinforced with tape. Therefore, we will maintain our current standards that allow interlocking bottoms when they are reinforced with water-resistant tape.

Two commenters requested clarification of the proposed changes to the secondary container requirements. The commenters stated that increasing the plastic bag thickness requirement from 3 mil to 4 mil was not necessary. In addition, they stated that it was not advantageous to require the plastic bag

to be placed around the secondary box. We believe that increasing the thickness of the plastic bag will help maintain the contents of the primary container should it break. Therefore, we will require plastic bags to be 4 mil thick. However, we will not require the plastic bag to be placed outside the secondary box.

Two commenters requested clarification of the proposed standards in section 601.10.17.7b4 of Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM). We revised this section to clarify that the absorbent material must be placed in the primary receptacle. Item e10 will serve as the required test to ensure that the secondary system is watertight.

One commenter suggested that the Postal Service require screw caps for primary containers. Historical data on safely mailing these mailpieces does not indicate a need to require screw caps. Therefore, this final rule adopts the standard as published in the proposal.

Mailpiece Testing

One commenter objected to the requirement that mailpieces be tested at the vendor's identified maximum weight and that the container's maximum allowable weight be printed on the outer shipping container. The commenter stated that it was impossible to predict the maximum weight of the materials that might be placed into a container and that end users would not have scales to weigh the mailpiece. We believe, in the interest of safety, that these mailpieces should be tested at the highest possible weight determined by the vendor, not to exceed 25 pounds, to ensure that the mailpiece can safely contain the maximum weight. Therefore, this final rule adopts the requirements as published in the proposal.

One commenter suggested that the Postal Service require accreditation of package testing facilities. Section 601.10.17.7d of the proposed rule states ''the Postal Service may require proof of accreditation or other documentation to support the credentials of an independent testing facility.'' We believe that this standard provides the authority to require proof of credentials as necessary. Therefore, this final rule adopts the standard as published in the proposal.

One commenter questioned the need for a reference to 49 CFR 178.604, Leak-proof test. The commenter stated that we should not refer to the test because our pass/fail criteria were not the same as the criteria in 49 CFR. The test in 49 CFR 178.604 requires that the primary container hold 20 kPa without leakage. Our criteria allow for air leakage around the opening of the primary container as long as there is no air leakage anywhere else and no leakage of water. We agree that it would be clearer, in this case, to eliminate the reference and to provide only the USPS test procedure and pass/fail criteria.

One commenter requested clarification on the height of the required drop tests. Our proposed rule requires 30-foot drops for the wet and cold tests as identified in 49 CFR 178.609e and f. The impact test requires a drop of 3 feet as identified in 49 CFR 178.609h. While we understand that the test identified in 49 CFR consists of requirements for packaging infectious substances, we believe that the Postal Service's handling and transportation systems are different from those of commercial carriers and require more stringent acceptance criteria. Therefore, this final rule adopts the standard as published in the proposal.

One commenter suggested that testing material should be simulated medical waste. We disagree. The testing material should consist of sharps or other regulated medical waste as defined in DMM 601.10.17.2e and g. Vendors are on notice that contaminated medical waste will not be used for testing purposes. Therefore, this final rule adopts the standard as published in the proposal.

Mailpiece Acceptance

One commenter objected to requirements that vendors retrieve improperly labeled containers when identified and held at plants. The commenter suggested that the Postal Service should confirm the mailpiece was properly marked and labeled before accepting it. While we continually educate employees on acceptance criteria, the mailer remains responsible for properly labeling the mailpiece. Therefore, this final rule adopts the requirement as published in the proposal.

This final rule will be effective on November 9, 2006. Sharps and other regulated medical waste containers that are currently approved for mailing can maintain their authorization until it expires (24 months from the most recent approval). Containers must meet the new standards if they are submitted for authorization (or renewal of authorization) on or after November 9.

We adopt the following amendments to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), as follows:

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

10.0 Hazardous Materials

* * * * *

10.17 Infectious Substances (Hazard Class 6, Division 6.2)

* * * * *

[Revise title of 10.17.7 as follows:]

10.17.7 Sharps Medical Waste and Regulated Medical Waste Containers

[Replace ''distributor or manufacturer'' with ''vendor'' throughout 10.17.7.]

* * * * *

[Add new authorization information to the end of item a1 as follows:]

1. * * * Vendors that market their containers to distributors are responsible for disposal and cleanup costs attributed to those containers. In addition, vendors must provide a list of distributors, including firm names, addresses, and telephone numbers, to the Postal Service on request.

* * * * *

[Revise item a3 to add ''name'' and ''phone number'' as follows:]

3. Name, address, and phone number of each storage and disposal site.

* * * * *

[Add text at the end of item a8 as follows:]

8. * * * and verification that the merchandise return service (MRS) permit fee and accounting fee have been paid.

[Add new item a9 as follows:]

9. Address of the post office or postage due unit where the containers are delivered.

* * * * *

[Revise the package testing information in item b1 by replacing the last sentence as follows:]

1. * * * Package testing results must show that the contents of the primary container did not penetrate through the primary container during package testing and that the primary container can maintain its integrity at temperatures as low as 0°F and as high as 120°F.

[Revise the third sentence of item b2 to read ''4 mil'' as follows:]

2. * * * If one of the components is a plastic bag, the bag must be at least 4 mil in thickness and must be used in conjunction with a fiberboard box.

* * *

* * * * *

[Revise item b4 by replacing ''a watertight barrier'' with ''the primary receptacle'' as follows:]

4. There must be enough material within the primary receptacle * * *

[Revise item b5 as follows:]

5. Each mailpiece must not weigh more than 25 pounds. The container's maximum allowable weight must be printed on the outside of the box and on the assembly and closure instructions included with each mailpiece. The mailpiece must be tested at the maximum allowable weight identified by the vendor.

* * * * *

[Add a new sentence at the end of item c1 as follows:]

1. * * * Place the label on the top or on a side of the container.

[Add a new sentence at the end of item c2 as follows:]

2. * * * The symbol on the outer shipping container must be at least 3 inches high and 4 inches wide.

* * * * *

[Add new item c7 as follows:]

7. Vendors must retrieve mailpieces held at processing facilities due to improper labeling such as no return address or due to improperly completed shipping papers.

* * * * *

[Revise item d as follows:]

d. *Package Testing.* Vendors must submit to the manager, Mailing Standards (see 608.8 for address), package testing results from an independent testing facility for each package for which the vendor is requesting authorization. In addition, vendors must submit package testing results from an independent testing facility when the design of a container system changes or every 24 months, whichever occurs first. The test results must show that if every mailpiece prepared for mailing were subject to the environmental and test conditions in 49 CFR and the additional test requirements in 10.17.7e, no contents would be released into the environment and the effectiveness of the packaging would not be significantly reduced. The Postal Service may require proof of accreditation or other documentation to support the credentials of an independent testing facility.

[Add new item e as follows:]

e. *Testing Criteria.* Each mailpiece must pass each of the tests described below:

1. *Leak-proof test.* The test must be conducted on one primary receptacle with the lid in place, without the secondary and outer packaging. The test duration must be at least 5 minutes and must be conducted at 20 kPa (3 psi). The pass/fail criterion is: No air leakage from anywhere other than the closure of the primary receptacle. Air leakage at the closure is not considered a failure if the primary receptacle passes the test for watertightness as determined by placing 50 ml of deionized water into the primary receptacle, securing the closure, and then turning the container on its side and observing for any evidence of leakage. Any evidence of water leaking from the primary receptacle is a failure.

2. *Stacking test.* One mailpiece must withstand the test in 49 CFR 178.606. The dynamic compression test must be conducted on the empty, unsealed mailpiece assembled for mailing, without the primary receptacle(s). The test mass is the vendor-identified maximum weight, not to exceed 25 pounds, as indicated on the outer shipping container and on the assembly and closing instructions. A compensation factor of 1.5 must be used to compute the test load, based on the vendor-identified weight. The pass/fail criteria are: No buckling of the sidewalls sufficient to cause damage to the contents in the primary container, and in no case does the deflection exceed 1 inch.

3. *Vibration test.* One mailpiece filled with sharps or other regulated medical waste must withstand the test in 49 CFR 178.608. The test mailpiece is filled with sharps or other regulated medical waste to the vendor-identified maximum weight, not to exceed 25 pounds, as indicated on the outer shipping container and on the assembly and closing instructions. The test sample is prepared as it would be for mailing. The pass/fail criterion is: No rupture, cracking, or splitting of any primary receptacle.

4. *Wet drop test.* Five mailpieces filled with sharps or other regulated medical waste must withstand the test in 49 CFR 178.609e. Each test mailpiece is filled with sharps or other regulated medical waste to the vendor-identified maximum weight, not to exceed 25 pounds, as indicated on the outer shipping container and on the assembly and closing instructions included with each mailpiece. Each mailpiece is prepared as it would be for mailing and subjected to the water spray as described in the test. A separate, untested mailpiece is used for each drop orientation: Top, longest side, shortest side, and corner. The pass/fail criteria are: No rupture, cracking, or splitting of any primary receptacle, and no contents may penetrate into or through the body or lid of any primary receptacle.

5. *Cold drop test.* Five mailpieces filled with sharps or other regulated medical waste must withstand the test in 49 CFR 178.609f. Each test mailpiece is filled with sharps or other regulated medical waste to the vendor-identified maximum weight, not to exceed 25 pounds, as indicated on the outer shipping container and on the assembly and closing instructions included with each mailpiece. Each mailpiece is prepared as it would be for mailing and chilled as described in the test. A separate, untested mailpiece is used for each drop orientation: Top, longest side, shortest side, and corner. The pass/fail criteria are: No rupture, cracking, or splitting of any primary receptacle, and no contents may penetrate into or through the body or lid of any primary receptacle.

6. *Impact test.* One mailpiece filled with sharps or other regulated medical waste must withstand the test in 49 CFR 178.609h. The test mailpiece is filled with sharps or other regulated medical waste to the vendor-identified maximum weight, not to exceed 25 pounds, as indicated on the outer shipping container and on the assembly and closing instructions included with each mailpiece. The mailpiece is prepared as it would be for mailing. The pass/fail criteria are: No rupture, cracking, or splitting of any primary receptacle, and no contents may penetrate into or through the body or lid of any primary receptacle.

7. *Puncture-resistant test.* Package testing results must show that during all of the previous tests, the contents did not penetrate through the primary container.

8. *Temperature test.* Package testing results must show that each primary receptacle maintained its integrity when exposed to temperatures as low as 0°F and as high as 120°F.

9. *Absorbency test.* Package testing results must show that the primary receptacle(s) contain enough absorbent material to absorb three times the total liquid allowed within the primary receptacle in case of leakage. Absorbency is determined by pouring 150 ml of deionized water into the

primary receptacle(s), then turning the receptacle(s) upside down and observing for any evidence of free liquid not absorbed on contact. Any evidence of free liquid is a failure.

10. *Watertight test.* Package testing results must show that no leakage occurred when 50 ml of deionized water was placed into the secondary containment system and the entire system turned upside down for 5 minutes.

[Add new item f as follows:]

f. *Suspension of Authorization.*

1. The Postal Service may suspend a vendor's authorization based on information that a mailpiece no longer meets the standards for mailing sharps medical waste and regulated medical waste containers, or that the mailpiece poses an unreasonable safety risk to Postal Service employees or the public. The suspension can be made immediately, making the mailpiece nonmailable immediately. The vendor may contest a decision to suspend authorization by writing to the manager, Mailing Standards (see 608.8 for address), within 7 days from the date of the letter of suspension. The appeal should provide evidence demonstrating why the decision should be reconsidered. Any order suspending authorization remains in effect during an appeal or other challenge.

2. When a vendor is notified that its authorization to mail sharps or other regulated medical waste containers has been suspended, the vendor must immediately: (1) Recall all identified containers. (2) Notify all customers that they cannot mail the identified containers. (3) Suspend sales and distribution of all identified containers. (4) Collect the identified containers from distributors, consumers, and the Postal Service without using the mail and in accordance with all Federal and State regulations.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E6–18063 Filed 10–31–06; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for Division 6.2 Infectious Substances

AGENCY: Postal Service.

ACTION: Interim rule with request for comments.

SUMMARY: The Postal Service is revising its mailing standards and packaging requirements for Division 6.2 infectious substances based on the criteria published by the World Health Organization. Our revised standards adopt many of the changes the Department of Transportation made to its regulations for the shipment and packaging of hazardous materials. We also harmonize our standards with the World Health Organization Guidance on Regulations for the Transport of Infectious Substances and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air. In addition, we prohibit Category A infectious substances in the mail.

DATES: These changes are effective November 1, 2006. We will accept your comments on or before December 1, 2006.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bert Olsen, 202–268–7276.

SUPPLEMENTARY INFORMATION: The Postal Service is subject to the legal restrictions in Title 18 of United States Code 1716, which prohibits the mailing of ''all disease, germs, or scabs, and all other natural or artificial articles, compositions, or material which may kill or injure another, or injure the mails or other property'' if that material is outwardly or of its own force dangerous to life, health, or property. For legal and safety reasons, the mailing standards for hazardous materials in *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) closely adhere to Department of Transportation (DOT) regulations in 49 CFR, and include additional limitations and prohibitions.

On June 6, 2003, we published a final rule in the **Federal Register** (68 FR 33858) to revise the standards for mailing infectious substances. The revision harmonized our standards with many of the DOT regulations in effect at that time for the transportation of infectious substances. On June 2, 2006, DOT published new regulations (71 FR 32244) to revise the transportation requirements for infectious substances and adopt new classification criteria, new exceptions, and new packaging and hazard communication requirements consistent with revised international standards.

This interim rule harmonizes our mailing standards with the packaging category system for infectious substances developed by the World Health Organization (WHO) in 2005. Our revisions are largely consistent with DOT regulations for shipping and packaging hazardous materials and with the International Civil Aviation Organization (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air. We also prohibit Category A infectious substances in the mail. Category A includes infectious substances transported in a form capable of causing permanent disability or life-threatening or fatal disease in otherwise healthy people or animals if exposure occurs. Our prohibition of Category A infectious substances is consistent with ICAO's recommendation that Category A substances not be carried by mail.

Our interim rule:

- Revises the classification system from the current four-tiered risk group classification system to a two-tiered system. Infectious substances are now classified as ''Category A'' and ''Category B,'' depending on the type of substance.
- Identifies Category A infectious substances as nonmailable.
- Replaces the shipping name ''Diagnostic Specimen'' with ''Biological substance, Category B.''
- Adopts packaging requirements for Category B infectious substances consistent with those in the DOT regulations, the WHO Guidance, and the ICAO Technical Instructions.

These revisions to our mailing standards will provide a greater level of safety for handling and transporting mailable infectious substances. These changes will also facilitate domestic and international transportation by aligning our mailing standards with the current international standards for the transport of hazardous materials.

We provide the new standards below. We will publish a final rule and may further revise the standards based on the comments we receive.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act regarding proposed rulemaking (see 5 U.S.C. 553(b), (c)), we invite public comments on the following revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

10.0 Hazardous Materials

* * * * *

10.17 Infectious Substances (Hazard Class 6, Division 6.2)

10.17.1 General

[Revise the first and last sentences in 10.17.1 as follows:] Division 6.2 materials include infectious substances, biological products, regulated medical waste, sharps medical waste, used health care products, and forensic materials. * * * Unless otherwise noted, all mailable Division 6.2 materials must meet the mail preparation requirements for air transportation.

10.17.2 Definitions

The terms used in the standards for Division 6.2 materials are defined as follows:

[Revise item a as follows:]

a. *Infectious substance* means a material known or reasonably expected to contain a pathogen. A pathogen is a microorganism that can cause disease in humans or animals. Examples of pathogens include bacteria, viruses, fungi, and other infectious agents. An infectious substance must be assigned to one of the following two categories:

1. *Category A:* An infectious substance transported in a form capable of causing permanent disability or life-threatening or fatal disease in otherwise healthy humans or animals when exposure occurs. Category A infectious substances are not mailable. A Category A infectious substance is assigned the identification number UN 2814 or UN 2900, based on the known medical history or symptoms of the source patient or animal, endemic local conditions, or professional judgment concerning the individual circumstances of the source human or animal.

2. *Category B:* An infectious substance that does not meet the criteria for inclusion in Category A. A mailpiece known or suspected to contain a Category B infectious substance must bear the proper shipping name ''Biological substance, Category B'' on the address side of the mailpiece and must be assigned to and marked with identification number UN 3373 or, for regulated medical waste and sharps medical waste, identification number UN 3291.

[Revise item b as follows:]

b. *Biological product* means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product or arsphenamine or derivative of arsphenamine (or any other trivalent arsenic compound) intended to prevent, treat, or cure a disease or condition of humans or animals. A biological product includes a material subject to regulation under 42 U.S.C. 262 or 21 U.S.C. 151–159. Unless otherwise excepted, mark these mailpieces with identification number UN 3373 when they contain a biological product known or reasonably expected to contain a pathogen that meets the definition of a Category B infectious substance.

[Revise item c as follows:]

c. *Cultures* are infectious substances that result from a process by which pathogens are intentionally propagated. This definition does not include a human or animal patient specimen as defined in 10.17.2e.

[Replace item d with new item d as follows:]

d. *Exempt human or animal specimen* means a human or animal sample (including, but not limited to, secreta, excreta, blood and its components, tissue and tissue fluids, and body parts) transported for routine testing not related to the diagnosis of an infectious disease. Typically, exempt human specimens are specimens for which there is a low probability that the sample is infectious, such as specimens for drug or alcohol testing; cholesterol testing; blood glucose level testing; prostate-specific antigens (PSA) testing; testing to monitor heart, kidney, or liver function; pregnancy testing; and testing for diagnosis of noninfectious diseases such as cancer biopsies. Exempt human or animal specimens are not subject to regulations as hazardous materials but must be packaged according to 10.17.10.

[Replace item e with new item e as follows:]

e. *Patient specimen* means material that is collected directly from humans or animals and transported for purposes such as diagnosis and research. Patient specimens include excreta, secreta, blood and its components, tissue and tissue swabs, body parts, and specimens in transport media (such as transwabs, culture media, and blood culture bottles).

[Replace item f with new item f as follows:]

f. *Regulated medical waste,* for USPS purposes, means a soft waste material (other than a sharp) derived from the medical treatment, diagnosis, immunization, or biomedical research of a human or animal. Soft medical waste includes items such as used rubber gloves, swabs, gauze, tongue depressors, and other similar material. Mark these mailpieces with identification number UN 3291.

[Delete Exhibit 10.17.2f, Risk Group Criteria. Revise item g as follows:]

g. *Sharps medical waste,* for USPS purposes, means a medical waste object that is capable of cutting or penetrating skin or packaging material and that is contaminated with a pathogen or may become contaminated with a pathogen derived from the medical treatment, diagnosis, immunization, or biomedical research of a human or animal. Sharps include used medical waste such as needles, syringes, scalpels, broken glass, culture slides, culture dishes, broken capillary tubes, broken rigid plastic, and exposed ends of dental wires. Mark these mailpieces with identification number UN 3291.

[Revise the last part of item h as follows:]

h. * * * UN 2814, UN 2900, or UN 3373, as appropriate. A toxin known or suspected to contain a Category A infectious substance is not mailable. A toxin known or suspected to contain a Category B infectious substance must be marked UN 3373 and packaged under 10.17.5. Toxins from plant, animal, or bacterial sources that do not contain an infectious substance, and are not contained in an infectious substance, may be considered for classification as Division 6.1 toxic substances under 10.16.

[Delete the last sentence in item i. Revise the last part of the new last sentence as follows:]

i. * * * to remove or mitigate the infectious hazard prior to transport.

10.17.3 Nonregulated Materials

[Revise 10.17.3 as follows:]

The following materials are not subject to regulation as Division 6.2 hazardous materials and are mailable

when the packaging requirements in 10.17.9 are met:

a. A biological product, including an experimental or investigational product or component of a product, subject to Federal approval, permit, review, or licensing requirements, such as those required by the Food and Drug Administration of the U.S. Department of Health and Human Services or the U.S. Department of Agriculture. A biological product known or suspected to contain a Category B infectious substance must be marked UN 3373 and packaged under 10.17.5. A biological product known or suspected to contain a Category A infectious substance is not mailable.

b. Blood collected for the purpose of blood transfusion or the preparation of blood products; blood products; plasma; plasma derivatives; blood components; tissues or organs intended for use in transplant operations; and human cell, tissues, and cellular and tissue-based products regulated under the Public Health Service Act (42 U.S.C. 264–272) or the Food, Drug, and Cosmetic Act (21 U.S.C. 332 *et seq.*).

c. Blood, blood plasma, and blood components collected for the purpose of blood transfusion or the preparation of blood products and sent for testing as part of the collection process, except where the person collecting the blood has reason to believe it contains a Category B infectious substance, in which case the test sample must be shipped as a Category B infectious substance. Materials known or suspected to contain a Category A infectious substance are not mailable.

d. Dried blood spots, collected by applying a drop of blood to absorbent material, or dried specimens for fecal occult blood detection. (These materials are not classified as exempt human or animal specimens.)

e. Forensic material containing a biological material, such as tissue, body fluid, excreta, or secreta, not expected to contain a Category A or Category B infectious substance and transported on behalf of a U.S. Government agency or a state, local, or Indian tribal government agency. A forensic material known or suspected to contain a Category B infectious substance must be shipped as a Category B infectious substance. A forensic material known or suspected to contain a Category A infectious substance is not mailable.

* * * * *

[Revise Exhibit 10.17.4 as follows:]

EXHIBIT 10.17.4 PACKAGING STANDARDS FOR DIVISION 6.2 INFECTIOUS SUBSTANCES

Material being mailed	Packaging standards		
	Nonregulated	Category A	Category B
Blood for Transfusion	10.17.9	nm	10.17.5
Biological Product	10.17.9	nm	10.17.5
Culture or Stock	10.17.9	nm	10.17.5
Patient Specimen	na	nm	10.17.5
Exempt Human or Animal Specimen	10.17.10	na	na
Forensic Material	10.17.9	nm	10.17.5
Regulated Medical Waste	10.17.6	nm	10.17.6
Sharps Waste	10.17.6	nm	10.17.6
Toxin *	10.16.4	nm	10.17.5
Treated Medical Waste	10.17.9	n/a	n/a
Used Health Care Product	10.17.7	nm	10.17.7

nm = Not mailable. n/a = Not applicable.

* *Toxin* means a Division 6.1 material from a plant, animal, or bacterial source. A toxin containing an infectious substance or a toxin contained in an infectious substance must be classified as Division 6.2; described as an infectious substance; and assigned to UN 2814, UN 2900, or UN 3373, as appropriate. A Division 6.1 toxin that can qualify as an ORM–D material is permitted when packaged under 10.16.3 or 10.16.4.

[Revise 10.7.5 as follows:]

10.17.5 Packaging Category B Infectious Substances

A material that is classified as a Category B infectious substance and that meets the definition in 10.17.2a2 must be triple-packaged, meeting the packaging requirements in 49 CFR 173.199, and sent as First-Class Mail, Priority Mail, or Express Mail. Each primary receptacle containing a liquid must be leakproof and surrounded by absorbent material sufficient to protect the primary receptacle and absorb the total amount of liquid should the primary receptacle leak or break. Each primary receptacle containing a solid must be siftproof. Secondary containers for liquids must be leakproof. Secondary containers for solids must be siftproof. The primary and secondary packaging must be enclosed in a rigid outer shipping container. A single primary receptacle must not contain more than 1 liter (34 ounces) of a liquid specimen or 4 kg (8.8 pounds) of a solid specimen. Two or more primary receptacles whose combined volume does not exceed 4 liters (1 gallon) for liquids or 4 kg (8.8 pounds) for solids may be enclosed in a single secondary container. In addition:

a. The secondary container must be marked with the international biohazard symbol shown in Exhibit 10.17.6c2.

b. The primary receptacle or secondary packaging must be capable of withstanding, without leakage, an internal pressure producing a pressure differential of not less than 95 kPa (0.95 bar, 14 psi) in the range of −40°C to 55°C (−40°F to 130°F).

c. All mailpieces sent under 10.17.5 must be marked on the address side with the shipping name ''Biological substance, Category B'' and ''UN 3373'' as outlined in 49 CFR 173.199 (a)(5). Regulated medical waste and sharps medical waste as defined in 10.17.2f and 10.17.2g must be marked UN 3291. See 10.17.6.

d. Orientation arrows are not required on these mailpieces but may be used.

e. The outer packaging must show the name and telephone number of a person who is knowledgeable about the material shipped and has comprehensive emergency response and incident mitigation information, or of someone who has immediate access to the person with such knowledge and information.

[Delete 10.17.6 and renumber 10.17.7 through 10.17.10 as 10.17.6 through 10.17.9.]

10.17.6 Sharps Waste and Other Mailable Regulated Medical Waste

[Revise the introductory text as follows:]

Regulated medical waste and sharps medical waste known or suspected to contain a Category A infectious substance is not mailable. Regulated medical waste and sharps medical waste as defined in 10.17.2f and 10.17.2g, and containing materials classified as Category B infectious substances, must be marked UN 3291 and is permitted for mailing only using merchandise return service (see 507.10.0) with First-Class Mail or Priority Mail service, subject to the following requirements:

* * * * *

[Revise item b as follows:]

b. *Packaging.* Regulated medical waste and sharps medical waste that also meets the definition of a Category A infectious substance is not mailable. A medical waste material treated by steam sterilization, chemical disinfections, or other appropriate method so that it no longer contains a Category A or Category B infectious substance must be packaged under 10.17.9. The packaging for regulated medical waste and sharps medical waste containing or suspected of containing a Category B infectious substance is subject to these standards:

* * * * *

10.17.7 Packaging Used Health Care Products

[Revise the introductory text as follows:]

A used health care product known or reasonably suspected to contain a Category A material is not mailable. A used health care product not suspected to contain an infectious material, or that is known or suspected to contain a Category B infectious substance, and is being returned to the manufacturer or manufacturer's designee is mailable as First-Class Mail, Priority Mail, or Express Mail subject to the following packaging requirements:

* * * * *

[Revise the heading and introductory text in renumbered 10.17.8 as follows:]

10.17.8 Packaging Forensic Material

Forensic material containing a biological material, such as tissue, body fluid, excreta, or secreta, and sent on behalf of a U.S. Government agency or a State, local, or Indian tribal government agency must be packaged under 10.17.9 when it is not known or suspected to contain a Category A or Category B infectious substance. Forensic material known or suspected to contain a Category A infectious substance is not mailable. Forensic material known or suspected to contain a Category B infectious substance as identified in 10.17.5 is mailable as First-Class Mail, Priority Mail, or Express Mail when triple-packaged in a primary receptacle, secondary container, and a rigid outer shipping container as follows:

* * * * *

[Revise the heading and text in renumbered 10.17.9 as follows:]

10.17.9 Packaging Nonregulated Materials

Nonregulated materials as defined in 10.17.3 are not subject to regulation as hazardous materials but must be properly packaged when presented for mailing. Regulated medical waste, sharps medical waste, and used health care products must be packaged and mailed under 10.17.6 and 10.17.7. Exempt human and animal specimens must be packaged under 10.17.10. Nonregulated materials are mailable as First-Class Mail, Priority Mail, Express Mail, or Package Services mail. Such materials must be held within a securely sealed primary receptacle. The primary receptacle must be surrounded by sufficient absorbent material (for liquids) and cushioning material to protect the primary receptacle from breakage. The absorbent material must be capable of taking up the entire liquid contents of the primary receptacle in case of leakage. Either the primary receptacle or the inner packaging must be marked with the international biohazard symbol shown in Exhibit 10.17.6c2. The primary receptacle and the absorbent and cushioning material must be snugly enclosed in a rigid outer shipping container that is securely sealed. A shipping paper and a content marking on the outer shipping container are not required. Nonregulated material specimens and biological products are subject to the following packaging standards:

a. *Liquid Patient Specimens and Biological Products.* Mailers must package a liquid nonregulated patient specimen, a forensic specimen, or a biological product (such as polio vaccine) as follows:

1. *Not exceeding 50 ml.* A patient specimen or biological product consisting of 50 ml or less per mailpiece must be packaged in a securely sealed primary receptacle. Two or more primary receptacles whose combined volume does not exceed 50 ml may be enclosed within a single mailpiece. Sufficient absorbent material and cushioning material to withstand shock and pressure changes must surround the primary receptacle(s), or be otherwise configured to take up the entire liquid contents in case of leakage. The primary receptacle(s) and the absorbent cushioning must be enclosed in a secondary container with a leakproof barrier that can prevent failure of the secondary container if the primary receptacle(s) should leak during transport. The secondary container must be securely sealed, and it may serve as the outer shipping container if it has sufficient strength to withstand ordinary postal processing. The secondary container must be marked with the international biohazard symbol shown in Exhibit 10.17.6c2, except when the secondary container also serves as the outer shipping container. In that case, the biohazard symbol must appear on the inner packaging or on the primary container. A shipping paper and a content marking on the outer shipping container are not required.

2. *Exceeding 50 ml.* A liquid patient specimen, forensic material, or biological product that exceeds 50 ml must be packaged in a securely sealed primary receptacle. A single primary receptacle must not contain more than 500 ml of specimen. Two or more primary receptacles whose combined volume does not exceed 500 ml may be enclosed in a single secondary container. Sufficient absorbent material and cushioning material to withstand shock and pressure changes must surround the primary receptacle(s), or be otherwise configured to take up the entire liquid contents in case of leakage. The primary receptacle(s) and the absorbent cushioning must be enclosed in a secondary container with a leakproof barrier that can prevent failure of the secondary container if the primary receptacle(s) should leak during transport. The secondary container cannot serve as the outer shipping container. The secondary container must be marked with the international biohazard symbol shown in Exhibit 10.17.6c2. The secondary container must be securely and snugly enclosed in a fiberboard box or container of equivalent strength that serves as the outer shipping container. A shipping paper and a content marking on the outer shipping container are not required.

b. *Solid (or Dry) Specimen.* A solid or dry specimen, such as a saliva swab, blood spot, fecal smear, culture or stock, or forensic material, must be completely dried before packaging in a mailing container or envelope. Cushioning material to withstand shock and pressure changes is required only if the dry specimen is placed in a breakable primary receptacle. When required, the cushioning material must surround the primary receptacle. The primary receptacle (and cushioning material, if required) must be enclosed in a secondary container with a siftproof

barrier that can prevent failure of the secondary container if the primary receptacle breaks during shipment. The secondary container must be securely sealed, and it may serve as the outer shipping container if it has sufficient strength to withstand ordinary postal processing. The secondary container must be marked with the international biohazard symbol shown in Exhibit 10.17.6c2, except when the secondary container also serves as the outer shipping container. In that case, the biohazard symbol must appear either on the inner packaging or on the primary container receptacle. A shipping paper and a content marking on the outer shipping container are not required.

[Insert new 10.17.10 as follows:]

10.17.10 Packaging Exempt Human or Animal Specimens

Exempt human or animal specimens as defined in 10.17.2d are not subject to regulation as hazardous materials but when presented for mailing must be triple-packaged in leakproof (for liquids) or siftproof (for solids) primary receptacles. Sufficient cushioning and absorbent materials must surround each primary receptacle containing liquid. Secondary containers for liquids must be leakproof. Secondary containers for solids must be siftproof. The primary and secondary packaging must be enclosed in a rigid outer shipping container. A single primary receptacle must not contain more than 500 ml of a liquid specimen or 500 grams of a solid specimen. Two or more primary receptacles whose combined volume does not exceed 500 ml (for liquids) or 500 grams (for solids) may be enclosed in a single secondary container. The secondary container cannot serve as the outer shipping container. The secondary container must be marked with the international biohazard symbol shown in Exhibit 10.17.6c2. The secondary container must be securely and snugly enclosed in a fiberboard box or container of equivalent strength that serves as the outer shipping container. A shipping paper is not required. The outer shipping container must be marked on the address side with the words ''Exempt human specimen'' or ''Exempt animal specimen,'' as appropriate. In addition, at least one surface of the outer packaging must have a minimum dimension of 3.9 inches x 3.9 inches (100 mm x 100 mm). Exempt human and animal specimens are mailable as First-Class Mail, Priority Mail, Express Mail, or Package Services mail.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E6–18062 Filed 10–31–06; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0564, FRL–8236–8]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Revisions to the Utah Administrative Code; Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve State Implementation Plan (SIP) revisions submitted by the State of Utah on February 7, 2006. These changes to the Utah Administrative Code revise some minor technical requirements of Utah's continuous emission monitoring rules and correct several grammatical errors. The intended effect of this action is to make federally enforceable those provisions that EPA is approving. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on January 2, 2007 without further notice, unless EPA receives adverse comment by December 1, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0564, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: long.richard@epa.gov* and *kimes.jeffrey@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466.
- *Hand Delivery:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2006–0564. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov or e-mail.* The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I: General Information portion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov index.* Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Program, Environmental Protection Agency

(EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Kimes, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466, (303) 312–6445, *kimes.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. Background
III. EPA's Review of the State of Utah's February 7, 2006 Submittal
IV. Final Action
V. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(iii) The initials SIP mean or refer to State Implementation Plan.

(iv) The words State or Utah mean the State of Utah, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *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:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. 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.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background

On February 7, 2006, the Governor of Utah submitted a SIP revision that contains amendments to Rule R307–170 of the Utah Administrative Code. The amendments update a key provision of the State's continuous emissions monitoring rule to be consistent with 40 CFR part 75, Appendix A, Section 6.2 on which part of the State's rule is based. In addition, the revision corrects several inconsequential grammatical errors. The Utah Air Quality Board adopted these amendments on January 4, 2006 and they became effective on January 5, 2006.

III. EPA's Review of the State of Utah's February 7, 2006 Submittal

A. Revisions to the Utah Administrative Code Adopted January 4, 2006 and Effective January 5, 2006

1. Changes to R307–170–7 (1). Performance Specification Audits

a. The state is adding language consistent with 40 CFR part 75, Appendix A, Section 6.2, Acid Rain program provisions. This will exempt sources with monitors subject to the Acid Rain rules from the requirement for quarterly monitor audits. Under 40 CFR part 75, Appendix A, Section 6.2, acid rain related monitors require only annual audits. Without the addition of this exemption the acid rain monitors would be unnecessarily subject to the same quarterly audits required under 40 CFR part 60, Appendix B (Standards of Performance for New Stationary Sources) monitoring standards. EPA is approving the revision to R307–170–7(1).

2. Typographical and Grammatical Corrections to R307–170–4. Definitions

a. The state is making typographical and grammatical corrections to several definitions. EPA is approving the paragraphs which are the definitions of the following terms: Continuous Emission Monitoring System; Description Report; Excess Emission Report; Monitor; State Electronic Data Report; and Summary Report.

3. Typographical and Grammatical Corrections to Assorted Sections

a. The state is making numerous typographical and grammatical corrections to several sections. EPA is approving these inconsequential corrections in the following sections: R307–170–5 (7); R307–170–7 (6); R307–170–7(6)(a) and (b); and in R307–170–9 sections (5)(a) and (b), (6)(b), (7)(b), and (9)(a).

IV. Final Action

EPA is approving the following changes to the Utah Administrative Code that were submitted by the Governor on February 7, 2006 and effective on January 5, 2006: R307–170–7(1); R307–170–4; R307–170–5 (7); R307–170–7 (6); R307–170–7(6)(a) and (b); and in R307–170–9 sections (5)(a) and (b), (6)(b), (7)(b), and (9)(a).

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of any National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. The Utah SIP revisions that are the subject of this document do not interfere with attainment or maintenance of any NAAQS or any other applicable requirement of the Act. The Governor's February 7, 2006 submittal merely makes changes to the operational audits of Acid Rain monitors and inconsequential typographical and grammatical changes. Therefore, section 110(l) requirements are satisfied.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments; we are approving one minor change and typographical and grammatical corrections to Utah's air quality rules. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that

will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective January 1, 2007 without further notice unless the Agency receives adverse comments by December 1, 2006. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 2, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 27, 2006.

Carol Rushin,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(64) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(64) Revisions to State Implementation Plan were submitted by the State of Utah on February 7, 2006. The revisions are to the Utah Administrative Code to revise the continuous emission monitoring requirements for performance audits of acid rain monitors and to correct several typographical and grammatical errors.

(i) Incorporation by reference.

(A) Utah Administrative Code sections: R307–170–7(1); R307–170–4; R307–170–5 (7); R307–170–7 (6); R307–170–7(6)(a) and (b); and in R307–170–9 sections (5)(a) and (b), (6)(b), (7)(b), and (9)(a); effective January 5, 2006.

[FR Doc. E6–18377 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2006–0784; FRL–8096–4]

Bacillus Thuringiensis Modified Cry3A Protein and the Genetic Material Necessary for Its Production in Corn; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a permanent exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn on field corn, sweet corn, and popcorn when applied/used as a plant-incorporated protectant. Syngenta Seeds, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn.

DATES: This regulation is effective November 1, 2006. Objections and requests for hearings must be received on or before January 2, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0784. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open 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: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@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. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0784 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 2, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0784, 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 Building), 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.

II. Background and Statutory Findings

In the **Federal Register** of October 27, 2004 (69 FR 62688) (FRL–7370–1), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 4F6838) by Syngenta Seeds, Inc., P.O. Box 12257, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257. The petition requested that 40 CFR part 174 be amended by establishing a permanent exemption from the requirement of a tolerance for residues of modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn. This notice included a summary of the petition prepared by the petitioner Syngenta Seeds, Inc. One comment was received in response to the notice of filing from the National Corn Growers Association.

They supported the petition and requested EPA to quickly issue the final rule.

On March 14-15, 2006, EPA held a FIFRA Scientific Advisory Panel (SAP) meeting, at *http://www.epa.gov/scipoly/sap/meetings/2006/index.htm#march* to address the scientific issues that arose during the risk assessment of mCry3A. EPA asked the SAP to comment on the equivalence of the mCry3A proteins from corn event MIR604 and from recombinant *E. coli* - specifically the presence of two forms in the bacterial-produced mCry3A protein and the differences in bioactivity in the WCRM bioassay. The majority of the Panel concluded that the two forms of the mCry3A are of relatively comparable biological activity for the purposes of the human health assessments based on the amino acid sequence identity, lack of glycosylation, and general stability.

EPA also asked the SAP to comment on EPA's conclusions regarding the lack of mammalian toxicity and allergenicity of the mCry3A protein-specifically the impact of the less potent mCry3A form on the results of the acute oral toxicity tests and the usefulness of *in vitro* digestibility studies and amino acid sequence homology analysis as part of the risk assessment. Overall, the Panel was more concerned with the quality of data, i.e. inadequately described methods and poor reproduction of data images. The Panel specifically noted that the amino acid sequence analysis to known toxins and allergens were missing the following data: Specification of which version of NCBI database was utilized; descriptions of parameters utilized; and dates accessed for the BLAST search. EPA recognizes that these are important parameters to include in a description of an amino acid analysis and is requiring submission of additional information by Syngenta Seeds, Inc. in order to confirm the method used. However, EPA maintains that the conclusions of the amino acid sequence analysis are still valid for the purpose of the risk assessment. EPA reached this decision based on the following: (1) Lack of mammalian toxicity of mCry3A protein as shown by the acute oral mouse study; (2) mCry3A protein is rapidly digested in SGF; (3) mCry3A protein originates from a non-allergenic source; (4) lack of sequence identity of mCry3A protein with eight contiguous amino acids or more than 35% identity over 80 amino acids with known toxins or allergens; and (5) mCry3A protein is not glycosylated when expressed in corn.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues '' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Data have been submitted demonstrating the lack of mammalian toxicity at high levels of exposure to the mCry3A protein alone. These data demonstrate the safety of the products at levels well above maximum possible exposure levels that are reasonably anticipated in the crops. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived (See 40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (Tiers II and III).

An acute oral toxicity study was submitted for the mCry3A protein. The acute oral toxicity data submitted support the prediction that the mCry3A protein would be non-toxic to humans. Male and female mice (5 of each) were dosed with 2,377 milligrams/kilograms bodyweight (mg/kg bwt) of mCry3A protein. With the exception of one female in the test group that was euthanized on day 2 (due to adverse clinical signs consistent with a dosing injury), all other mice survived the study, gained weight, had no test material-related clinical signs, and had no test material-related findings at necropsy.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (*Sjoblad, Roy D., et al.* ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' Regulatory Toxicology and Pharmacology 15, 3–9 (1992)). Therefore, since no effects were shown to be caused by the plant-incorporated protectants, even at relatively high dose levels, the mCry3A protein is not considered toxic. Further, amino acid sequence comparisons showed no similarity between the mCry3A protein and known toxic proteins available in public protein data bases. According to the Codex Alimintarius guidelines, the assessment of potential toxicity also includes stability to heat (FAO/WHO Standards Programme, 2001). Further data demonstrate that mCry3A is inactivated against Western corn rootworm, when heated to 95 °C for 30 minutes.

Since mCry3A is a protein, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by acid, and proteases; may be glycosylated; and present at high concentrations in the food. Data have been submitted that demonstrate that the mCry3A protein is rapidly degraded by gastric fluid *in vitro*. In a solution of simulated gastric fluid 1 milligrams/milliliter (mg/mL) mCry3A test protein mixed with simulated gastric fluid (pH 1.2, containing 2 mg/mL NaCl, 14 µL 6 N HCl, and 2.7 mg/mL pepsin) resulting in 10 pepsin activity units/microgram (µg) protein (complies with year 2000 U.S. Pharmacopoeia recommendations),

complete degradation of detectable mCry3A protein occurred within 2 minutes. A comparison of amino acid sequences of known allergens uncovered no evidence of any homology with mCry3A, even at the level of eight contiguous amino acids residues. Further, data demonstrate that mCry3A is not glycosylated, and is present in low levels in corn tissue. Therefore, the potential for the mCry3A protein to be a food allergen is minimal. As noted above, toxic proteins typically act as acute toxins with low dose levels. Therefore, since no effects were shown to be caused by the plant-incorporated protectant, even at relatively high dose levels, the mCry3A protein is not considered toxic.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-incorporated protectant chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. Exposure via residential or lawn use to infants and children is also not expected because the use sites for the mCry3A protein are all agricultural for control of insects. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, potentially, drinking water. However, oral toxicity testing done at a dose in excess of 2 grams/kilogram (gm/kg) showed no adverse effects. Furthermore, the expression of the modified Cry3A protein in corn kernals has been shown to be in the parts per million range, which makes the expected dietary exposure several orders of magnitude lower than the amounts of mCry3A protein shown to have no toxicity. Therefore, even if negligible aggregate exposure should occur, the Agency concludes that such exposure would present reasonable certainty of no harm due to the lack of mammalian toxicity and the rapid digestibility demonstrated for the mCry3A protein.

V. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity, resulting from the plant-incorporated protectant, we conclude that there are no cumulative effects for the mCry3A protein.

VI. Determination of Safety for U.S. Population, Infants and Children

A. Toxicity and Allergenicity Conclusions

The data submitted and cited regarding potential health effects for the mCry3A protein include the characterization of the expressed mCry3A protein in corn, as well as the acute oral toxicity, and *in vitro* digestibility of the proteins. The results of these studies were determined applicable to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies were considered.

Adequate information was submitted to show that the mCry3A protein test material derived from microbial cultures was biochemically and functionally similar to the protein produced by the plant-incorporated protectant ingredients in corn. Production of microbially produced protein was chosen in order to obtain sufficient material for testing.

The acute oral toxicity data submitted supports the prediction that the mCry3A protein would be non-toxic to humans. As mentioned above, when proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' Regulatory Toxicology and Pharmacology 15, 3–9 (1992)). Since no effects were shown to be caused by mCry3A protein, even at relatively high dose levels (2,377 mg/kg bwt), the mCry3A protein is not considered toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived. (See 40 CFR 158.740(b)(2)(i). Moreover, mCry3A showed no sequence similarity to any known toxin and was inactivated by heat against Western corn rootworm. No further toxicity testing and residue data were required because for microbial products, further toxicity testing and residue data requirements are triggered by significant acute effects in studies such as the mouse oral toxicity study to verify the observed effects and clarify the source of these effects (Tiers II and III).

Modified Cry3A protein residue chemistry data were not required for a human health effects assessment of the subject plant-incorporated protectant ingredients because of the lack of mammalian toxicity. However, data submitted demonstrated low levels of mCry3A in corn tissues with less than 2 μg mCry3A protein/gram dry weight in kernals and less than 30 μg mCry3A protein/gram dry weight of whole corn plant.

Since modified Cry3A is a protein, its potential allergenicity is also considered as part of the toxicity assessment. Data considered as part of the allergenicity assessment include that the modified Cry3A protein came from *Bacillus thuringiensis* which is not a known allergenic source, showed no sequence similarity to known allergens, was readily degraded by pepsin, and was not glycosylated when expressed in the plant. Therefore, there is a reasonable certainty that modified Cry3A protein will not be an allergen.

Neither available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children) nor safety factors that are generally recognized as appropriate for the use of animal experimentation data were evaluated. The lack of mammalian toxicity at high levels of exposure to the mCry3A protein, as well as the minimal potential to be a food allergen demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

The genetic material necessary for the production of the plant-incorporated protectant active ingredients are the nucleic acids (DNA, RNA) which comprise genetic material encoding these proteins and their regulatory regions. The genetic material (DNA, RNA), necessary for the production of mCry3A protein has been exempted under the blanket exemption for all nucleic acids (40 CFR 174.475).

B. Infants and Children Risk Conclusions

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity.

In addition, FFDCA section 408(b)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety, also referred to as margins of exposure (MOEs), for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different MOE will be safe for infants and children.

In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the mCry3A protein and the genetic material necessary for their production. Thus, there are no threshold effects of concern to infants and children when the mCry3A protein is used as a plant-incorporated protectant. Accordingly, the Agency concludes that the additional MOE is not necessary to protect infants and children, and that not adding any additional MOE will be safe for infants and children.

C. Overall Safety Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the mCry3A protein and the genetic material necessary for its production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed, nor any indication of allergenicity potential for the plant-incorporated protectant.

VII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredient is a protein, derived from sources that are not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of the plant-incorporated protectant at this time.

B. Analytical Method(s)

A method for extraction and ELISA analysis of mCry3A protein in corn has been submitted and found acceptable by the Agency.

C. Codex Maximum Residue Level

No Codex maximum residue levels exist for the plant-incorporated protectant *Bacillus thuringiensis* mCry3A protein and the genetic material necessary for its production in corn.

VIII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption from the requirement of a tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 29, 2006.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 174—AMENDED

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 174.456 is revised to read as follows:

§ 174.456 Bacillus thuringiensis modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn.

Bacillus thuringiensis modified Cry3A protein (mCry3A) and the genetic material necessary for its production in corn is exempt from the requirement of a tolerance when used as plant-incorporated protectant in the food and feed commodities of field corn, sweet corn and popcorn. Genetic material necessary for its production means the genetic material which comprise genetic material encoding the mCry3A protein and its regulatory regions. Regulatory regions are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the mCry3A protein.

[FR Doc. E6–18223 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., CFM, Acting Section Chief, Engineering Management Section, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
Madera County, California Docket No.: FEMA–B–7432				
California	Madera County	San Joaquin River	At State Highway 145	*225
			Just upstream of State Highway 99	*244
			Approximately 5,000 feet upstream of Atchison, Topeka and Santa Fe Railroad.	*251

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Madera County Unincorporated Areas
Maps are available for inspection at the Madera County Planning Department, 135 West Yosemite Avenue, Madera, California 93637.

San Joaquin County, California Docket No.: FEMA–B–7445				
California	San Joaquin County	Stanislaus River	Approximately 5 miles downstream of State Highway 99.	*45
			Approximately 3 miles upstream of Santa Fe Railroad.	*93
California	City of Ripon, San Joaquin County.	Stanislaus River	Approximately 3.3 miles downstream of State Highway 99.	*48
			Approximately 1.3 miles upstream of State Highway 99.	*57

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

San Joaquin County Unincorporated Areas
Maps are available for inspection at the Department of Public Works, 1810 East Hazelnut Avenue, Stockton, California 95202.
City of Ripon
Maps are available for inspection at City Hall, 259 North Wilma Avenue, Ripon, California 95366.

Shasta County, California Docket No.: FEMA–B–7453				
California	City of Redding, Shasta County.	Churn Creek	Approximately 250 feet upstream of (Upper) Churn Creek Road.	*465
			Approximately 3,350 feet upstream of (Upper) Churn Creek Road.	*471
California	Shasta County	Churn Creek	At the confluence of Churn Creek and the Sacramento River.	*410
			Approximately 250 feet upstream of (Upper) Churn Creek Road.	*465

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

City of Redding
Maps are available for inspection at the County Courthouse, 1855 Placier Street, Redding, California 96001.
Shasta County Unincorporated Areas
Maps are available for inspection at City Hall, 777 Cypress Avenue, 1st Floor, Redding, California 96001.

Linn County, Iowa Docket No.: FEMA–B–7453				
Iowa	Linn County	Long Branch Creek	Just upstream of Highway 11	+735
			Approximately 1,800 feet downstream of Iva Road.	+737
Iowa	Linn County	West Yellow Creek	Approximately 2,000 feet downstream	+727
			Just downstream of Highway 11	+734

Depth in feet above ground.
* National Geodetic Vertical Datum.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified

+ North American Vertical Datum.

ADDRESSES

Linn County Unincorporated Areas
Maps are available for inspection at the Linn County, County Courthouse 108 North High Street, Linneus, Missouri 64653.

Tama County, Iowa
Docket No.: FEMA–B–7453

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
Iowa	Tama County	Deer Creek	Approximately 2,700 feet upstream of confluence of Deer Creek with Iowa River.	+819
			Approximately 400 feet downstream of 13th Street.	+823
Iowa	Tama County	Iowa River	Approximately 1,400 feet downstream of Iowa River.	+784
			Approximately 2 miles upstream of Station Street.	+788
Iowa	Tama County	Iowa River at City of Tama	Approximately 7,000 feet downstream of U.S highway 63.	+814
			Approximately 1,800 feet upstream of confluence of Deer Creek with Iowa River.	+819
Iowa	Tama County	Mud Creek	At confluence with Iowa River	+814
			Just downstream of 9th Street	+836
Iowa	Tama County	Otter Creek	Just west of the intersection of Station Street Highway 212.	+785

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Tama County Unincorporated Areas:
Maps are available for inspection at the 100 North Main Street, Toledo, Iowa 52342.

Plymouth County, Massachusetts
Docket No.: FEMA–D–7624

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
Massachusetts	Town of Marshfield, Plymouth County.	Massachusetts Bay, Duxbury Marsh.	Approximately 300 feet southwest of the intersection of Careswell Street and Colby Hewitt Lane.	*10
			Approximately 1,700 feet southeast of the intersection of Careswell Street and Colby Hewitt Lane.	*13
Massachusetts	Town of Marshfield, Plymouth County.	Massachusetts Bay	Approximately 1,500 feet north of the intersection of Bay Street and Canal Street.	*11
			Approximately 896 feet east of the intersection of Cove Street and Central Street.	*23
Massachusetts	Town of Marshfield, Plymouth County.	Massachusetts Bay, Green Harbor River.	Approximately 400 feet west of the intersection of Meetinghouse Lane and Stagecoach Drive.	*10
Massachusetts	Town of Marshfield, Plymouth County.	Massachusetts Bay	At the intersection of Hancock Street and Ashburton Avenue.	#2

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Plymouth County Unincorporated Areas
Maps available for inspection at the Marshfield Town Hall, Building Department, 870 Moraine Street, Marshfield, Massachusetts.
Town of Marshfield
Maps available for inspection at the Marshfield Town Hall, Building Department, 870 Moraine Street, Marshfield, Massachusetts.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
Burleigh County, North Dakota Docket No.: FEMA–B–7439				
North Dakota	City of Bismarck, Burleigh County.	Missouri River	Approximately 3.8 miles upstream of confluence of Little Heart River.	*1,632
			Approximately 1.7 miles upstream of Old Brunt Creek.	*1,639
North Dakota	Burleigh County	Missouri River	Approximately 500 feet downstream of confluence of Apple Creek.	*1,628
			Approximately 5.7 miles upstream of confluence Square Butte Creek.	*1,644
North Dakota	Burleigh County	Brunt Creek	At confluence with Missouri River	*1,640
			Just upstream of North Dakota Highway 1804.	*1,650

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum

ADDRESSES

City of Bismarck
Maps are available for inspection at the Building Inspection Office, 1020 East Central Avenue, Bismarck, North Dakota 58501.
Burleigh County Unincorporated Areas
Maps are available for inspection at the Building Inspection Office, 1020 East Central Avenue, Bismarck, North Dakota 58501.

Burleigh County, North Dakota Docket No.: FEMA–B–7449				
North Dakota	City of Lincoln, Burleigh County.	Apple Creek	Just upstream of Railroad	+1,644
			Approximately 5,000 feet downstream of confluence of Hay Creek.	+1,646

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

City of Lincoln
Maps are available for inspection at City Hall, 74 Santee Road, Lincoln, North Dakota 58504.

Summit County, Utah Docket No.: FEMA–B–7453				
Utah	Summit County	East Canyon Creek	Approximately 2,200 feet upstream of confluence with Threemile Canyon Creek.	+6,313
			Approximately 150 feet of upstream of Bitner Branch Road.	+6,375
Utah	Summit County	Kimball Creek	At confluence with North Parkley's Park Drainage.	+6,375
			Just downstream of Old Ranch Road Canal.	+6,438
Utah	Summit County	McLeod Creek	At Canal Entrance Culvert	+6,506
			Approximately 350 feet	+6,629
Utah	Summit County	North Parkley's Park Drainage.	At the confluence with Kimball Creek	+6,375
			Approximately 15,800 feet upstream of confluence with Kimball Creek.	+6,430
Utah	Summit County	Red Pine Creek	At confluence with McLeod Creek	+6,538
			Approximately 100 feet downstream of Route 224.	+6,694
Utah	Summit County	McLeod Creek through Quarry Mountain.	Just upstream of Old Ranch Road Canal	+6,438
			At divergence from McLeod Creek	+6,584

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified

ADDRESSES

Summit County Unincorporated Areas:
Maps are available for inspection at Summit County Courthouse, 60 North Main, Coalville, Utah 84017.

Shenandoah County, Virginia
Docket No.: FEMA–B–7453

Virginia	Shenandoah County	Stony Creek	Approximately 1,150 feet downstream of Dellinger Acres Road. Approximately 1.63 miles upstream of Lake Laura Dam.	*1,082 *1,375

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Shenandoah County Unincorporated Areas
Maps are available for inspection at Planning and Zoning Office, 600 North Main Street, Suite 107, Woodstock, VA 22664.

Ferry County, Washington
Docket No.: FEMA–B–7453

Washington	Ferry County	Sanpoil River	At border with Colville Indian Reservation Approximately 600 feet upstream of Fish Hatchery Road (Route 21).	+2,025 +2,430

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Ferry County Unincorporated Areas
Maps are available for inspection at County Courthouse, 290 East Tessie Avenue, Republic, Washington 99166.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

Fresno County, California and Incorporated Areas
Docket No.: FEMA–B–7432

San Joaquin River	At State Highway 145 Just upstream of State Highway 99 Approximately 5,000 feet upstream of Atchison, Topeka and Santa Fe Railroad.	*225 *244 *251	City of Fresno, Fresno County (Unincorporated Areas).

Depth in feet above ground
* National Geodetic Vertical Datum
+ North American Vertical Datum

ADDRESSES

Fresno County (Unincorporated Areas)
Maps are available for inspection at the Fresno County Department of Public Works and Planning, 2220 Tulare Street, Fresno, California 93721.
City of Fresno
Maps are available for inspection at City Hall, 2600 Fresno Street, Room 3043, Fresno, California 93721.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Merced County, California and Incorporated Areas Docket No.: FEMA–B–7437			
Bear Creek	At McKee Road	* 183	Merced County (Unincorporated Areas).
	Just upstream of Bear Creek Drive	* 255	
Black Rascal	At confluence with Bear Creek	* 199	Merced County (Unincorporated Areas).
Diversion Channel	Approximately 3,700 feet upstream of East Olive Avenue	* 202	Merced County (Unincorporated Areas).
Local Ponding	Northeast of the intersection of East Childs Avenue and the Fairfield Canal.	* 200	Merced County (Unincorporated Areas), City of Merced.
	Northeast of the intersection of Mission Avenue and South Arboleda Drive.	* 200	
Local Ponding	Northeast of the intersection of East Childs Avenue and Tower Road.	* 196	Merced County (Unincorporated Areas), City of Merced.
	Southeast of the intersection of Le Grand Road and US Highway 99.	* 196	
	Northeast of the intersection of Gerarad Avenue and the Fairfield Canal.	* 196	
Local Ponding	Northeast of the intersection of Mission Avenue and the Fairfield Canal.	* 193	Merced County (Unincorporated Areas), City of Merced.
	Northeast of the intersection of East Childs Avenue and Kirby Road.	* 191	
Local Ponding	Northeast of the intersection of State Highway 140 and East Street.	* 190	Merced County (Unincorporated Areas), City of Merced.
	Southeast of the intersection of US Highway 99 and Mariposa Way.	* 189	
Local Ponding	Northeast and Southeast of the intersection of East Childs Avenue and the Hartley Bradley Lateral.	* 186	Merced County (Unincorporated Areas), City of Merced.
Local Ponding	Southeast of the intersection of US Highway 99 and Vassar Avenue.	* 183	Merced County (Unincorporated Areas).
Local Ponding	Southeast of the intersection of US Highway 99 and Mission Avenue.	* 179	Merced County (Unincorporated Areas).
	Northeast of the intersection of Sandy Mush Road and Givens-Lustre Road.	* 179	
Local Ponding	Northeast and Southeast of the intersection of US Highway 99 and McHenry Road.	* 185	Merced County (Unincorporated Areas).
Local Ponding	Southeast of the intersection of East Childs Avenue and Carol Avenue.	* 176	City of Merced.
Local Ponding	Northeast of the intersection of Mission Avenue and Tyler Road.	* 165	Merced County (Unincorporated Areas).
Local Ponding	Northeast of the intersection of Healy Road and Deadman Creek.	* 164	Merced County (Unincorporated Areas).
Local Ponding	Northeast of the intersection of State Highway 59 and Duck Slough.	* 151	Merced County (Unincorporated Areas).
Local Ponding	Northeast of the intersection of Mariposa Way and Burchell Avenue.	* 237	Merced County (Unincorporated Areas).
Local Ponding	Northeast of the intersection of Gerard Avenue and Plainsburg Avenue.	* 226	Merced County (Unincorporated Areas).
Local Ponding	Southeast of the intersection of Kadota Avenue and Plainsburg Road.	* 222	Merced County (Unincorporated Areas).
Shallow Flooding	From the intersection of Woodland Avenue South and West to State Highway 59.	# 1	Merced County (Unincorporated Areas), City of Merced.
	From the AT & SF Railroad West to State Highway 59	# 1	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Shallow Flooding	From the AT & SF Railroad West to State Highway 59	# 2	Merced County (Unincorporated Areas).
Shallow Flooding	Northeast of the intersection of State Highway 59 and Duck Slough.	# 3	Merced County (Unincorporated Areas).

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Merced County (Unincorporated Areas)
Maps are available for inspection at Merced County Department of Public Works, 715 Martin Luther King Jr. Way, Merced, California 95340.
City of Merced
Maps are available for inspection at City Hall, 678 West 18th Street, Merced, California 95340.

Coweta County, Georgia and Incorporated Areas
Docket No.: FEMA–B–7453

Little Wahoo Creek	Approximately 130 feet upstream of confluence with Wahoo Creek.	+ 800	Coweta County (Unincorporated Areas).
	Approximately 1,100 feet upstream of confluence with Wahoo Creek.	+ 800	
Snake Creek	Approximately 170 feet upstream of confluence with Wahoo Creek.	+ 796	Coweta County (Unincorporated Areas).
	Approximately 4,200 feet upstream of confluence with Wahoo Creek.	+ 801	
Tributary 1 to Persimmon Creek	At confluence with Persimmon Creek	+ 866	Coweta County (Unincorporated Areas).
	Approximately 120 feet upstream of confluence with Permission Creek.	+ 866	
Tributary 1 to Snake Creek	At confluence with Snake Creek	+ 873	City of Newman.
	Approximately 40 feet upstream of confluence with Snake Creek.	+ 873	
Tributary 2 to Mineral Spring Branch.	At confluence with Mineral Spring Branch	+ 830	Coweta County (Unincorporated Areas).
	Approximately 780 feet upstream of Fourth Street	+ 830	
Tributary 2 to Sandy Creek	At confluence with Tributary 3 to Sandy Creek	+ 793	Coweta County (Unincorporated Areas).
	Approximately 30 feet upstream of confluence with Tributary 3 to Sandy Creek.	+ 793	
Tributary 2 to Shoal Creek	Approximately 500 feet upstream of confluence with Shoal Creek.	+ 839	Coweta County (Unincorporated Areas).
	Approximately 1,720 feet upstream of confluence with Shoal Creek.	+ 839	
Tributary 3 to Shoal Creek	Approximately 140 feet upstream of confluence with Shoal Creek.	+ 854	Coweta County (Unincorporated Areas).
	Approximately 500 feet upstream of confluence with Shoal Creek.	+ 854	
Tributary 3 to Wahoo Creek	Approximately 110 feet upstream of confluence with Tributary 2 to Wahoo Creek.	+ 868	City of Newman.
	Just downstream of Bullsboro Drive/State Highway 34	+ 869	
Tributary 4 to Wahoo Creek	Approximately 100 feet upstream of confluence with Tributary 3 to Wahoo Creek.	+ 873	City of Newman.
	Approximately 650 feet upstream of confluence with Tributary 3 to Wahoo Creek.	+ 873	
Tributary 6 to Wahoo Creek	At confluence with Tributary 2 to Wahoo Creek	+ 881	City of Newman.
	Approximately 160 feet upstream of confluence with Tributary 2 to Wahoo Creek.	+ 881	
Tributary 9 to Wahoo Creek	At confluence with Wahoo Creek	+ 875	City of Newman.
	Approximately 600 feet upstream of confluence with Wahoo Creek.	+ 875	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Tributary 10 to Wahoo Creek	Approximately 220 feet upstream of confluence with Wahoo Creek.	+882	City of Newman.
	Approximately 420 feet upstream of confluence with Wahoo Creek.	+882	
Tributary 12 to Wahoo Creek	At confluence with Wahoo Creek	+891	City of Newman.
	Approximately 270 feet upstream of confluence with Wahoo Creek.	+896	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

City of Newman
Maps are available for inspection at the Community Map Repository, 25 LaGrange Street, Newman, Georgia.
Coweta County (Unincorporated Areas)
Maps are available for inspection at the Community Map Repository, 22 East Broad Street, Newman, Georgia.

Henry County, Georgia and Incorporated Areas
Docket Nos.: FEMA–B–7454 and FEMA–P7903

Little Cotton Indian Creek	At confluence with Big Cotton Indian Creek	+655	Henry County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the confluence with Big Cotton Indian Creek.	+655	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Henry County, Georgia (Unincorporated Areas)
Maps are available for inspection at the Community Map Repository, 140 Henry Parkway, McDonough, Georgia 30253.

Berrien County, Michigan and Incorporated Areas
Docket No.: FEMA–B–7453

Bedortha Drain	Just downstream of Lake Street	*617	City of Bridgman.
	250 feet upstream of Railroad	*637	
Bridgman City Drain	Confluence of Bedortha Drain	*627	City of Bridgman.
	Approximately 1,250 feet upstream of Railroad	*644	
Bridgman Drain Tributary	Confluence with Bridgman City Drain	*631	City of Bridgman.
	Approximately 370 feet downstream of Railroad	*632	
Lake Michigan	Shoreline for entire county	*585	Benton Township, Benton Harbor, Bridgman, Chikaming Township, Grand Beach, Hagar Township, Lake Township, Lincoln Township, Michiana, New Buffalo, New Buffalo Township, Shoreham, St. Joseph.
Tanner Creek	Confluence with Lake Michigan	*585	City of Bridgman.
	Confluence with Bedortha Drain	*617	
William & Esseg Drain	Confluence with Tanner Creek	*617	City of Bridgman.
	Bridgman City Limit	*630	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

City of Benton Harbor
Maps are available for inspection at Benton Harbor City Hall, 200 E. Wall Street, Benton Harbor, Michigan 49023.
Benton Township

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

Maps are available for inspection at Inspection Department—Benton Township, 1725 Territorial Road, Benton Harbor, Michigan 49022.

City of Bridgman

Maps are available for inspection at Bridgman City Hall, 9765 Maple Street, Bridgman, Michigan 49106.

Chikaming Township

Maps are available for inspection at Chikaming Township, 14900 Lakeside Road, Lakeside, Michigan 49116.

Village of Grand Beach

Maps are available for inspection at Village Office of Grand Beach, 48200 Perkins Boulevard, Grand Beach, Michigan 49117.

Hagar Township

Maps are available for inspection at Hager Township Hall, 3900 Riverside, Riverside, Michigan 49084.

Lake Township

Maps are available for inspection at Lake Township Hall, 3220 Shawnee Road, Bridgman, Michigan 49106.

Lincoln Township

Maps are available for inspection at 2055 West John Beers Road, Stevensville, Michigan 49127.

Village of Michiana

Maps are available for inspection at Village of Michiana, 4000 Cherokee Drive, Michiana, Michigan 49117.

City of New Buffalo

Maps are available for inspection at City Clerks Office—New Buffalo City Hall, 224 West Buffalo Street, New Buffalo, Michigan 49117.

New Buffalo Township

Maps are available for inspection at Town Hall—New Buffalo Township, 17425 Red Arrow Highway, New Buffalo, Michigan 49117.

Village of Shoreham

Maps are available for inspection at St. Joseph Town Hall—Building & Zoning Department, 3000 Washington Avenue, St. Joseph, Michigan 49085.

City of St. Joseph

Maps are available for inspection at City of St. Joseph, 700 Broad Street, St. Joseph, Michigan 49085.

Blaine County, Montana and Incorporated Areas
Docket No.: FEMA–B–7454

Milk River	Approximately 2.5 river miles downstream of U.S Highway 2	+2,287	Blaine County (Unincorporated Areas), Fort Belknap Indian Reservation.
	Approximately 4.7 river miles upstream of Kennedy Road	+2,360	
Peoples Creek	At confluence with Milk River	+2,297	Fort Belknap Indian Reservation.
	Approximately 11.5 miles upstream of confluence with Milk River (approximately 2.8 miles upstream of Road Bridge).	+2,339	
Peoples Creek-Split Flow	Approximately 1.2 river miles upstream of confluence with South Dodson Canal.	+2,288	Fort Belknap Indian Reservation.
	Approximately 3.2 river miles upstream of Lodgepole Highway	+2,319	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Blaine County Unincorporated Areas

Maps are available for inspection at the County Courthouse, 400 Ohio Street, Chinook, Montana 59523.

Fort Belknap Indian Reservation

Maps are available for inspection at the Tribal Office Building, Highway 2 & Route 66, Harlem, Montana 59526.

Snohomish County, Washington and Incorporated Areas
Docket No.: FEMA–B–7442

Ebey Slough	Approximately 1.2 miles downstream of Interstate Highway 5	*8	Snohomish County (Unincorporated Areas), City of Marysville.
	At divergence from Snohomish River	*19	
Ebey-Steamboat Slough Connector.	At confluence with Steamboat Slough	*12	Snohomish County (Unincorporated Areas).
	At divergence from Ebey Slough	*12	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Marshland	At Burlington Northern Railroad tracks	*20	Snohomish County (Unincorporated Areas) and City of Everett.
	At divergence from Snohomish River	*23	
Snohomish River	Approximately 1.2 miles downstream of State Highway 529	*8	Snohomish County (Unincorporated Areas), City of Monroe, City of Snohomish, and City of Everett.
	At confluence with Skykomish and Snoqualmie Rivers	*41	
Steamboat Slough	Approximately 2.08 miles downstream of Burlington Northern Railroad bridge.	*8	Snohomish County (Unincorporated Areas), City of Marysville, and City of Everett.
	At divergence from Snohomish River	*13	
Union Slough	Approximately 0.24 miles downstream of Burlington Northern Railroad bridge.	*8	Snohomish County (Unincorporated Areas) and City of Everett.
	Approximately 1,270 feet downstream of divergence from Snohomish River.	*12	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Unincorporated Areas of Snohomish County
Maps are available for inspection at the Snohomish County Planning Department, 3000 Rockefeller Avenue, Everett, Washington 98201.
City of Monroe
Maps are available for inspection at the Engineering Department, City Hall, 806 West Main Street, Monroe, Washington 98272.
City of Marysville
Maps are available for inspection at the Public Works Department, 80 Columbia Avenue, Marysville, Washington 98270.
City of Everett
Maps are available for inspection at the Public Works Department, 3200 Cedar Street, Everett, Washington 98201.
City of Snohomish
Maps are available for inspection at the Engineering Department, 116 Union Avenue, Snohomish, Washington 98290.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 18, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–18306 Filed 10–31–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., CFM, Acting

Section Chief, Engineering Management Section, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

NATIONAL ENVIRONMENTAL POLICY ACT. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) + Elevation in feet (NAVD) Modified
Healdsburg, California Docket No.: FEMA–B–7453				
California	City of Healdsburg	Russian River	Just upstream of U.S. Highway 101	*90
			Approximately 6,750 feet Railroad	*104
		Russian River-Split Flow	At the Convergence with Russian River	*90
			At the Divergence from Russian River	*99

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

City of Healdsburg
Maps are available for inspection at City of Healdsburg, City Hall, 401 Grove Street, Healdsburg, California 95448.

Sonoma County, California Docket No.: FEMA–B–7453				
California	Sonoma County	Russian River	At confluence with Dry Creek	*85
			At U.S. Highway 101	*90

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Sonoma County Unincorporated Areas
Maps are available for inspection at Permit and Resource Management Department, 2550 Ventura Avenue, Santa Rosa, California 95403.

Silt, Colorado Docket No.: FEMA–B–7454				
Colorado	Town of Silt	Colorado River	Approximately 1100 feet upstream of I–70.	*5,404
			Just downstream of County Road 311	*5,428

Depth in feet above ground.
* National Geodetic Vertical Datum.

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) + Elevation in feet (NAVD) Modified

+ North American Vertical Datum.

ADDRESSES

Town of Silt
Maps are available for inspection at the Town Hall, 231 North 7th Street, Silt, Colorado 81652.

Knox County, Kentucky
Docket No.: FEMA–B–7454

Kentucky	Knox County	Cumberland River	Approximately 6,410 feet southwest of the intersection of Goodin Creek Road and Kentucky State Highway 11.	+966
			Approximately 4,495 feet upstream of the confluence of Elys Branch.	+1,014

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Knox County Unincorporated Areas
Maps are available for inspection at Community Map Repository, County Courthouse, 104 Court Square, Barbourville, Kentucky 40906.
City of Barbourville
Maps are available for inspection at Community Map Repository, County Courthouse, 104 Court Square, Barbourville, Kentucky 40906.

Williamsburg, Kentucky
Docket No.: FEMA–B–7454

Kentucky	City of Williamsburg	Cumberland River	Just downstream of State Route 204	+906
			Approximately 4,570 feet upstream from Goodin Creek.	+966

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Whitley County Unincorporated Areas
Maps are available for inspection at Community Map Repository, Whitley County Courthouse, 310 Main Street, Williamsburg, Kentucky 40769.
City of Williamsburg
Maps are available for inspection at Community Map Repository, Williamsburg City Hall, office of Mayor, 116 North Second Street, Williamsburg, Kentucky 40769.

Eagle Lake, Maine
Docket No.: FEMA–B–7454

Maine	Town of Eagle Lake	Eagle Lake	Entire Shoreline at Eagle Lake within the corporate limits.	+581

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Town of Eagle Lake
Maps are available for inspection at the 36 Devoe Brook Road, Eagle Lake, Maine 04739.

Milan, New Hampshire
Docket No.: FEMA–B–7454

New Hampshire	Town of Milan	Androscoggin River	Approximately 7,800 feet of Halt Road extended.	+1,109
			Approximately 1,500 feet upstream of Owens Road extended.	+1,114

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Town of Milan

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) + Elevation in feet (NAVD) Modified
Maps are available for inspection at the Town Hall, 20 Bridge Street, Milan, New Hampshire 03588.				
Lincoln County, Montana Docket No.: FEMA–B–7454				
Montana	Lincoln County	Big Cherry Creek	At the confluence with Libby Creek	*2,152
			Approximately 3,600 feet upstream of Granite Creek Road.	*2,358
		Libby Creek	Just upstream of railroad crossing prior to confluence with Kootenai River.	*2,065
			Approximately 3,500 feet upstream of U.S. Route 2.	*2,773

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Lincoln County Unincorporated Areas
Maps are available for inspection at the County Courthouse, 512 California Avenue, Libby, Montana 59923.

Wakefield, New Hampshire Docket No.: FEMA–B–7454				
New Hampshire	Town of Wakefield	Belleau Lake	At Moose Road	+584
			Entire Shoreline of Belleau Lake above Woodman Lake.	+584

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Town of Wakefield
Maps are available for inspection at the Map Repository, Town of Wakefield, Assessor's Office, 2 High Street, Sanbornville, New Hampshire 03872.

Granville, Pennsylvania Docket No.: FEMA–B–7454				
Pennsylvania	Township of Granville	Strodes Run	Approximately at the confluence with Juniata River.	+490
			Approximately 55 feet upstream of Ferguson Valley Road.	+621

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Township of Granville
Maps are available for inspection at the Granville Municipal Offices, 100 Helen Street Lewistown, Pennsylvania 17044.

Oliver, Pennsylvania Docket No.: FEMA–B–7454				
Pennsylvania	Township of Oliver	Strodes Run	Approximately at the confluence with Juniata River.	+490
			Approximately 55 feet upstream of Ferguson Valley Road.	+621

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Township of Oliver
Maps are available for inspection at Municipal Offices, 274 Lockport Road, Lewistown, Pennsylvania 17044.

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) + Elevation in feet (NAVD) Modified
Lewis County, Washington Docket No.: FEMA 7442				
Washington	Lewis County	Newaukum River	Confluence with Chehalis River	*183
			Confluence of North and South Fork Newaukum River.	*268
Washington	Lewis County	Newaukum River Overflow	Approximately 750 feet upstream of Rice Road.	*185
			Approximately 2.1 miles upstream of Rice Road.	*199
Washington	City of Chehalis	Newaukum River	Approximately 500 feet upstream of Railroad.	*184
			Approximately 3,650 feet upstream of Railroad.	*185
Washington	City of Chehalis	Newaukum River Overflow	Approximately 1,200 feet downstream of Rice Road.	*185
			Approximately 750 feet upstream of Rice Road.	*185
Washington	City of Napavine	Newaukum River	Approximately 2,000 feet downstream of Rush Road.	*224
			Approximately 100 feet upstream of Kirkland Road.	*240

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Lewis County Unincorporated Areas
Maps are available for inspection at Lewis County Public Works Department, 350 North Market Boulevard, Chehalis, Washington 98532.
City of Chehalis
Maps are available for inspection at 1321 South Market Boulevard, Chehalis, Washington 98532.
City of Napavine
Maps are available for inspection at 214 Second Avenue Northeast, Napavine, Washington 98565.

Ohio County, West Virginia Docket No.: FEMA B–7454				
West Virginia	Ohio County	Little Wheeling Creek	Approximately 475 feet upstream of Middle Wheeling Creek Road.	*718
			Approximately 158 feet upstream of U.S. Route 40.	*782

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Ohio County Unincorporated areas
Maps are available for inspection at the City County Building, 1500 Chapline Street, Room 215, Wheeling, West Virginia 26003.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Morgan County, Alabama and Incorporated Areas Docket No.: FEMA D–7606			
Bakers Creek	Approximately 1,600 feet upstream of the confluence with the Tennessee River.	+558	Morgan County (Unincorporated Areas), City of Decatur.
	Approximately 100 feet downstream of West Morgan Road	+621	
Tributary to Bakers Creek	At the confluence with Bakers Creek	+595	Morgan County (Unincorporated Areas), City of Decatur.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	Approximately 150 feet upstream of Cumberland Avenue Southwest.	+611	
Betty Rye Branch	Approximately 0.8 mile upstream of the confluence with the Tennessee River.	+559	Morgan County (Unincorporated Areas), City of Decatur.
	Approximately 150 feet upstream of Bedford Drive Southwest.	+607	
Black Branch	Just upstream of Point Mallard Drive (8th Street southeast)	+562	Morgan County (Unincorporated Areas), City of Decatur.
	Approximately 0.2 mile upstream of Regency Boulevard	+566	
Brush Creek	Approximately 650 feet downstream of Brookmead Road	+562	City of Decatur.
	Approximately 0.2 mile upstream of Royal Drive	+568	
Chapel Hill Branch	Approximately 0.4 mile upstream of the confluence with West Flint Creek.	+572	Morgan County (Unincorporated Areas), City of Decatur.
	Approximately 2.0 miles upstream of the confluence with West Flint Creek.	+594	
Clark Spring Branch	Approximately 800 feet upstream of the confluence with Brush Creek.	+568	City of Decatur.
	Approximately 400 feet upstream of Asheville Drive Southwest.	+641	
Clark Spring Branch Tributary.	At the confluence with Clark Spring Branch	+587	City of Decatur.
	Approximately 300 feet upstream of Danville Park Drive Southwest.	+613	
Dry Branch	Approximately 0.5 mile downstream of Washington Street	+559	Morgan County (Unincorporated Areas), City of Decatur.
	Approximately 900 feet upstream of Runnymead Avenue Southwest.	+604	
North Dinsmore	Just downstream of U.S. Highway 31	+564	City of Decatur.
	Approximately 100 feet upstream of Cedar Lake Road	+575	
South Dinsmore Middle Tributary.	Approximately 50 feet downstream of U.S. Highway 31	+564	Morgan County (Unincorporated Areas), City of Decatur.
	Approximately 250 feet upstream of Spring Avenue	+610	
South Dinsmore North Tributary.	At the confluence with South Dinsmore Middle Tributary	+567	City of Decatur.
	Approximately 0.5 mile upstream of Lenwood Road	+570	
South Dinsmore South Tributary.	At the confluence with South Dinsmore Middle Tributary	+571	Morgan County (Unincorporated Areas), City of Decatur.
	Approximately 1,600 feet upstream of Central Avenue	+576	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

City of Decatur
Maps available for inspection at the City of Decatur Building Department, 403 Lee Street Northeast, Fourth floor, Decatur, Alabama 35603.
Morgan County Unincorporated Areas
Maps available for inspection at the Morgan County Engineering Department, 580 Shull Road, Northeast, Hartselle, Alabama 35601.

Harlan County, Kentucky and Incorporated Areas
Docket No.: FEMA B–7454

Catron Creek	At the confluence of Catron Creek with Martins Fork	+1,188	Harlan County (Unincorporated Areas) City of Harlan.
	Approximately 270 feet upstream of the confluence of Lower Double Branch.	+1,472	
Clover Fork	At the confluence of Clover Fork with Cumberland River	+1,178	Harlan County (Unincorporated Areas) City of Evarts, City of Harlan.
	Approximately 1,140 feet upstream of the confluence of Breedens Creek.	+1,722	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Cloverlick Creek	At the confluence of Cloverlick Creek with Poor Fork	+1,427	City of Loyall Harlan County (Unincorporated Areas) City of Cumberland.
	Approximately 45 feet upstream of the confluence of Gilley Branch.	+1,453	
Cumberland River	Approximately 1,440 feet downstream of the confluence of Jerry's Branch.	+1,098	Harlan County (Uninc. Areas) City of Loyall, City of Wallins Creek.
	At the confluence of Clover Fork and Poor Fork	+1,178	
Looney Creek	At the confluence of Looney Creek with Poor Fork	+1,437	Harlan County (Uninc. Areas) City of Benham, City of Cumberland, City of Lynch.
	Approximately 735 feet downstream of the confluence of Long Rock Branch.	+1,884	
Martins Fork	At the confluence of Martins Fork with Clover Fork	+1,181	Harlan County (Unincorporated Areas) City of Harlan.
	Approximately 2,990 feet upstream of the confluence of Raccoon Branch.	+1,264	
Poor Fork	At the confluence of Poor Fork with Cumberland River	+1,178	Harlan County (Unincorporated Areas) City of Cumberland, City of Loyall.
	Approximately 3,670 feet upstream of the confluence of Coldiron Branch.	+1,522	
Wallins Creek	At the confluence of Wallins Creek with Cumberland River	+1,133	Harlan County (Unincorporated Areas) City of Wallins Creek.
	Approximately 175 feet upstream of the confluence of Brock Branch.	+1,154	
Yocum Creek	At the confluence of Yocum Creek with Clover Fork	+1,300	Harlan County (Unincorporated Areas).
	Approximately 575 feet downstream of the confluence of Reds Creek.	+1,519	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Harlan County (Unincorporated Areas)
Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
City of Benham
Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
City of Cumberland
Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
City of Evarts
Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
City of Harlan
Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
City of Loyall
Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
City of Lynch
Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.
City of Wallins Creek
Maps are available for inspection at the County Courthouse, Harlan, Kentucky 40871.

Barry County, Missouri and Incorporated Areas
Docket Nos.: FEMA B–7453 and B–7454

Unnamed Tributary No. 1	Just upstream of the confluence with Flat Creek	+1,309	Barry County (Unincorporated Areas) and City of Cassville.
	Approximately 2,325 feet upstream of Highway 248	+1,320	
Town Branch	Approximately 750 feet downstream of Main Street	+1,308	City of Cassville.
	Approximately 2,950 feet upstream of County House Road	+1,350	
Brock Branch	Just upstream of the confluence with Flat Creek	+1,310	City of Cassville.
	Approximately 1,535 feet upstream of the confluence with Flat Creek.	+1,319	
Hawk Branch	Approximately 1,220 feet downstream of Presley Drive	+1,321	City of Cassville.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	Approximately 160 feet upstream of Oak Hill Drive	+1,338	
Flat Creek	Approximately 1,500 feet downstream of Thirteenth Street	+1,298	Barry County (Unincorporated Areas) and City of Cassville.
	Approximately 3,100 feet upstream of County Bridge	+1,320	
Boys Drain	Just upstream of the confluence with Unnamed Tributary	+1,298	City of Monett.
	Approximately 220 feet upstream of the Sixth Street	+1,338	
Chapel Drain	Just upstream of the confluence with Kelly Creek	+1,328	Barry County (Unincorporated Areas) and City of Monett.
	At the intersection of Chapel Drain and Cleveland Street (Highway 60).	+1,334	
Chapel Drain	At confluence with Kelly Creek	+1,328	City of Monett.
	Just upstream of Chapel Drive	+1,336	
Clear Creek	Approximately 850 feet downstream of the confluence with Unnamed Tributary.	+1,245	Barry County (Unincorporated Areas) and City of Monett.
	Approximately 225 feet upstream of Farm Road 1090	+1,345	
Kelly Creek	Approximately 300 feet downstream of Diary Street	+1,290	Barry County (Unincorporated Areas) and City of Monett.
	Approximately 4,850 feet upstream of Chapel Drive	+1,353	
Kelly Creek Tributary	Just upstream of the confluence with Kelly Creek	+1,303	City of Monett.
	Approximately 3,700 feet upstream of Cleveland Street	+1,366	
Tributary # 1 to Unnamed Tributary to Clear Creek.	At confluence with Unnamed Tributary	+1,326	City of Monett.
	Approximately 750 feet upstream of confluence with Unnamed Tributary.	+1,333	
Unnamed Tributary	Just upstream of the confluence with Clear Creek	+1,250	Barry County (Unincorporated Areas) and City of Monett.
	Approximately 1,440 feet upstream of Highway 37	+1,350	
Unnamed Tributary to Clear Creek.	At Lawrence County—Barry County Boundary.	+1,285	City of Monett.
	Approximately 1,075 feet upstream of Missouri State Highway "H" and just downstream of Farm Road 2330..	+1,377	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Barry County (Unincorporated Areas) Missouri
Maps are available for inspection at the County Courthouse, 700 Main Street, Cassville, Missouri 65625.
City of Cassville
Maps are available for inspection at City Hall, 300 Main Street, Cassville, Missouri 65625.
City of Monett
Maps are available for inspection at City Hall, 217 Fifth Street, Monett, Missouri 65708.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 18, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–18308 Filed 10–31–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The

respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
City of Omaha, Douglas County, Nebraska Docket No.: FEMA–P7915				
NE	City of Omaha	Candlewood Lake	Entire Shoreline	+1,096

Depth in feet above ground.
National Geodetic Vertical Datum.
North American Vertical Datum.

ADDRESSES

City of Omaha, Douglas County, Nebraska
Maps are available for inspection at City, 1819 Farnam Street, Omaha, Nebraska 68183.

City of Lufkin, Angelina County, Texas Docket No.: FEMA–P–7699				
TX	City of Lufkin	Biloxi Creek North Tributary.	Approximately 2,860 feet downstream of State Highway 287.	+306
			Approximately 210 feet upstream of State Highway 287.	+329
TX	City of Lufkin	Biloxi Creek South Tributary.	Approximately 640 feet downstream of Lemans Drive.	+303
			Approximately 1,660 feet upstream of Lemans Drive.	+319
TX	City of Lufkin	Cedar Creek	At Gobblers Knob Road	+238
			Approximately 100 feet upstream of Union Pacific Railroad.	+299
TX	City of Lufkin	Cedar Creek North Tributary.	At confluence with Cedar Creek	+276
			Approximately 50 feet upstream of Lotus Lane.	+286
TX	City of Lufkin	Cedar Creek South Tributary.	At confluence with Cedar Creek	+287
			Approximately 1,350 feet upstream of Berry Road.	+253
TX	City of Lufkin	Cedar Creek Tributary 3	At confluence with Cedar Creek	+266
			Approximately 80 feet upstream of Live Oak Lane.	+240

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
TX	City of Lufkin	One Eye Creek	Approximately 2,120 feet downstream of Bartmess Drive.	+309
			Approximately 3,900 feet upstream of Bartmess Drive.	+289
TX	City of Lufkin	Shirley Creek	Approximately 7,350 feet upstream of the confluence with Paper Mill Creek.	+232
			Approximately 50 feet upstream of Trenton Street.	+297
TX	City of Lufkin	Shirley Creek Tributary 2	At the confluence with Shirley Creek	+260
			Approximately 1,600 feet upstream of State Highway 287.	+310
TX	City of Lufkin	Shirley Creek Tributary 2 East Branch.	At confluence with Shirley Creek Tributary 2.	+277
			Approximately 970 feet upstream of Freeman Street.	+297

Depth in feet above ground.
National Geodetic Vertical Datum.
North American Vertical Datum.

ADDRESSES

City of Lufkin, Angelina County, Texas
Maps are available for inspection at City Hall, 300 Shepherd Street, Lufkin, Texas 75902.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 18, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–18307 Filed 10–31–06; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–2029; MB Docket No. 05–146; RM–10798]

Radio Broadcasting Services; Caliente and Moapa, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule, dismissal of petition for reconsideration.

SUMMARY: This document dismisses a petition for reconsideration filed by Aurora Media, LLC., because it was untimely filed. Aurora requested reconsideration of a Report and Order that denied its petition for rule making to reallot Channel 233C from Caliente, Nevada to Moapa, Nevada, and to modify the construction permit authorization to reflect the change of community. The proposed change of community was denied because it would not result in a preferential arrangement of allotments.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MB Docket No. 05–146, adopted October 11, 2006, and released October 13, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

This document is not subject to the Congressional Review Act. The Commission, is, therefore, not required to submit a copy of this Memorandum Opinion and Order to the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because the aforementioned petition for reconsideration was dismissed.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–18316 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–2027; MB Docket No. 06–77; RM–11324; RM–11334]

Radio Broadcasting Services; Belle Meade, TN; Burkesville, KY; Edinburgh, IN; Goodlettsville, Greensburg, and Henderson, TN; Hodgenville, KY; Hope, IN; Horse Cave, KY; Lebanon, Lebanon Junction, Lewisport, Louisville, Lyndon, KY; Manchester and Millersville, TN; New Haven, Springfield and St. Matthews, KY; Tell City and Versailles, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed jointly by Elizabethtown CBC, CBC of Marion County, Inc., Washington County CBC, Inc., Newberry Broadcasting, Inc. and Cumulus Licensing LLC and a counterproposal filed by CXR Holdings, LLC in this proceeding, this document granted multiple channel substitutions and

changes of community of license in Indiana, Kentucky and Tennessee. Specifically, this document substitutes Channel 294C3 for Channel 294A at Belle Meade, Tennessee, reallots Channel 294C3 to Millersville, Tennessee, and modifies the license of Station WNFN to specify operation on Channel 294C3 at Millersville. In order to accommodate Channel 294C3 at Millersville, it substitutes Channel 293A for Channel 294A at Horse Cave, Kentucky, and modifies the license of Station WHHT to pecify operation on Channel 293A. It also substitutes Channel 297A for Channel 292A at Hodgenville, Kentucky, and modifies the license of Station WKMO to specify operation on Channel 297A, and substitutes Channel 257A for Channel 297A at Lebanon Junction, Kentucky, modifies the license of Station WTHX to specify operation on Channel 257A. In order to replace the loss of a sole local service at Belle Meade, it reallots Channel 246C2 from Goodlettsville, Tennessee, to Belle Meade and modifies the license of Station WRQQ to specify Belle Meade as the community of license. To avoid depriving Goodlettsville of its sole local service, it reallots Channel 221A from Hendersonville, Tennessee, to Goodlettsville, and modifies the license of Station WQQK to specify Goodlettsville as the community of license. To avoid the loss of the sole local service at Hendersonville, it substitutes Channel 259C0 for Channel 259C at Manchester, Tennessee, reallots Channel 259C0 to Hendersonville, and modifies the license of Station WWTN to specify operation on Channel 259C0 at Hendersonville. As requested in the CXR Holdings, LLC Counterproposal, it substitutes Channel 276C2 for Channel 276A at St. Matthews, Kentucky, reallots Channel 276C2 to Lyndon, Kentucky, and modifies the license of Station WRKA to specify operation on Channel 276C2 at Lyndon. In order to accommodate the Channel 276C2 allotment at Lyndon, it substitutes Channel 275A for Channel 276A at Versailles, Indiana, reallots Channel 275A to Hope, Indiana, and modification of the license of Station WXCH to specify operation on Channel 275A at Hope. To allot Channel 275A to Hope, it substitutes Channel 262A for Channel 275A at Edinburgh, Indiana, and modifies the license of Station WYGB to specify operation on Channel 262A. In order to accommodate the allotment of Channel 276C2 to Lyndon, it substitutes Channel 274A for Channel 275C3 at Tell City, Indiana, reallots Channel 274A to Lewisport, Kentucky, and modifies the license of Station WLME to specify operation on Channel 274A at Lewisport. To replace the loss of the sole local service from St. Matthews, it reallots Channel 295B from Louisville, Kentucky, to St. Matthews and modifies the license of Station WVEZ to specify St. Matthews as the community of license. In order to allot Channel 276C2 at Lyndon, it substitutes Channel 289A for Channel 276A at Greensburg, Kentucky, and modifies the license of Station WGRK-FM to specify operation on Channel 289A. The reference coordinates for the Channel 294C3 allotment at Millersville, Tennessee, are 36–26–24 and 86–37–39. The reference coordinates for the Channel 293A allotment at Horse Cave, Kentucky, are 37–13–57 and 85–52–06. The reference coordinates for the Channel 297A allotment at Hodgenville, Kentucky, are 37–40–34 and 85–40–57. The reference coordinates for the Channel 257A allotment at Lebanon Junction, Kentucky, are 37–44–37 and 85–38–52. The reference coordinates for the Channel 246C2 allotment at Belle Meade, Tennessee, are 37–17–50 and 86–45–11. The reference coordinates for the Channel 221A allotment at Goodlettsville, Tennessee, are 37–17–50 and 86–45–11. The reference coordinates for the Channel 259C0 allotment at Hendersonville, Tennessee, are 35–49–03 and 86–31–24. The reference coordinates for the Channel 276C2 allotment at Lyndon, Kentucky, are 38–23–57 and 85–36–56. The reference coordinates for the Channel 275A allotment at Hope, Indiana, are 39–19–29 and 85–53–41. The reference coordinates for the Channel 262A allotment at Edinburgh, Indiana, are 39–15–37 and 86–06–21. The reference coordinates for the Channel 274A allotment at Lewisport, Kentucky, are 37–47–44 and 86–50–58. The reference coordinates for the Channel 295B allotment at St. Matthews, Kentucky, are 38–22–19 and 85–49–33. The reference coordinates for the Channel 289A allotment at Greensburg, Kentucky, are 37–14–09 and 85–27–56. With this action, the proceeding is terminated.

DATES: Effective November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MB Docket No. 06–77, adopted October 11, 2006, and released October 13, 2006. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, D.C. 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copying and Printing, Inc. 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 275A and by adding Channel 262A at Edinburgh, by adding Hope, Channel 275A, by removing Tell City, Channel 275C3, and by removing Versailles, Channel 276A.

■ 3. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 276A and by adding Channel 289A at Greensburg, by removing Channel 292A and by adding Channel 297A at Hodgenville, by removing Channel 294A and by adding Channel 293A at Horse Cave, by removing Channel 297A and by adding Channel 257A at Lebanon Junction, by adding Lewisport, Channel 274A, by removing Channel 295B at Louisville, by adding Lyndon, Channel 276C2, by removing Channel 276A and by adding Channel 295B at St. Matthews.

■ 4. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 294A and by adding Channel 246C2 at Belle Meade, by removing Channel 246C2 and by adding Channel 221A at Goodlettsville, by removing Channel 221A and by adding Channel 259C0 at Hendersonville, and by removing Manchester, Channel 259C and by adding Millersville, Channel 294C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–18404 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–2028; MB Docket No. 06–88; RM–11254]

Radio Broadcasting Services; Boonville and Wheatland, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The staff grants a rulemaking petition filed by Bittersweet Broadcasting, Inc. to upgrade its Station KWJK–FM, Boonville, Missouri, from Channel 226A to Channel 226C3. To accommodate this upgrade, the Commission substitutes Channel 272A for vacant but applied for Channel 226A at Wheatland, Missouri. With this action, the proceeding is terminated. *See* **SUPPLEMENTARY INFORMATION**.

DATES: Effective November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 06–88, adopted October 11, 2006, and released October 13, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of the Report and Order in this proceeding in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The reference coordinates for Channel 226C3 at Boonville, MO, are 38–51–17 NL and 92–38–17 WL. The reference coordinates for Channel 272 at Wheatland, MO, are 37–58–44 NL and 93–26–49 WL.

The Report and Order also requires that World Radio Link, Inc., the successful bidder in Auction No. 62 for Channel 226A at Wheatland, Missouri, modify its application for Channel 226A at Wheatland to specify Channel 272A at a rule-compliant site. World Radio Link's application is not entitled to cut-off protection vis-à-vis the rulemaking petition because the application was filed after the rulemaking petition.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 226A and by adding Channel 226C3 at Boonville, and by removing Channel 226A and adding Channel 272A at Wheatland.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–18403 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–2025; MB Docket No. 05–14; RM–11088; MB Docket No. 05–15; RM–11148]

Radio Broadcasting Services; Powers, OR, and Zapata, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 293C2 to Powers, Oregon, and Channel 292A to Zapata, Texas. It also makes an editorial change in the FM Table of Allotments by removing Channel 228A and adding Channel 228C3 at Zapata, Texas. *See* **SUPPLEMENTARY INFORMATION**, *infra.*

DATES: Effective November 27, 2006. The window period for filing applications for these channels will not be opened at this time. Instead, the issue of opening filing windows for these allotments for auction will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket Nos. 05–14 and 05–15, adopted October 11, 2006, and released October 13, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The Audio Division, at the request of Mikel Chavez, allots Channel 293C2 at Powers, Oregon, as the community's first local aural transmission service. *See* 70 FR 7221, February 11, 2005. Channel 293C2 can be allotted to Powers in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The reference coordinates for Channel 293C2 at Powers are 42–53–01 North Latitude and 124–04–19 West Longitude.

The Audio Division, at the request of Jeraldine Anderson, allots Channel 292A at Zapata, Texas, as the community's fourth local FM transmission service. *See* 70 FR 7221, February 11, 2005. Channel 292A can be allotted to Zapata in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.0 kilometers (5.6 mile) south to avoid a sort-spacing to the licensed site for Station KPSO–FM, Channel 292A, Falfurria, Texas. The reference coordinates for Channel 292A at Zapata are 26–49–57 North Latitude and 99–14–25 West Longitude. Because Zapata is located within 320 kilometers (199 miles) of the U.S.-Canadian border, concurrence of the Mexican government has been obtained.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Powers, Channel 293C2.

■ 3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 228A, and adding Channels 228C3 and 292A at Zapata.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–18402 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–2026]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), *Amendment of the Commission's Rules to permit FM Channel and Class Modifications by Applications,* 8 FCC Rcd 4735 (1993) and *Streamlining of Radio Technical Rules in Part 73 and 74 of the Commission's Rules,* 15 FCC Rcd 21649 (2000).

DATES: Effective November 1, 2006.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* adopted October 11, 2006, and released October 13, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will not send a copy of the *Report & Order* in this proceeding pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part as follows:

PART 73—RADIO BROADCASTING SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 289A and adding Channel 289B1 at Lost Hills.

■ 3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 262C and adding Channel 262C0 at Alexandria and by removing Channel 281C and adding Channel 281C0 at Monroe.

■ 4. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 223C3 and adding Channel 223C2 at Park Rapids.

■ 5. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 286A and adding Channel 283C1 at Billings and by removing Channel 300A and adding Channel 300C2 at Darby.

■ 6. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 224A and adding Channel 224C2 at Ainsworth.

■ 7. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by removing Channel 239C and adding Channel 239C1 at New England and by removing Channel 290C and adding Channel 290C1 at Sarles.

■ 8. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 222C1 and adding Channel 221C2 at Kayce and by removing Channel 298A and adding Channel 298C2 at Wheatland.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–18315 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–2022; MB Docket No. 04–409; RM–11108; RM–11234]

Radio Broadcasting Services; Chester, VA; Fruitland, MD; Lakeside, VA; Port Norris, NJ; Warsaw, VA, and Willards, MD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants a counterproposal filed by CXR Holdings, Inc., (''CXR'') licensee of Station WDYL(FM), Chester, Virginia in response to a Notice of Proposed Rule Making issued at the request of Dana Puopolo proposing the allotment of Channel 299A at Port Norris, New Jersey. Channel 265B1 is substituted for Channel 266A at a new transmitter site, reallotted from Chester to Lakeside, Virginia as the community's first local aural service, and Station WDYL's license is modified to reflect the changes. Channel 298A is substituted for Channel 265A at Warsaw, Virginia, at a new transmitter site Station WNNT–FM's license is modified to reflect the channel substitution. Channel 299A is substituted for Channel 298B1 at a new site at Fruitland, Maryland and Station WKHI(FM)'s license is modified accordingly. Channel 265B1 is allotted at Lakeside, Virginia, at a site 9.6 kilometers (5.9 miles) east of the community at coordinates 37–36–08 NL and 77–22–09 WL. Channel 299A is be allotted at Fruitland, Maryland at a site 13.2 kilometers (8.2 miles) northeast of the community at coordinates 38–22–55 NL and 75–29–25 WL. Channel 298A can be allotted at Warsaw, Virginia, at Station WNNT–FM's transmitter site located 1.7 kilometers (1.1 miles) south of the community at coordinates 37–56–39 NL and 76–45–05 WL.

DATES: Effective November 27, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order, MB Docket No. 04–409, adopted October 11, 2006, and released October 13, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subject in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Maryland is amended by removing Channel 298B1 and by adding Channel 299A at Fruitland.

■ 3. Section 73.202(b), the Table of FM Allotments under Virginia is amended by removing Chester, Channel 266A, by adding Lakeside, Channel 265B1, and by removing Channel 265A and by adding Channel 298A at Warsaw.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–18410 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 00–167; FCC 06–143]

Broadcast Services; Children's Television; Cable Operators

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document resolves a number of issues regarding the obligation of television broadcasters to protect and serve children in their audience. The document addresses matters related to two areas: the obligation of television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees protect children from excessive and inappropriate commercial messages. The item makes certain modifications to the rules and policies adopted in the Commission's 2004 order in this proceeding. These modifications respond to petitions for reconsideration filed in response to the 2004 rules as well as a joint proposal recommending modifications to those rules filed by a group of cable and broadcast industry representatives and children's television advocates, among others.

DATES: The stay is lifted on § 73.670 paragraphs (b), (c) and Note 1; § 73.671 paragraphs (e) and (f) and § 76.225 paragraphs (b), (c) and Note 1 effective January 2, 2007. The amendments in this final rule are effective January 2, 2007.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Second Order on Reconsideration and Second Report and Order* in MM Docket No. 00–167, FCC 06–143, adopted September 26, 2006, and released September 29, 2006. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. To request materials in accessible formats for people with disabilities (braille, large print, electronic file, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Second Order on Reconsideration and Second Report

1. In this *Second Order* on Reconsideration and *Second Report and Order* (''Second Order'') we resolve issues regarding the obligation of television broadcasters to protect and serve children in their audience. We address matters related to two areas: the obligation of television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees and cable operators protect children from excessive and inappropriate commercial messages. Some of the rules and policies adopted herein apply only to digital broadcasters, while others apply to both analog and digital broadcasters as well as cable operators. Our goals in resolving these issues are to provide television broadcasters with guidance regarding their obligation to serve children as we transition from an analog to a digital television environment, update our rules protecting children from overcommercialization in children's programming, and improve our children's programming rules and policies.

2. Specifically, this *Second Order* makes certain modifications to the rules and policies adopted in our September 9, 2004 Report and Order and Further Notice of Proposed Rule Making (70 FR 25 and 63, January 3, 2005) (''2004 Order'') in this proceeding. The modifications we make today respond to petitions for reconsideration filed in response to the rules as well as a Joint Proposal of Industry and Advocates on Reconsideration of Children's Television Rules (''Joint Proposal'') filed by a group of cable and broadcast industry representatives and children's television advocates, among others.

3. Our decision today does not alter the new children's core programming ''multicasting'' rule adopted in the 2004 Order, but does clarify the way in which repeats of core programs will be counted under the new rule. We do not make substantial changes to the four-prong Web site rule adopted in the 2004 Order, but do amend the host selling restrictions adopted in the 2004 Order to apply those restrictions less broadly and to exempt certain third party Web sites from the host selling restriction. We also revise the definition of ''commercial time'' adopted in the 2004 Order to limit the kinds of promotions of children's programs that must be counted under the advertising rules adopted in the 2004 Order. In addition, with regard to scheduling of core children's programming, we vacate the percentage cap on the number of permissible core program preemptions adopted in the 2004 Order and return to our prior practice of addressing the number of preemptions and rescheduling of core programming on a case-by-case basis. These modifications will serve the public interest by

ensuring an adequate supply of children's educational and informational programming as we transition to digital television technology, and protecting children from excessive and inappropriate commercial messages in broadcast and cable programming, without unduly impairing the scheduling flexibility of broadcasters and cable operators.

Discussion

4. We commend the parties to the Joint Proposal for their hard work in negotiating a compromise among a group of entities with often widely divergent views on the appropriate rules and policies in the area of children's television. Negotiation among interested parties can often be productive in achieving a workable compromise proposal consistent with the public interest on issues before the Commission, and we encourage such efforts. This private agreement has now been subject to public scrutiny and we will, of course, consider all comments in determining what rules and policies are most consistent with the statute and best serve the public interest. Based on the full record before us, we conclude that the Joint Proposal appropriately balances the concerns and needs of children and parents with those of industry, advertisers, and others, and will result in swift implementation of the rules.

5. We note that the Joint Proposal recommends only relatively minor clarifications to two of the rules adopted in the 2004 Order—the digital broadcasting processing guideline and the Web site address rule. While some of the comments filed in response to the Joint Proposal indicate that some parties remain concerned about aspects of the digital broadcasting processing guideline, by and large the comments support the Joint Proposal. In this item, we retain both the digital programming processing guideline and the Web site address rule with only minor modifications. These and the other modifications we make to the 2004 rules are consistent with the recommendations of the Joint Proposal and with our overall goals of ensuring the provision of sufficient children's educational programming and protecting children from excessive advertising as we transition to the digital era.

Digital Core Children's Programming Processing Guideline

6. Under the core programming processing guideline adopted in 1996, analog broadcasters that air at least three hours per week of core children's educational programming are entitled to staff-level approval of the CTA portion of their license renewal application. With the advent of digital broadcasting and the multicasting ability that technology offers, the Commission determined in the 2004 Order that it would adopt a new method of quantifying the core programming guideline for digital broadcasters that choose to multicast. The Commission made clear that all digital broadcasters continue to be subject to the existing three hours per week core programming processing guideline on their main program stream. In addition, for DTV broadcasters that choose to multicast, the guideline increases in proportion to the additional hours of free programming offered on multicast channels—up to an additional three hours per week for each 24-hour free multicast program stream. Under the revised guideline adopted in the *2004 Order*, digital broadcasters can choose to air some or all of the additional core programming on either the main stream or a multicast stream, as long as the multicast stream receives MVPD carriage comparable to the stream that generated the additional core programming obligation.

7. In order to ensure that digital broadcasters do not simply replay the same core programming in order to meet this revised processing guideline, the Commission required in the 2004 Order that ''at least 50 percent of core programming not be repeated during the same week in order to qualify as core.'' The Commission exempted from this requirement any program stream that merely time shifts the entire programming line-up of another program stream. In addition, the Commission stated that during the digital transition we would not count as repeated programming core programs that are aired on both the analog station and a digital program stream.

8. A number of broadcast interests argued on reconsideration that requiring additional programming obligations for multicast streams would stifle the deployment of specialized channels. Broadcasters also claimed that there is no record evidence of a failure by commercial TV stations to meet children's educational programming needs. To counter the disincentive to air multicast channels, some petitioners supported an exemption for digital program streams that carry non-entertainment programming. Petitioners also argued that the Commission should waive the ''comparable carriage'' element of the guideline, at least until MVPDs are required to carry all free over-the-air channels. In response, children's television advocates argued that history shows that market forces do not ensure that broadcasters serve the educational needs of children and that the record in this proceeding demonstrates that the educational needs of children are not currently being met.

9. The Joint Proposal generally accepts the new multicasting rule but recommends a clarification of the restriction on the number of repeated core programs that can count toward the new programming guideline. Specifically, the Joint Proposal would clarify that at least 50 percent of the core programming counted toward meeting the additional programming guideline cannot consist of program episodes that had already aired within the previous seven days on either the station's main program stream or on another of the station's free digital program streams. This is not a change in the rule, but rather a clearer statement of what the rule was intended to cover. The Joint Proposal would also amend FCC Form 398 to collect information necessary to enforce this limit.

10. We will retain the revised core programming processing guideline as adopted in the 2004 Order. As we stated then, we believe that the revised guideline translates the existing three-hour guideline to the digital environment in a manner that is both fair to broadcasters and meets the needs of the child audience. The previous core programming guideline represented the Commission's judgment as to what constituted a ''reasonable, achievable guideline'' that would not unduly burden broadcasters. Now that digital broadcasters have the capability to significantly increase their overall hours of programming, increasing the amount of core programming will not result in an unreasonable burden. For example, if a station chooses to broadcast a second stream of free video programming twenty-four hours a day, seven days a week, it can satisfy the new guideline by providing merely three additional hours per week of core programming—or less than two percent of the channel's 168 hours of additional weekly programming. In addition, we believe that a guideline that increases the amount of core programming in a manner roughly proportional to the increase in free video programming offered by broadcasters is consistent with the objective of the CTA ''to increase the amount of educational and informational broadcast television available to children.''

11. We also conclude that the revised quantitative processing guideline we reaffirm today is consistent with the First Amendment. It is well established

that the broadcast media do not enjoy the same level of First Amendment protection as do other media. Under this more lenient scrutiny, it is also well established that the government may regulate broadcast speech in order to advance its compelling interest in promoting and protecting the well-being of children. As we discussed in the 2004 Order, our new guideline imposes reasonable parameters on a broadcaster's use of the public airwaves and is narrowly tailored to advance the government's substantial, and indeed compelling, interest in the protection and education of America's children. In enacting the CTA, Congress explicitly found that ''as part of their obligation to serve the public interest, television station operators and licensees should provide programming that serves the special needs of children.'' As noted above, the multicasting rule substantially advances that interest by furthering ''the objective of the CTA 'to increase the amount of educational and informational broadcast television available to children.' '' Moreover, consistent with the First Amendment, the rule is narrowly tailored to achieve its objective. It increases the guideline only for broadcasters that choose to use their digital capacity to air additional free video programming. Broadcasters continue to retain wide discretion in choosing the ways in which they will meet their CTA obligations. Under the rule, the core programming guideline increases in a manner roughly proportional to the additional amount of free video programming multicasters choose to provide. That guideline, by ''giving broadcasters clear but nonmandatory guidance on how to guarantee compliance'' with the CTA, provides ''a constitutional means of giving effect to the CTA's programming requirement.'' We reject the State Broadcasters Associations' argument that our revised guideline is constitutionally unacceptable because it ''dictates the removal of one form of content over another.'' The CTA itself reflects a preference for children's educational and informational programming, and no party has challenged the constitutionality of the CTA's provisions for promoting such programming.

12. A number of broadcast companies and industry associations, none of which are parties to the Joint Proposal, argue that the Commission either should not impose additional core programming requirements on digital multicast channels, or at least should exempt multicast channels that offer educational, informational, and/or public interest programming. These commenters argue that many local broadcasters are planning multicast channels that focus on a single genre of programming, such as weather or news, and that the multicast guideline as adopted would discourage the provision of such specialized channels. These commenters also argue that children are unlikely to watch programming aired on channels primarily devoted to news and other specialized adult programming.

13. We decline to revise our processing guideline as suggested by these commenters. As we stated in the 2004 Order, we do not want to discourage broadcasters from providing channels with a specialized focus. However, we agree with the Children's Media Policy Coalition that the guideline provides broadcasters the flexibility to move core programming to either their main programming stream or other multicast streams, so long as the stream the programming is moved to receives comparable MVPD carriage to the stream triggering the additional obligation. Thus, the guideline preserves the principle that, in order to obtain staff level approval of their CTA compliance, broadcasters must provide three hours of children's core programming for every 168 hours per week of free video programming that they air, while at the same time giving broadcasters flexibility to choose the multicast stream that will air that programming. In addition, broadcasters could meet the guideline by airing children's programming on specialized channels, such as a children's news program on a twenty-four hour news channel or a children's educational weather program on a twenty-four hour weather channel. Furthermore, we note that our rules provide flexibility for licensees that have aired somewhat less core programming than indicated by the guideline but that nonetheless demonstrate an adequate commitment to educating and informing children.

14. Some broadcast commenters also point out that there is no requirement for cable carriage of multicast channels, thereby limiting the flexibility of broadcasters to consolidate their core programming on a multicast stream under the comparable MVPD carriage requirement. While we recognize that the comparable MVPD carriage requirement may limit the flexibility of some broadcasters to consolidate core programming on a single multicast channel, we believe that the comparable carriage requirement is necessary to ensure that, as additional free programming is made available to viewers in the station's service area, the level of children's programming increases as well.

15. As noted, the Joint Proposal suggests a clarification of the number of permissible core program repeats under the processing guideline. Specifically, the Joint Proposal recommends that the Commission clarify that at least 50 percent of the core programming counted toward meeting the additional programming guideline cannot consist of program episodes that had already aired within the previous seven days on either the station's main program stream or on another of the station's free digital program streams. We will adopt this clarification; it makes the rule easier to understand and apply and is consistent with the intent of the 2004 Order. All of the commenters that addressed this aspect of the Joint Proposal supported this clarification. We will also adopt the Joint Proposal recommendation, supported by other commenters, that FCC Form 398 be amended to collect the information necessary to enforce the limit on repeats under the revised guideline. As suggested by commenters, we will permit licensees to certify on Form 398 that they have complied with the repeat restriction and will not require broadcasters to identify each program episode on Form 398. We will require licensees, however, to retain records sufficient to document the accuracy of their certification, including records of actual program episodes aired, and to make such documentation available to the public upon request. The children's programming liaison, whose name and phone number must be included on FCC Form 398, should be able to provide documentation to substantiate the certification if requested.

Preemption

16. To qualify as ''core programming'' for purposes of the children's programming processing guideline, the Commission requires that a children's program be ''regularly scheduled''; that is, a core children's program must ''be scheduled to air at least once a week'' and ''must air on a regular basis.'' In adopting its 1996 children's programming rules, the Commission stated that television series typically air in the same time slot for thirteen consecutive weeks, although some episodes may be preempted for programs such as breaking news or live sports events. The Commission stated in the 1996 Order that it would leave to the staff to determine, with guidance from the full Commission as necessary, what constitutes regularly scheduled programming and what level of preemption is allowable.

17. In the 2004 Order, the Commission stated that core programs moved to the same time slot on another digital program stream would not be considered preempted, as long as the alternate stream has comparable MVPD carriage and the station provides notice of the move on both the original and the alternate program stream. In addition, the 2004 Order limited the number of core programming preemptions for analog and digital broadcasters to no more than ten percent of core programs in each calendar quarter. Any preemption beyond the ten percent limit would cause that program not to count as core under the processing guideline, even if the program were rescheduled. The 2004 Order exempted preemptions for breaking news from the preemption limit and rescheduling requirement.

18. On reconsideration, a number of petitioners argued that the preemption cap is unworkable in light of broadcasters' commitments to air live sports programming on Saturdays, particularly on the West coast. In lieu of the new rules, some petitioners urged the Commission to continue its prior practice of case-by-case staff approval of network preemption practices. Other petitioners supported exempting from the preemption cap live sports programming or children's programs rescheduled in accordance with the Media Bureau's current preemption policies. In their original opposition to these petitions, children's advocates agreed that a modest modification of the new preemption rule would be appropriate to accommodate major sporting events such as the Olympics and World Cup.

19. The Joint Proposal recommends that the Commission not adopt any percentage or other numerical limit on preemptions and instead return to the Commission practice of ensuring, on a case-by-case basis, that broadcasters do not engage in excessive preemptions of core programming. All of the commenters that addressed the issue of preemptions supported the Joint Proposal recommendation to eliminate the cap on the number of preemptions and return to a case-by-case approach.

20. We are persuaded that the burden created by the ten percent cap on preemptions outweighs the benefits the Commission sought to achieve, and therefore hereby repeal the ten percent cap on preemptions adopted in the 2004 Order. We will instead institute a procedure similar to that used by the Media Bureau and the Commission following adoption of the 1996 children's television Order whereby networks sought informal approval of their preemption plans each year. Under the policy formerly developed by the Commission staff, a program counted as preempted only if it was not aired in a substitute time slot (otherwise known as a ''second home'') with an on-air notification of the schedule change occurring at the time of preemption during the previously scheduled episode. The on-air notification must announce the alternate date and time when the preempted show will air. As part of this policy, we will require all networks requesting preemption flexibility to file a request with the Media Bureau by August 1 of each year stating the number of preemptions the network expects, when the program will be rescheduled, whether the rescheduled time is the program's second home, and the network's plan to notify viewers of the schedule change. We will presume that non-network stations are complying with the three hour core programming requirement, and do not need broad preemption relief. We intend to monitor the number, rescheduling, and promotion of preemptions of all stations under this policy by our quarterly review of their Children's Programming Reports to ensure that the interests of the child audience are being served. We find this approach to be a reasonable compromise for programmers that routinely face conflicts between their children's television blocks and sports programming as the result of time differences. We note that the concept of a ''second home'' is familiar to viewers, and are persuaded that those core programs that must be preempted are consistently rescheduled and promoted. Indeed, the Media Bureau has previously found that children's educational and informational programming efforts have not been ''unduly affected by the limited preemption flexibility granted'' under the existing standard.

Limit on Display of Internet Web Site Addresses

21. The CTA requires that commercial television broadcasters and cable operators limit the amount of commercial matter in children's programs to no more than 101/2 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission noted in the 2004 Order that some broadcasters are displaying Internet Web site addresses during children's program material (for example, in a crawl at the bottom of the screen) and expressed concern that the display of such addresses for Web sites established for commercial purposes in children's programs was inconsistent with the CTA's mandate to protect children from excessive and inappropriate commercial messages. Accordingly, the 2004 Order required that, with respect to programs directed to children ages 12 and under, the display of Internet Web site addresses during program material is permitted only if: (1) The Web site offers a substantial amount of *bona fide* program-related or other noncommercial content; (2) the Web site is not primarily intended for commercial purposes, including either e-commerce or advertising; (3) the Web site's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (4) the page of the Web site to which viewers are directed by the Web site address is not used for e-commerce, advertising, or other commercial purposes (*e.g.*, contains no links labeled ''store'' and no links to another page with commercial material). This restriction applies to analog and digital broadcasters as well as cable operators.

22. On reconsideration, a number of petitioners claimed that the rule exceeds the Commission's authority because the CTA does not authorize regulation of Web site addresses, which petitioners assert are not commercials. We disagree. As the children's television advocates asserted, the Commission has the authority to enact these restrictions because they do not regulate Internet content, but rather the advertising of commercial Web sites in children's programming, a subject clearly within the scope of the Commission's jurisdiction. Several petitioners also challenged the rule on notice grounds. In response, child advocates argued that the Commission gave adequate notice of the potential restriction, because it sought comment on whether to prohibit all direct links to commercial Web sites and the term Web site links can refer to either passive displays or interactive links. We agree that adoption of the Web site display rules was within the scope of the NPRM. Furthermore, the Second FNPRM sought comment ''on the rules and policies adopted in the [2004] Order in light of the recommendations reflected in the Joint Proposal'' and asked for ''any alternative modifications'' to the 2004 rules, in addition to the modifications proposed in the Joint Proposal. Thus, the notice issue is moot.

23. The Joint Proposal does not propose material changes to the Web site rule adopted in the 2004 Order but requests two clarifications: (1) That the rule applies only when Internet addresses are displayed during program material or during promotional material

not counted as commercial time; and (2) that if an Internet address for a Web site that does not meet the four-prong test is displayed during a promotion, in addition to counting against the commercial time limits, the promotion will be clearly separated from programming material. The comments filed in response to the Second FNPRM generally support the Joint Proposal approach.

24. We will retain the rule on Web site addresses and, in addition, adopt the clarifications proposed in the Joint Proposal. As the Commission stated in the 2004 Order, the Web site address rule fairly balances the interest of broadcasters in exploring the potential uses of the Internet with our mandate to protect children from over-commercialization. The display of the address of a Web site that sells a product is the equivalent of a commercial encouraging children to go to the store and buy the product. Thus, including the display during program material converts that program material into commercial matter just as a host telling children to race to their local toy store would. We note that broadcasters are free to display the addresses of Web sites that do not comply with the test during the allowable commercial time, as long as it is adequately separated from the program material; thus, the burden is minimal and outweighed by the benefits discussed above. The minor clarifications recommended by the Joint Proposal make this point clear.

25. We also disagree with petitioners, and conclude that the Web site rule we modify today is consistent with the First Amendment. Because this rule regulates commercial speech, it is subject to less First Amendment protection than noncommercial speech. The rule is therefore permissible under the First Amendment if it ''directly advances'' a ''substantial'' governmental interest in a manner that ''is not more extensive than necessary to serve that interest.'' The Web site rule satisfies these criteria. By limiting the display of commercial Web site addresses during children's programming, the Web site rule advances the government's substantial interest in protecting children from overcommercialization. Numerous Web sites sell products with special appeal to children. Televised references to commercial Web sites are no different from other forms of advertising. A television commercial encouraging children to go to a toy store Web site, for example, is substantially similar to an advertisement telling children to go to their local toy store. As such, a limit on televised advertising of commercial Web sites during children's programming is necessary ''to protect children, who are particularly vulnerable to commercial messages.'' The rule is narrowly tailored. It only limits when certain types of Web site addresses may be televised; it places no limits on displays of Web sites that are not commercial in nature. In addition, these restrictions apply only during non-commercial portions of children's programs, which represent a tiny fraction of a broadcaster's programming. The rule does nothing to prevent broadcasters and cable programmers from publicizing their Web sites as often as they wish during their many hours of other programming or during properly buffered commercial portions of children's programming, regardless of whatever content those Web sites may contain. Further, despite petitioner's passing assertions, the Web site rule as modified is not constitutionally suspect on vagueness grounds. We find that the four-part test is sufficiently clear to give broadcasters reasonable notice of what conduct is proscribed.

26. A number of commenters, including the Ad Council, request that public service announcements (''PSAs'') be exempt from the four-prong Web site rule. The Ad Council states that the rule has created confusion within the broadcast industry and has had a chilling effect on broadcasters' willingness to run PSAs. We agree that further clarification of this issue could help avoid confusion. We agree with the Children's Media Policy Coalition that we should clarify that certain PSAs, which are not commercial matter under our rules, are exempt from the Web site display rules. The Commission has historically encouraged licensees to air PSAs as part of their obligation to fulfill the public interest. Indeed, in the children's television context, as discussed above, licensees that have not aired at least three hours of core programming may count educational and informational PSAs toward the three hour processing guideline. Thus, the Commission has already adopted a policy of encouraging the airing of PSAs during programming directed to children. For these purposes, we will define PSAs exempt from the Web site display rules as suggested by the Coalition: PSAs aired on behalf of independent non-profit or government organizations, or media companies in partnership with non-profits or government entities, that display Web sites not under the control of the licensee or cable company. We believe it is unlikely that PSAs meeting this definition will display addresses for commercially-oriented Web sites, and we are persuaded by commenters that if we do not carve out an exception for PSAs licensees and cable operators will be discouraged from airing them because they do not want to incur the obligation of ensuring that any Web site addresses displayed comply with the four prong test. Given the non-profit nature of PSAs, we do not expect abuse of this exemption. But we will revisit this issue if the need arises.

27. For similar reasons, we also clarify that station identifications and emergency announcements are not subject to the rules governing the display of Web site addresses as long as the display is consistent with the purpose of the announcement. The four prong Web site address rule applies to Web site addresses displayed during program material and, as clarified above, to promotional material not counted as commercial time. Station identifications and emergency announcements are neither program material nor promotions for purposes of the Web site rule. Rather, both are announcements required under the Commission's rules and must comport with certain requirements regarding their composition and timing. To the extent a licensee includes a Web site address to provide more information about an emergency or about how to contact the station, we find it unnecessarily restrictive to require that such a Web site comply with the four prong test.

28. We decline to exempt closing credits from application of the Web site address rules as requested by some commenters. Closing credits are part of the television program material and should, therefore, be subject to the Web site restrictions.

29. We decline at this point to further define terms in the Web site rule. NAB argues that certain terms in the rule are vague and do not provide sufficient guidance to broadcasters on whether a Web site would comply with the Web site rule. We believe that the rule, as clarified herein, is sufficiently clear to guide broadcasters' compliance. Isolated concerns about the clarity of the Web site rule can be addressed by the Commission staff on a case-by-case basis.

30. We also decline to allow broadcasters to avoid liability by relying on representations from program providers that web addresses meet the four-prong test. We do not expect compliance to be burdensome, but we will revisit this issue if we receive evidence that this is imposing an undue burden on broadcasters.

Host Selling

31. The Commission's long standing host selling policy prohibits the use of program characters or show hosts to sell products in commercials during or adjacent to shows in which the character or host appears. Because of the unique vulnerability of children to host selling, the 2004 Order prohibits the display of Web site addresses in children's programs when the site uses characters from the program to sell products or services. In the 2004 Order, the Commission stated that the restriction on Web sites that use host selling applies to Web site addresses displayed both during program material and during commercial material.

32. Several parties argued on reconsideration that the host selling restriction is unnecessarily restrictive. These petitioners contended that familiar television characters are often used in Web sites in ways that are not commercial in nature, such as to adorn a webpage or guide children from one page to the next. Petitioners also argued that any Web site promotion of any product or service incorporating a program-related character appears to violate the rule even though the 2004 Order permits the sale of program-related merchandise on appropriately cabined commercial sections of a Web site. In response, children's advocates argued that there are clear examples of problems with host selling on Web sites, and that the Commission can address any concerns about the clarity of its rules on a case-by-case basis.

33. The Joint Proposal proposes that the host selling rule in the 2004 Order be vacated and replaced with the following rule:

> Entities subject to commercial time limits under the Children's Television Act (''CTA'') will not display a Web site address during or adjacent to a program if, at that time, on pages that are primarily devoted to free noncommercial content regarding that specific program or a character appearing in that program: (1) Products are sold that feature a character appearing in that program; or (2) a character appearing in that program is used to actively sell products.
>
> To clarify, this rule does not apply to: (1) Third-party sites linked from the companies' web pages; (2) on-air third-party advertisements with Web site references to third-party Web sites; or (3) pages that are primarily devoted to multiple characters from multiple programs.

Commenters that addressed the host selling issue generally support the Joint Proposal recommendation.

34. We continue to believe that it is important to restrict the practice of host selling in children's programming. As we have stated before, the trust that children place in program characters allows advertisers to take unfair advantage of the relationship between the hosts and young children. This can occur whether the host selling occurs on the air or on a Web site to which the television program refers children.

35. We agree, however, with those who argue that our original formulation of the host selling rule was overly restrictive, and that we should revise it as recommended by the Joint Proposal. We believe the revised rule achieves a better balance than the existing rule between the goals of protecting children and permitting broadcasters and cable operators to make appropriate use of Web site displays. The 2004 Order expressly states that commercial portions of Web sites that comply with the Web site display rules may sell or advertise products associated with the related television program. As several parties noted, the host selling rule as originally written appeared to prohibit the sale of any merchandise incorporating a program-related character anywhere on a Web site, even if that portion of the site was clearly identified as commercial in nature and the site otherwise complied with the four-prong Web site rule. The revised host selling rule we adopt today permits the sale of merchandise featuring a program-related character in parts of the Web site that are sufficiently separated from the program itself to mitigate the impact of host selling.

36. Univision supports the Joint Proposal revision but states that the revised rule is vague with respect to the proposed exemption for certain third party sites as it fails to provide a definition of the term ''third party.'' We decline to adopt a definition of ''third party'' at this time as we believe that the purpose of the third party exemption from the host selling restriction is sufficiently clear to provide guidance to broadcasters and cable operators about the kinds of ads and Web sites to which the exemption applies. As stated by the Coalition, the intent behind the third party exemption to the rule is to alleviate the need for companies to police third party Web sites over which the company has no control. In addition, the third party Web site would not be included in the relevant children's programming; rather the third party Web site would be displayed in a commercial (subject to the commercial limits) or would merely be linked to from the company's Web site. Advertisements with or without Web site addresses must be separated from programming material by use of bumpers, as currently required under the Commission's existing commercial limits rules and policies. As such, there will be multiple layers of separation between the program and the third party Web site, which will sufficiently attenuate the commercial content from the relevant programming.

37. Television licensees currently certify their compliance with the children's advertising commercial limits on their license renewal forms and are required to maintain in their public inspection file records sufficient to substantiate the certification. As the Commission stated in the 2004 Order, licensees will be required also to certify that they have complied with the requirements concerning the display of Web site addresses in such programming. In addition, licensees will be required to maintain in their public inspection file, until final action has been taken on the station's next license renewal application, records sufficient to substantiate the station's certification of compliance with the restrictions on Web site addresses in programs directed to children ages 12 and under. Cable operators airing children's programming must maintain records sufficient to verify compliance with the Web site address and host selling rules and make such records available to the public. Such records must be maintained by cable operators for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

Definition of Commercial Matter

38. The limitation on the duration of advertising in children's programming of 10 ½ minutes per hour on weekends and 12 minutes per hour on weekdays applies to ''commercial matter.'' Prior to the 2004 Order, the term ''commercial matter'' was defined to exclude certain types of program interruptions, including promotions of upcoming programs that do not mention sponsors. The Commission noted in the 2004 Order that a significant amount of time is devoted to these types of announcements in children's programming, thereby reducing the amount of actual program material far more than the commercial limits alone might suggest. To address this problem, the 2004 Order revised the definition of ''commercial matter'' to include promotions of television programs or video programming services other than children's educational and informational programming. The revised definition applies to analog and digital broadcasters and to cable operators.

39. On reconsideration, petitioners generally argued that the revised definition of commercial matter would lead to lost ad sales in children's programming and reduced revenues

from such programming as well as diminished opportunities to promote programming. Petitioners claimed that reducing the number of program promotions would reduce the number of children watching the programs. Petitioners also argued that there is no evidence that counting internal promotions as commercials would increase the amount of content in children's shows or reduce program interruptions as programs are produced in a specific length. Children's advocates claimed that new children's programs can be made longer and that the amount of program material in existing shows can be increased by supplementing existing programs with short-form programming, that is, programming lasting less than thirty minutes.

40. As noted above, the 2004 Order included all program promotions other than children's educational and informational programming in the definition of commercial matter. The Joint Proposal would change the revised definition of ''commercial matter'' to exclude (1) promotions for any children's or other age-appropriate programming appearing on the same channel, and (2) promotions for children's educational and informational programming appearing on any channel. Commenters express general support for the Joint Proposal recommendation.

41. We will revise our definition of ''commercial matter'' as recommended by the Joint Proposal. We believe that the revised definition of commercial matter is consistent with the public interest, provides additional flexibility for broadcasters and cable operators, and furthers our goal of making high quality children's programming available to the public. We also note that the CTA explicitly authorizes the Commission to review and evaluate the advertising duration limits; the Commission is therefore authorized to change the definition of ''commercial matter'' consistent with the intent of the CTA and the public interest. Thus, we disagree with parties that argue the revised definition is inconsistent with the CTA.

42. While the revised rule may not limit program promotions in children's programming to the same extent as the rule adopted in the 2004 Order, the revision will still reduce the number of interruptions that were permissible under the original rule and encourage the promotion of programming appropriate for children, including educational and informational programming. As we stated in the 2004 Order, we believe that reducing the number of program promotions will help protect children from overcommercialization of programming consistent with overall intent of the CTA. In addition, exempting program promotions for programming appropriate for children may encourage broadcasters to promote children's programming with educational and informational value, thereby increasing public awareness of the availability of this programming.

Conclusion

43. The rules and policies adopted herein will serve the public interest by both protecting children from excessive and inappropriate advertising on television and ensuring an adequate supply of children's educational programming as we transition from an analog to a digital television environment. Our actions today further the public interest and the mandate of the CTA and provide a reasonable balance between the concerns of industry and protecting the well-being of the nation's children.

Administrative Matters

44. *Final Regulatory Flexibility Analysis* As required by the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') relating to this Report and Order.

45. *Final Paperwork Reduction Act Analysis*. This *Second Order* contains information collection requirements which were proposed in the Second FNPRM, 21 FCC Rcd 3642 (2006), 71 FR 15145 (March 27, 2006), and are subject to the Paperwork Reduction Act of 1995 (''PRA''). The Second FNPRM proposed to revise FCC Form 398 and modify/add new information collection requirements. These proposals were submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The revised FCC Form 398 and modified/new information collection requirements were approved by OMB on June 23, 2006, OMB Control No. 3060–0754. This *Second Order* adopts the information collection requirements and FCC Form 398 as proposed.

46. Our requirements regarding the requests that may be filed with the Media Bureau by networks seeking preemption flexibility will become effective after approval by the Office of Management and Budget (''OMB''). The Commission will publish a separate **Federal Register** Notice seeking public comment on this new information collection requirement at a later date. Upon OMB approval, we will issue a Public Notice announcing the effective date of this rule.

47. In addition, the general public and other Federal agencies were invited to comment on the information collection requirements in the Second FNPRM. We further note that pursuant to the Small Business Paperwork Relief Act of 2002, the Commission previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' We received no comments concerning these information collection requirements. For additional information concerning the information collection requirements contained in this Report and Order, contact Cathy Williams at 202–418–2918, or via the Internet to *Cathy.Williams@fcc.gov.*

48. *Congressional Review Act*. The Commission will send a copy of this *Second Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

49. *Additional Information.* For additional information on this proceeding, please contact Kim Matthews, Policy Division, Media Bureau at (202) 418–2154, or Holly Saurer, Policy Division, Media Bureau at (202) 418–7283.

Ordering Clauses

50. *It is ordered* that, pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303a, 303b, and 307of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303, 303a, 303b, and 307, this *Second Order* on Reconsideration and Second Report and Order *is adopted.*

51. *It is further ordered* that pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303a, 303b, and 307 of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i), 303, 303a, 303b, and 307, the Commission's rules *are hereby amended* as set forth in the rule changes. It is our intention in adopting these rule changes that, if any provision of the rules is held invalid by any court of competent jurisdiction, the remaining provisions shall remain in effect to the fullest extent permitted by law.

52. *It is further ordered* that the rules as revised in the rule changes *shall be effective* 60 days after publication of the *Second Order* in the **Federal Register**. With respect to renewal applications, we will evaluate compliance with these requirements in applications filed after that date. Licensee performance during any portion of the renewal term that predates the effective date of the rules in the *Second Order* will be evaluated

under current rules, and licensee performance that post-dates the effective date of the revised rules will be judged under the new provisions.

53. *It is further ordered* that the Media Bureau make available to the public an electronic version of FCC Form 398, Children's Television Programming Report, that reflects the changes adopted in this *Second Order*. A revised version of this form has already been approved by OMB. Licensees will be required to use the revised electronic version of FCC Form 398 to report their children's core programming, including their digital core programming, for the first quarter of 2007. Thus, licensees must use the revised electronic version of FCC Form 398 for their quarterly filing due no later than April 10, 2007.

54. *It is further ordered* that the Petitions for Reconsideration and Oppositions to Petition for Reconsideration filed in response to the 2004 Report and Order and Further Notice of Proposed Rule Making in this docket are granted in part and denied in part, as discussed above, and otherwise dismissed as moot.

55. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Order* on Reconsideration and Second Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

56. *It is further ordered* that the Commission *shall send* a copy of this Second Order on Reconsideration and Second Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Second Further Notice of Proposed Rule Making (''Second FNPRM'') in this proceeding. The Commission sought written public comment on the proposals in the Second FNPRM, including comment on the IRFA. The Commission received one comment on the IRFA, as discussed below. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

Need for, and Objectives of, the Second Order

The purpose of this proceeding is to determine how the existing children's educational television programming obligations and limitations on advertising in children's programs should be interpreted and adapted to apply to digital television broadcasting in light of the new capabilities made possible by that technology. The *Second Report and Order and Second Order on Reconsideration (''Second Order'')* makes certain modifications to the rules and policies adopted in our September 9, 2004 Report and Order and Further Notice of Proposed Rule Making (''2004 Order'') in this proceeding. The modifications we make today respond in part to a Joint Proposal of Industry and Advocates on Reconsideration of Children's Television Rules (''Joint Proposal'') filed by a group of cable and broadcast industry representatives and children's television advocates, among others. The Commission sought comment on the Joint Proposal in the Second FNPRM.

In the 2004 Order, the Commission updated the children's television rules and policies to ensure that they continue to serve the interests of children and parents as the country transitions from analog to digital television. Among other things, the Commission revised the three-hour core programming processing guideline as it applies to DTV broadcasters that choose to multicast. Specifically, the 2004 Order increased the core programming benchmark for digital broadcasters in a manner roughly proportional to the increase in free video programming offered by the broadcaster on multicast channels. The 2004 Order also permitted the display of Internet Web site addresses during children's programming only if the Web site meets a four-prong test limiting commercial matter on the site, and prohibited broadcasters from displaying Web site addresses during both children's programs and commercials appearing in those programs if the Web site uses host selling. The 2004 Order also imposed a percentage cap on the number of preemptions of core children's programs and revised the definition of ''commercial matter'' for purposes of the commercial limits to include promotions of other television programs unless they are children's educational or informational programs.

Our decision today does not alter the new children's core programming ''multicasting'' rule adopted in the 2004 Order, but does clarify the way in which repeats of core programs will be counted under the new rule. We do not make substantial changes to the four-prong Web site rule adopted in the 2004 Order, but do amend the host selling restrictions adopted in the 2004 Order to apply those restrictions less broadly and to exempt certain third party Web sites from the host selling restriction. We also revise the definition of ''commercial time'' adopted in the 2004 Order to limit the kinds of promotions of children's programs that must be counted under the advertising rules adopted in the 2004 Order. In addition, with regard to scheduling of core children's programming, we vacate the percentage cap on the number of permissible core program preemptions adopted in the 2004 Order and return to our prior practice of addressing the number of preemptions and rescheduling of core programming on a case-by-case basis. These modifications will serve the public interest by ensuring an adequate supply of children's educational and informational programming as we transition to digital television technology, and protecting children from excessive and inappropriate commercial messages in broadcast and cable programming, without unduly impairing the scheduling flexibility of broadcasters and cable operators.

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

The U.S. Small Business Administration (''SBA'') filed the only comment in this proceeding responding to the IRFA. The SBA notes that several alternatives were suggested to the FCC by various members of industry which could, according to the SBA, offer significant cost savings to smaller broadcasters while potentially serving the FCC's goals. First, the SBA notes that the Local Broadcasters Alliance (''LBA'') recommends that the FCC limit the applicability of the new core programming requirements to multicast streams that do not already offer educational, informational, and/or public affairs programming. According to the SBA, providing an exemption for small broadcasters who are already providing public affairs content, and who do not yet have the technical capabilities to insert children's programming on their multicast channels, could serve the FCC's goals and provide a reasonable amount of flexibility for small business. Second, the SBA notes that the National Association of Broadcasters (''NAB'') and others recommend that the FCC allow broadcasters to rely on certifications from programming providers that Web site addresses displayed during core programming meet the FCC requirements, instead of requiring stations to continuously monitor and edit programming

containing Web site addresses. According to the SBA, adopting this alternative could offer significant cost savings to small broadcasters. Third, the SBA notes that the multicasting rule would require that at least 50 percent of the core programming counted toward meeting the additional core programming requirements not consist of program episodes that have already aired within the previous seven days. The SBA notes that the NAB recommends that the FCC amend Form 398 to allow broadcasters to certify compliance with the limitation. According to the SBA, adopting this alternative could provide significant compliance cost savings to both small and large broadcasters.

With respect to LBA's argument that the Commission limit the applicability of the new core programming requirements to multicast streams that do not already offer educational or public affairs programming, as noted in paragraph 20 of the *Second Order* a number of commenters joined the LBA in arguing that the Commission either should not impose additional core programming requirements on digital multicast channels, or at least should exempt multicast channels that offer educational, informational, and/or public interest programming. As discussed in paragraphs 18–21 of the *Second Order*, we decline to revise the guideline as suggested by these commenters. The Commission believes that the revised processing guideline translates the existing three-hour guideline to the digital environment in a manner that is both fair to broadcasters and meets the needs of the child audience. Now that digital broadcasters have the capability to significantly increase their overall hours of programming, increasing the amount of core programming will not result in an unreasonable burden. For example, if a station chooses to broadcast a second stream of free video programming twenty-four hours a day, seven days a week, it can satisfy the new guideline by providing merely three additional hours per week of core programming—or less than two percent of the channel's 168 hours of additional weekly programming. That additional programming can be aired on the main program stream or on a multicast stream, at the discretion of the broadcaster. In addition, we believe that a guideline that increases the amount of core programming in a manner roughly proportional to the increase in free video programming offered by broadcasters is consistent with the objective of the CTA ''to increase the amount of educational and informational broadcast television available to children.''

The digital programming processing guideline provides broadcasters flexibility to move core programming to either their main programming stream or other multicast streams, so long as the stream the programming is moved to receives comparable MVPD carriage to the stream triggering the additional obligation. Thus, the guideline preserves the principle that, in order to obtain staff level approval of their CTA compliance, broadcasters must provide three hours of children's core programming for every 168 hours per week of free video programming that they air, while at the same time giving broadcasters flexibility to choose the multicast stream that will air that programming. In addition, broadcasters could meet the guideline by airing children's programming on specialized channels, such as a children's news program on a twenty-four hour news channel or a children's educational weather program on a twenty-four hour weather channel. Furthermore, we note that our rules provide flexibility for licensees that have aired somewhat less core programming than indicated by the guideline but that nonetheless demonstrate an adequate commitment to educating and informing children. With respect to the recommendation of NAB and others regarding reliance on certifications from program providers, as discussed in paragraph 38 of the item we decline to allow broadcasters to avoid liability by relying on representations from program providers that web addresses meet the four-prong test. We do not expect compliance to be burdensome, but we will revisit this issue if we receive evidence that this is imposing an undue burden on broadcasters.

Finally, as discussed in paragraph 23 the item adopts NAB's recommendation, which was echoed by other commenters, that FCC Form 398 allow broadcasters to certify compliance with the revised limitation on the repeat of core digital programming adopted under the multicasting guideline rather than requiring broadcasters to identify each program episode on Form 398. We will require licensees, however, to retain records sufficient to document the accuracy of their certification, including records of actual program episodes aired, and to make such documentation available to the public upon request.

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

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

Television Broadcasting. The proposed rules and policies apply to television broadcast licensees, and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than $13 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on October 18, 2005, about 873 of the 1,307 commercial television stations (or about 67 percent) have revenues of $12 million or less and thus qualify as small entities under the SBA definition. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult

at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Cable and Other Program Distribution. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

1. *Cable Companies and Systems*. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

2. *Cable System Operators*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The *Second Order* retains the revised core programming processing guideline for digital stations adopted in the 2004 Order but clarifies the number of permissible core program repeats under the guideline. Specifically, we clarify that at least 50 percent of the core programming counted toward meeting the additional programming guideline cannot consist of program episodes that had already aired within the previous seven days on either the station's main program stream or on another of the station's free digital program streams. We also amend FCC Form 398 to collect the information necessary to enforce the limit on repeats under the revised guideline. We permit licensees to certify on Form 398 that they have complied with the repeat restriction and do not require broadcasters to identify each program episode on Form 398. Licensees must retain records sufficient to document the accuracy of their certification, including records of actual program episodes aired, and make such documentation available to the public upon request. The children's programming liaison identified in the FCC Form 398 must be able to provide documentation to substantiate the certification if requested.

The *Second Order* repeals the ten percent cap on preemptions of core children's programming adopted in the *2004 Order* and instead institutes a procedure similar to that used by the Media Bureau and the Commission following adoption of the 1996 children's television Order whereby networks sought informal approval of their preemption plans each year. Under the policy formerly developed by the Commission staff, a program counted as preempted only if it was not aired in a substitute time slot (otherwise known as a ''second home'') with an on-air notification of the schedule change occurring at the time of preemption during the previously scheduled episode. The on-air notification must announce the alternate date and time when the preempted show will air. As part of this policy, we will require all networks requesting preemption flexibility to file a request with the Media Bureau by August 1 of each year stating the number of preemptions the network expects, when the program will be rescheduled, whether the rescheduled time is the program's second home, and the network's plan to notify viewers of the schedule change. We will presume that non-network stations are complying with the three hour core programming requirement, and do not need broad preemption relief.

The *Second Order* retains the rule on Web site addresses adopted in the *2004 Order* with two clarifications: (1) The rule applies only when Internet addresses are displayed during program material or during promotional material not counted as commercial time; and (2) if an Internet address for a Web site that does not meet the four-prong test is displayed during a promotion, in addition to counting against the commercial time limits, the promotion will be clearly separated from programming material. We exempt from the Web site display rules certain PSAs, which are not commercial matter under our rules. Specifically, we define PSAs exempt from the Web site display rules as: PSAs aired on behalf of independent non-profit or government organizations, or media companies in partnership with non-profits or government entities, that display Web sites not under the control of the licensee or cable company. We also clarify that station identifications and emergency announcements are not subject to the rules governing the display of Web site addresses as long as the display is consistent with the purpose of the announcement. Closing credits are not exempt from application of the Web site address rules.

The Commission's host selling policy prohibits the use of program characters or show hosts to sell products in commercials during or adjacent to shows in which the character or host appears. The *Second Order* adopts the following host selling rule with respect to Web site addresses:

> Entities subject to commercial time limits under the Children's Television Act (''CTA'') will not display a Web site address during or adjacent to a program if, at that time, on pages that are primarily devoted to free noncommercial content regarding that specific program or a character appearing in that program: (1) Products are sold that feature a character appearing in that program; or (2) a character appearing in that program is used to actively sell products.
>
> To clarify, this rule does not apply to: (1) Third-party sites linked from the companies'

web pages; (2) on-air third-party advertisements with Web site references to third-party Web sites; or (3) pages that are primarily devoted to multiple characters from multiple programs.

The limitation on the duration of advertising in children's programming of 10½ minutes per hour on weekends and 12 minutes per hour on weekdays applies to ''commercial matter.'' Prior to the *2004 Order*, the term ''commercial matter'' was defined to exclude certain types of program interruptions, including promotions of upcoming programs that do not mention sponsors. The *2004 Order* revised the definition of ''commercial matter'' to include promotions of television programs or video programming services other than children's educational and informational programming. The revised definition applies to analog and digital broadcasters and to cable operators.

The *Second Order* revises the definition of ''commercial matter'' to exclude (1) promotions for any children's or other age-appropriate programming appearing on the same channel, and (2) promotions for children's educational and informational programming appearing on any channel.

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

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

Several steps were taken to minimize the impact on small entities. As noted above, the *Second Order* adopts the alternative recommended by NAB and others that broadcasters be permitted to certify on FCC Form 398 their compliance with the limit on the number of repeats of digital core programming under the revised processing guideline. See paragraph 23, supra. Thus, broadcasters will not be obligated to identify each program episode on Form 398, but will be required to retain documentation sufficient to substantiate the certification on Form 398. This step will make compliance with the rules easier for all broadcasters, including smaller broadcasters. The Commission considered, but rejected, the approach of requiring broadcasters to identify each program episode on the Form 398. That approach, if adopted, would have imposed a greater burden on broadcasters.

The *Second Order* also lifts the cap on the number of preemptions of core programs adopted in the *2004 Order* and instead returns to the prior practice of permitting networks that need scheduling flexibility to accommodate sports and other programming to request such flexibility from the Media Bureau. This change should help all broadcasters, including small broadcasters, by providing more scheduling flexibility. The Commission considered, but rejected, keeping the cap on the number of preemptions as adopted in the *2004 Order*, which would have been more burdensome to broadcasters.

In addition, the *Second Order* also revises the definition of ''host selling'' adopted in the *2004 Order* with respect to Web site address displays in children's programming. The revised definition is less restrictive than that adopted in 2004 and permits the sale of merchandise featuring a program-related character in parts of the Web site that are sufficiently separated from the program itself to protect children from the unique impact of host selling. This change should provide more flexibility to all broadcasters and cable operators, including smaller entities, and should be less burdensome to all affected entities.

Another change made in the *Second Order* that will ease the burden on all entities in complying with the rules is the change in the definition of ''commercial matter.'' The revised definition provides additional flexibility for broadcasters and cable operators and permits them to air program promotions that would not have been permitted under the rule adopted in 2004.

Report to Congress

The Commission will send a copy of the *Second Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 604(b). A copy of the *Second Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

List of Subjects

47 CFR Part 73

Television.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

■ 2. Section 73.670 is amended by revising paragraph (b) introductory text and paragraph (c), adding paragraph (d), and revising Note 1 to read as follows (Note 2 remains unchanged):

§ 73.670 Commercial limits in children's programs.

* * * * *

(b) The display of Internet Web site addresses during program material or promotional material not counted as commercial time is permitted only if the Web site:

* * * * *

(c) If an Internet address for a Web site that does not meet the test in paragraph (b) of this section is displayed during a promotion in a children's program, in addition to counting against the commercial time limits in paragraph (a) of this section the promotion must be clearly separated from program material.

(d)(1) Entities subject to commercial time limits under the Children's Television Act shall not display a Web site address during or adjacent to a program if, at that time, on pages that are primarily devoted to free noncommercial content regarding that specific program or a character appearing in that program:

(i) Products are sold that feature a character appearing in that program; or

(ii) A character appearing in that program is used to actively sell products.

(2) The requirements of this paragraph do not apply to:

(i) Third-party sites linked from the companies' Web pages;

(ii) On-air third-party advertisements with Web site references to third-party Web sites; or

(iii) Pages that are primarily devoted to multiple characters from multiple programs.

Note 1: *Commercial matter* means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's or other age-appropriate programming appearing on the same channel or promotions for children's educational and informational programming on any channel.

* * * * *

■ 3. Section 73.671 is amended by revising paragraph (e)(3) and by removing paragraph (f) to read as follows:

§ 73.671 Educational and informational programming for children.

* * * * *

(e) * * *

(3) For purposes of the guideline described in paragraph (e)(2) of this section, at least 50 percent of the core programming counted toward meeting the additional programming guideline cannot consist of program episodes that had already aired within the previous seven days on either the station's main program stream or on another of the station's free digital program streams. This requirement does not apply to any program stream that merely time shifts the entire programming line-up of another program stream and, during the digital transition, to core programs aired on both the analog station and a digital program stream.

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 4. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

■ 5. Section 76.225 is amended by revising paragraphs (b) introductory text, (c), and (d), by adding paragraph (e), and by revising Note 1 to § 76.225 to read as follows:

§ 76.225 Commercial limits in children's programs.

* * * * *

(b) The display of Internet Web site addresses during program material or promotional material not counted as commercial time is permitted only if the Web site:

* * * * *

(c) If an Internet address for a Web site that does not meet the test in paragraph (b) of this section is displayed during a promotion in a children's program, in addition to counting against the commercial time limits in paragraph (a) of this section the promotion must be clearly separated from program material.

(d)(1) Entities subject to commercial time limits under the Children's Television Act shall not display a Web site address during or adjacent to a program if, at that time, on pages that are primarily devoted to free noncommercial content regarding that specific program or a character appearing in that program:

(i) Products are sold that feature a character appearing in that program; or

(ii) A character appearing in that program is used to actively sell products.

(2) The requirements of this paragraph do not apply to:

(i) Third-party sites linked from the companies' Web pages;

(ii) On-air third-party advertisements with Web site references to third-party Web sites; or

(iii) Pages that are primarily devoted to multiple characters from multiple programs.

(e) The requirements of this section shall not apply to programs aired on a broadcast television channel which the cable operator passively carries, or to access channels over which the cable operator may not exercise editorial control, pursuant to 47 U.S.C. 531(e) and 532(c)(2).

Note 1 to § 76.225: *Commercial matter* means air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's or other age-appropriate programming appearing on the same channel or promotions for children's educational and informational programming on any channel.

* * * * *

[FR Doc. E6–18401 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 102606C]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the daily Atlantic bluefin tuna (BFT) retention limits for the Atlantic tunas General category should be adjusted to provide reasonable opportunity to harvest the General category November through January time-period subquota. Therefore, NMFS increases the daily BFT retention limits for the entire month of November, including previous scheduled Restricted Fishing Days (RFDs), to provide enhanced commercial General category fishing opportunities in all areas while minimizing the risk of an overharvest of the General category BFT quota.

DATES: The effective dates for the BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2006 BFT fishing year began on June 1, 2006, and ends May 31, 2007. The final initial 2006 BFT specifications and General category effort controls were published on May 30, 2006 (71 FR 30619). These final specifications divided the General category quota among three subperiods (June through August, the month of September, and October through January) in accordance with the Highly Migratory Species Fishery Management Plan (1999 FMP) published in 1999 (May 29, 1999; 64 FR 29090), and implementing regulations at § 635.27. The final initial 2006 BFT specifications increased the General category retention limit to three fish for the June though August time-period, as

well as established the following General category Restricted Fishing Day (RFD) schedule: all Saturday and Sundays from November 18, 2006, through January 31, 2007, and Thursday November 23, 2006, and Monday December 25, 2006, inclusive. Due to the large amount of available quota and the low catch rates, NMFS extended the three-fish retention limit through September (71 FR 51529, August 30, 2006) and October (71 FR 58287, October 3, 2006) respectively to enhance fishing opportunities while minimizing the risk of exceeding available quota. On October 2, 2006, NMFS published a final rule implementing the Consolidated Highly Migratory Species Fishery Management Plan (HMS FMP) (71 FR 58058). Contained in the HMS FMP is a revised General category time-period subquota allocation scheme that has divided the coastwide General category into the following five distinct time-periods; June through August, September, October and November, December, and January of the following year. The effective date of these time-periods and their associated subquota is November 1, 2006.

Daily Retention Limits

Pursuant to this action and the final initial 2006 BFT specifications, noted above, the daily BFT retention limits for Atlantic tunas General category are as follows:

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Areas	BFT Size Class Limit
General	October 1, 2006, through October 31, 2006, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	November 1, 2006, through November 30, 2006, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	December 1, 2006, through January 31, 2007, inclusive	All	One BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger

Adjustment of General Category Daily Retention Limits

Under § 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for a reasonable opportunity to harvest the quota for BFT. As part of the final specifications on May 30, 2006 (71 FR 30619), NMFS adjusted the commercial daily BFT retention limit, in all areas, for those vessels fishing under the General category quota, to three large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip. This retention limit, which was to remain in effect through August 31, 2006, inclusive, was extended through September and October through separate actions filed with the **Federal Register**. From November 1, 2006, through January 31, 2007, inclusive, the General category daily BFT retention limit was scheduled to revert to one large medium or giant BFT per vessel per day/trip.

The June through August, September, and soon to be effective October and November time-period subquota allocations for the 2006 fishing year total approximately 1,041.2 metric tons (mt). As of October 23, 2006, 94.5 mt have been landed in the General category and catch rates are less than 1.0 mt per day. If catch rates remain at current levels and RFDs remain as scheduled, approximately 29 mt would be landed through November 30, 2006. This projection would bring June though November landings to approximately 123.5 mt, resulting in an underharvest of approximately 917.7 mt. The October 2, 2006, final rule established stand-alone General category time-periods for the months of December and January. Each of these time-periods are allocated a portion of the coastwide General category, thereby ensuring fishing opportunities are provided in years where high catch rates are experienced. The quota carryover from the previous time-period subquotas, combined with the newly established December and January time-period subquota allocations, would allow for approximately 1,039.8 mt to be harvested through January 31, 2007. In combination with the subquota rollover from previous time-periods, scheduled RFDs, current catch rates, and the daily retention limit reverting to one large medium or giant BFT per vessel per day on November 1, 2006, NMFS anticipates the full October and November time-period subquota will not be harvested. Adding an excessive amount of unused quota from one time-period subquota to the subsequent time-period subquota is undesirable because it effectively changes the time-period subquota allocation percentages established in the HMS FMP and may contribute to excessive carry-overs to subsequent fishing years. In the past, however, the fishery has had the capability of increasing landings rates dramatically in the latter Fall and Winter months, particularly off southern states. If the fishery was to perform at these past levels with high landings rates (although not witnessed during the winter of 2005/2006), it may alleviate concern of excessive roll-overs from one fishing year to the next, but raises the possibility of unprecedented, and potentially unsustainable, catch rates during the winter fishery.

The final initial 2006 BFT specifications scheduled a number of RFDs for the month of November, including all Saturdays and Sundays, as well as Thursday November 23, 2006. These RFDs were designed to provide for an extended late season, south Atlantic BFT fishery for the commercial handgear fishermen in the General category. For the reasons referred to above, NMFS has determined that the scheduled November RFDs are no longer required to meet their original purpose, and may in fact exacerbate low catch rates. Therefore, NMFS determined an increase in the General category daily BFT retention limit on those previously established RFDs for the month of November is warranted. NMFS has selected these days in order to give adequate advance notice to fishery participants. While catch rates have continued to be low so far this season, NMFS recognizes that they may increase at any time late in the season. In order to ensure equitable fishing opportunities in all areas, NMFS has not waived the RFDs scheduled in December and January at this time. If

catch rates continue to be low, some or all of the remaining previously scheduled RFDs may be waived as well.

Therefore, based on a review of dealer reports, daily landing trends, available quota, revised time-periods, and the availability of BFT on the fishing grounds, NMFS has determined that an increase in the General category daily BFT retention limit effective from November 1, 2006, through November 30, 2006, inclusive of previously scheduled RFDs for the month of November, is warranted. Thus, the General category daily retention limit of three large medium or giant BFT per vessel per day/trip (see Table 1) is extended through November 30, 2006, including all Saturdays and Sundays of November as well as Thursday November 23, 2006. From December 1, 2006, through January 31, 2007, inclusive, the General category default daily BFT retention limit will be one large medium or giant BFT per vessel per day/trip will apply, unless further action is taken.

NMFS anticipates that with a combination of the default retention limit starting on December 1, 2006, and the large amount of General category quota available, there will be sufficient quota for the coastwide General category season to extend through the winter months and allow for a southern Atlantic fishery to take place with minimal risk of landings exceeding available quota. However, to reduce the risks of excessive landings rates throughout December and January, NMFS has determined it necessary to only extend the three BFT daily retention limit for the one month of November and will re-examine the need to further extend the increased bag limit prior to newly established December and January time-periods based on landings rates and other fishery information.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. landings quota of BFT while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Monitoring and Reporting

NMFS selected the daily retention limits and their duration after examining current and previous fishing year catch and effort rates, taking into consideration public comment on the annual specifications and inseason management measures for the General category received during the 2006 BFT quota specifications rulemaking process, and analyzing the available quota for the 2006 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports, the Automated Landings Reporting System, state harvest tagging programs in North Carolina and Maryland, and the Large Pelagics Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or, to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access the internet at www.hmspermits.gov, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

NMFS has recently become aware of increased availability of large medium and giant BFT off southern New England and southern Atlantic fishing grounds from fishing reports and landings data from dealers. This increase in abundance provides the potential to increase General category landings rates if fishery participants are authorized to harvest three large medium or giant BFT per day. Although landings to date have been low (i.e., less than one mt per day) there is the potential for increased availability of BFT during the Fall to allow for an increase in fishery landing rates. The regulations implementing the HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Adjustment of retention limits, including waiving previously scheduled RFDs in the month of November, is also necessary to avoid excessive quota rollovers to subsequent General category time-period subquotas. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are still available on the fishing grounds. Analysis of available data shows that the General category BFT retention limit may be increased for the Atlantic tuna General and HMS Charter/Headboat permit holders with minimal risks of exceeding the International Commission for the Conservation of Atlantic Tunas allocated quota.

Delays in increasing the retention limits would be contrary to the public interest. Limited opportunities to harvest the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend on catching the available quota within the time-periods designated in the HMS FMP, or depend on multiple BFT retention limits to attract individuals to book charters. For both the General and the HMS Charter/Headboat sectors, the retention limits must be adjusted as expeditiously as possible so the impacted sectors can benefit from the adjustment.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., current default retention limit is one fish per vessel/trip but this action increases that limit and allows retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 26, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–9007 Filed 10–27–06; 2:36 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 211
Wednesday, November 1, 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 35

[Docket No. PRM–35–20]

E. Russell Ritenour, Ph.D.; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking dated September 10, 2006, filed by E. Russell Ritenour, Ph.D. (petitioner) on behalf of the American Association of Physicists in Medicine (AAPM). The petition has been docketed by the NRC and has been assigned Docket No. PRM–35–20. The petitioner is requesting that the NRC amend the regulations that govern medical use of byproduct material to revise what it calls the ''grandfather'' provision to recognize individual diplomates of certifying boards that were previously named in these regulations before October 25, 2005.

DATES: Submit comments by January 16, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (PRM–35–20) in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Attention:* Rulemaking and Adjudications staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail 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 comments about our rulemaking Web site to Carol Gallagher, (301) 415–5905; (e-mail *cag@nrc.gov*). Comments can also be submitted via the Federal eRulemaking Portal *http:www.regulations.gov.*

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http:// ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams. html.* From this site, the public can gain entry into the NRC's Agencywide Documents 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 PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

A copy of the petition can be found in ADAMS under accession number ML062620129. A paper copy of the petition may be obtained by writing to Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll-Free: 1–800–368–5642 or e-mail: *MTL@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NRC has received a petition for rulemaking dated September 10, 2006, submitted by E. Russell Ritenour, Ph.D. (petitioner) on behalf of the American Association of Physicists in Medicine. The petitioner requests that the NRC amend 10 CFR part 35, ''Medical Use of Byproduct Material.'' Specifically, the petitioner requests that 10 CFR 35.57, ''Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist'' be revised to recognize medical physicists certified by either the American Board of Radiology (ABR) or the American Board of Medical Physics (ABMP) on or before October 24, 2005, as ''grandfathered for the modalities that they practiced as of October 24, 2005.''

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–35–20. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner notes that a revision of 10 CFR part 35 was published on April 24, 2002 (67 FR 20249), that contained new T&E requirements for individuals to become authorized as an RSO, AMP, authorized user (AU), and authorized nuclear pharmacist (ANP). The petitioner states that these requirements provide the following three pathways for an individual to become authorized:

(1) An individual may be certified by a specialty board whose certification process is recognized by the NRC or an Agreement State as meeting NRC's T&E requirements (a recognized board.)

(2) Approval based on an individual's T&E (alternate pathway.)

(3) Identification of an individual's listing on an existing NRC or Agreement State license. The petitioner refers to this option as the ''grandfathering'' pathway.

The petitioner states that the Advisory Committee on the Medical Uses of Isotopes (ACMUI) expressed the concern during briefings on February

19, 2002, to the Commission on the proposed amendments to Part 35 that if the requirements for recognition of specialty board certifications were to become effective as drafted, there could be potential shortages of individuals qualified to serve as RSOs, AMPs, ANPs, and AUs because they would no longer meet T&E requirements under the certification pathway. The petitioner also states that the ACMUI was concerned that the specialty boards might be ''marginalized'' and that ACMUI urged the Commission to address T&E issues associated with recognition of specialty boards. The petitioner notes that the NRC modified the regulation by reinserting Subpart J until October 24, 2005.

The petitioner requests that 10 CFR 35.57 be amended to recognize medical physicists certified by either the ABR or ABMP on or before October 24, 2005, ''as grandfathered for the modalties that they practiced as of October 24, 2005.'' The petitioner also states that this amendment ''should be independent of whether or not a medical physicist was named on an NRC or an Agreement State license as of October 24, 2005.'' The petitioner states that 10 CFR 35.57 should also be amended to recognize all individuals certified by the named boards in Subpart J for RSOs who have relevant work experience even if an individual has not been formally ''named'' as an RSO and that these individuals ''need to be grandfathered as an RSO by virtue of certification providing the appropriate preceptor statement is submitted.''

The petitioner states that although the AAPM, ABR, and ABMP recognize that it was never the NRC's intent to deny recognition to any currently practicing medical physicist or to minimize the importance of a certifying board, these organizations remain concerned about the NRC staff's method used to grant recognized status to the process used by certifying boards. The petitioner is concerned that the effective date assigned by the staff once it recognizes a board's process may force individuals certified prior to that date to have to pursue the alternate pathway. The petitioner indicates that it has affirmed with the ABR and ABMP that they believed that existing diplomates' certifications (i.e., certificates issued before October 25, 2005) would continue to be recognized by the NRC or an Agreement State. The petitioner believes that medical physicists have demonstrated competence to practice through ABR or ABMP certification and remains concerned that the effective date assigned by the NRC staff after it recognizes a board's process may force individuals certified before that date to pursue the alternate pathway. The petitioner believes that the current provision places an undue burden on the medical community and could result in a shortage of AMPs and RSOs.

The petitioner notes that the AMP is a recent addition to licenses granted under 10 CFR part 35 and Agreement State regulations. The petitioner describes the previous regulations before the concept of the AMP was introduced as ''inconsistent.'' The petitioner believes this inconsistency was the basis for the requirement to list an AMP on licenses. The petitioner also states that this requirement specifies that an individual must have a statement signed by a ''preceptor AMP'' attesting that the individual is capable of acting independently for the specified modality. The petitioner indicated that without medical physicists listed on licenses prior to the new regulation, there is limited opportunity for a medical physicist to serve as a preceptor. The petitioner believes that for a medical physicist to be ''grandfathered'' under the new regulation, the individual must have been listed on a license as of the effective date of the regulation. The petitioner has stated that its suggested amendment to § 35.57 would allow individuals to serve as AMPs or preceptor AMPs without having to be recognized via the ''alternate pathway.''

The petitioner also notes that licensees can specify only one individual as an RSO under the current provisions, unlike the position of AU for which there are typically multiple individuals named on a license. The petitioner believes this makes it more difficult for an AMP or other Board diplomates to have acquired the requisite grandfather status before October 24, 2005. The petitioner has stated that the NRC should recognize individuals who were certified by a board listed in former Subpart J for § 35.50 (RSO) and § 35.51 (AMP) prior to October 24, 2005.

The petitioner concluded that its proposed amendment should be enacted expeditiously to permit individuals certified by the boards listed in Subpart J to continue practicing medical physics and serving as RSOs to assure the continuation of high quality patient care.

Dated at Rockville, Maryland, this 26th day of October 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–18363 Filed 10–31–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket No. PRM–51–10]

Massachusetts Attorney General; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated August 25, 2006, which was filed with the Commission by Diane Curran on behalf of Massachusetts Attorney General. The petition was docketed by the NRC on September 19, 2006, and has been assigned Docket No. PRM–51–10. The petitioner requests that the NRC revoke certain regulations in their entirety, and revoke other regulations to the extent that these regulations, in the petitioner's view, state, imply, or assume that the environmental impacts of storing spent nuclear fuel in high-density pools are not significant; issue a generic determination to clarify that the environmental impacts of high-density pool storage of spent fuel, will be considered significant; and require that any NRC licensing decision concerning high-density pool storage of spent nuclear fuel be accompanied by an environmental impact statement that addresses the environmental impacts of this storage and alternatives for avoiding or mitigating any environmental impacts. The petitioner is seeking the generic treatment of spent fuel pool hazards because he believes that a pool accident at any operating nuclear power plant in the New England and Mid-Atlantic states could significantly affect the health, environmental, and economic well-being of Massachusetts.

DATES: Submit comments by January 16, 2007. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments on this petition by any one of the following methods. Please include *PRM–51–10* in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any

information in your submission that you do not want to be publicly disclosed.

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 e-mail 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 eRulemaking 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. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/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 PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

A copy of the petition can be found in ADAMS under accession number ML062640409. A paper copy of the petition may be obtained by contacting Betty Golden, Office of Administration, Nuclear Regulatory Commission, Washington DC, 20555–0001, telephone 301–415–6863, toll-free 1–800–368–5642, or by e-mail *bkg2@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free: 1–800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The petitioner states that this petition for rulemaking is a companion to the contentions filed by the Massachusetts Attorney General on May 26, 2006, before the NRC's Atomic Safety and Licensing Board (ASLB) in the license renewal proceedings for the Pilgrim and Vermont Yankee nuclear power plants, and raises the same substantive concern as those contentions, namely, that spent fuel stored in high-density fuel storage pools is much more vulnerable to fire than the NRC's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (May 1996) (GEIS) concludes. The petitioner states that the petition relies on and incorporates by reference the legal and technical assertions made in the Massachusetts Attorney General's contentions. The Massachusetts Attorney General's Request for a Hearing and Petition to Intervene With Respect to Entergy Nuclear Operations Inc.'s Application for Renewal of the Vermont Yankee Nuclear Plant Operating License can be found in NRC's ADAMS system at accession number ML061640032.

The petitioner has filed this petition in the event that the ASLB rules that certain NRC regulations render the petitioner's contentions inadmissible.

Petitioner's Request

The petitioner requests that the NRC:

- Revoke 10 CFR 51.53(c)(2) and 51.95(c), and Table B–1 of appendix A to 10 CFR part 51; and revoke 10 CFR 51.23(a) and (b), 51.30(b), 51.53, 51.61, and 51.80(b) to the extent that these regulations state, imply, or assume that the environmental impacts of high-density pool storage are insignificant and therefore need not be considered in any National Environmental Policy Act of 1969 (NEPA) analysis. The petitioner assets that the revocation of these regulations, which according to the petitioner, ''codify'' the use of the GEIS by the NRC, is necessary to ensure compliance with NEPA in the Pilgrim and Vermont Yankee license renewal cases. In this regard, the petitioner asserts that new and significant information, provided by the petitioner, shows that spent nuclear fuel stored in high-density fuel storage pools is much more vulnerable to fire than the GEIS concludes.
- Issue a generic determination that the environmental impacts of high-density pool storage of spent fuel, including the environmental impacts of accidents arising from this storage, are significant.
- Amend its regulations concerning severe accident mitigation alternatives (SAMAs). The petitioner requests that the body of SAMAs that must be discussed in an environmental impact statement or related supplement or in an environmental assessment, under 10 CFR 51.53(c)(3)(ii)(L) and Table B–1 appendix A to 10 CFR part 51 (Postulated Accidents: Severe Accidents) must include alternatives to avoid or mitigate the impacts of high-density pool fires.
- Require that any NRC licensing decision that approves high-density pool storage of spent fuel at a nuclear power plant or any other facility must be accompanied by an environmental impact statement that addresses the environmental impacts of high-density pool storage of spent fuel at that nuclear plant or facility, and presents a reasonable array of alternatives for avoiding or mitigating those impacts.

Conclusion

The petitioner asserts that a generic rulemaking would be the most effective means to ensure broad protection of public health and the environment. The petitioner states that NRC's conclusion regarding the degree of vulnerability of high-density spent fuel storage pools to fire is contained in numerous NEPA and other licensing documents, and affects many licensing decisions. Consequently, the petitioner asserts that this NRC conclusion should be revoked ''across the board'' to ensure that future NRC licensing decisions are not based on inadequate consideration of environmental risks or measures for avoiding or reducing those risks. Moreover, the petitioner asserts he has an interest in seeking generic treatment of spent fuel pool hazards because he believes that a pool accident at any one of the operating nuclear power plants in the New England or Mid-Atlantic states could have a significant effect on the health, environmental, and economic well-being of the Commonwealth of Massachusetts.

Dated at Rockville, Maryland, this 26th day of October 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–18364 Filed 10–31–06; 8:45 am]

BILLING CODE 7590–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 170

RIN 3038–AC29

Membership in a Registered Futures Association

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend its regulations in order to require, subject to the existing exception for certain notice registered securities brokers or dealers (''BDs''), that all persons registered with the Commission as futures commission merchants (''FCMs'') must become and remain members of at least one registered futures association (''RFA''). This action (''Proposed Amendment'') is consistent with the regulatory philosophy underlying the Commodity Futures Modernization Act of 2000 (''CFMA'').

DATES: Comments must be received on or before December 1, 2006.

ADDRESSES: Comments on the Proposed Amendment should be sent to Eileen Donovan, Acting Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to *secretary@cftc.gov.* Reference should be made to ''Proposed Regulation Regarding Membership in a Registered Futures Association.'' Comments also may be submitted by connecting to the Federal eRulemaking Portal at *http://www.regulations.gov* and following the comment submission instructions.

FOR FURTHER INFORMATION CONTACT: Helene D. Schroeder, Special Counsel, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5450; facsimile number: (202) 418–5528; and electronic mail: *hschroeder@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Commission Regulation 170.15

Commission Regulation 170.15 [1] (''Regulation'') provides in general that all persons who are required to register as FCMs must become and remain members of at least one RFA. The Regulation was adopted in 1983 pursuant to the Commission's general rulemaking authority in Section 8a(5) of the Commodity Exchange Act (''Act'' or ''CEA''),[2] as well as the authority in Sections 17(m), (p) and (q) of the Act,[3] which govern the registration of futures associations. Currently, the National Futures Association (''NFA'') is the sole RFA under Section 17(a) of the Act, and it is also a self-regulatory organization (''SRO'').

Section 8a(5) of the Act authorizes the Commission to promulgate such regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the Act. Section 17(m) of the Act permits the CFTC to require membership in an RFA if the CFTC determines that mandatory membership is ''necessary or appropriate'' to the purposes and objectives of the Act. Section 17(p) of the Act requires each RFA to have a comprehensive program to audit the financial and sales practices of its members and their associated persons. Section 17(q) of the Act requires each RFA to establish such programs ''as soon as practicable but not later than September 30, 1985.''

When it proposed Regulation 170.15, the Commission received 50 comment letters, from a wide range of futures professionals and industry representatives. In adopting the Regulation, the Commission addressed concerns raised by two commenters [4] and determined, in accordance with Section 8a(5) of the Act, that adoption of the Regulation was reasonably necessary to effectuate the purposes of the Act and, in particular, to provide a means for assuring that the purposes of Sections 17(m), (p) and (q) of the Act would be achieved.[5] Specifically, the Commission found that comprehensive and effective self-regulation, and the avoidance of duplicative regulation, which are the underlying goals of Sections 17(m), (p) and (q) of the Act, would be enhanced by adoption of a Regulation mandating membership in an RFA by each person required to be registered as an FCM.

The Commission further noted that, in the absence of a mandatory membership requirement, the Commission would be required under relevant provisions of the Act to maintain costly and extensive direct regulation over those Commission registrants that would not be subject to any self-regulatory jurisdiction.[6] In particular, the Commission would have had to continue to conduct financial, compliance and sales practice examinations of those FCMs, commodity pool operators (''CPOs''), commodity trading advisors (''CTAs'') and introducing brokers (''IBs'') that did not join NFA.[7] Further, the Commission found that the need to maintain these extensive programs for the comparatively small number of persons likely to remain subject solely to the Commission's direct regulation would be inefficient and duplicative of the self-regulatory functions for which NFA would be responsible.[8]

In proposing the Regulation, the Commission requested comment on whether the Regulation should be expanded to apply to all registered FCMs, regardless of whether such persons are required to be registered.[9]

[1] 17 CFR 170.15. The Commission's regulations can be accessed at *http://www.access.gpo.gov/nara/cfr/waisidx_06/17cfrv1_06.html.*

[2] 7 U.S.C. 12a(5). The Act can be accessed at *http://www.access.gpo.gov/uscode/title7/chapter1_.html.*

[3] 7 U.S.C. 21(m), (p) and (q).

[4] Only two commenters opposed adoption of the Regulation, the Antitrust Division of the United States Department of Justice (''Antitrust Division''), and an individual engaged in the business of financial consulting, whose views were somewhat similar to those of the Antitrust Division. The Antitrust Division set forth three basic objections to the Regulation: (1) that the proposed regulation was of questionable constitutionality; (2) that the Commission lacked authority under the Act to adopt the proposed regulation; and (3) that the Commission was compelled to employ other less anticompetitive regulatory alternatives pursuant to Section 15 of the Act, because, in the view of the Antitrust Division, the proposed regulation would have serious anticompetitive consequences.

[5] *See* 48 FR 26304 (Jun. 7, 1983), which contains a detailed discussion of the Commission's response to the commenters' concerns.

[6] *See, e.g.*, 7 U.S.C. 21(e), which specifies that any person registered under the Act, who is not a member of an RFA, ''shall be subject to such other rules and regulations as the Commission may find necessary to protect the public interest and promote just and equitable principles of trade.''

[7] In this regard, the Commission found that the Regulation, which would operate in conjunction with NFA's Bylaw 1101, would assure essentially complete NFA membership from the universe of commodity professionals: FCMs, CPOs, CTAs and IBs. This is because Bylaw 1101 prohibits members from carrying an account, accepting an order or handling a transaction in commodity futures contracts for or on behalf of any non-NFA member that is required to be registered with the CFTC as an FCM, IB, CPO or CTA.

[8] It should be noted that, since the adoption of the Regulation, the Commission has been reauthorized four times, specifically, in 1986, 1992, 1995 and 2000. The Act also was amended by the Telemarketing and Consumer Fraud and Abuse Prevention Act, Pub. L. No. 103–297, 108 Stat. 1545 (1994). At no time during reauthorization of the Commission or in connection with amending the CEA was the viability of the Regulation challenged or questioned.

[9] 47 FR 53031, 53031–32 (Nov. 24, 1982). Pursuant to Sections 1a(20) and 4d(a)(1) of the Act, a person must register with the Commission as an

Continued

Ultimately, the Commission found that expansion was not necessary to ensure the effectiveness of NFA's self-regulatory program. The Commission noted, however, that it might consider expanding the Regulation in the future in light of new circumstances or experiences with the Regulation.[10] As discussed below, in light of the new oversight philosophy advanced by the CFMA, the Commission believes that the Regulation now should be expanded.

B. The Commodity Futures Modernization Act of 2000

In December 2000, the CFMA was enacted into law. The CFMA extensively revised the Act and the regulatory landscape by adding a more flexible regulatory structure based on core principles for registered entities (designated contract markets, derivatives transaction execution facilities and derivatives clearing organizations).

Another relevant change made by the CFMA relates to the supervisory function of the Commission. Specifically, the CFMA transformed the role of the CFTC from a front-line regulator, with responsibility for direct supervision of the commodity futures markets and their participants and professionals, to an oversight agency.[11] In light of this new oversight role and the policies and purposes of the Act, including the goals of effective self-regulation and the avoidance of duplicative regulation, the Commission is of the view that all registered FCMs, regardless of whether any such FCM is required to be registered as such, must become and remain members of an RFA.

II. Proposed Amendment

Paragraph (a) of the Regulation currently provides that, except as specified in paragraph (b) of the Regulation, each person required to register as an FCM must become and remain a member of at least one RFA. As proposed to be revised, the Regulation would require that each person registered as an FCM—*regardless* of whether any such person is required to be so registered—would need to become and remain a member of at least one RFA. This would ensure that all FCMs come under direct supervision of at least one SRO.

Paragraph (b) of the Regulation currently provides an exception for persons registered as FCMs pursuant to the notice registration provisions set forth in Regulation 3.10(a)(3). The Commission is not proposing to amend paragraph (b) of the Regulation, which was added following enactment of the CFMA. The CFMA established a joint regulatory framework for persons trading security futures products that included a notice registration procedure for FCMs and BDs that are fully registered, respectively, with the CFTC or the Securities and Exchange Commission. In this regard, the CFMA amended the CEA to specify that any BD that is notice registered with the Commission as an FCM is not required to become a member of an RFA.[12] Paragraph (b) was added in recognition of this joint regulatory framework and the need to avoid duplicative regulation and, further, to make clear that BDs who notice register as FCMs (in contrast to persons fully registered as FCMs) are not subject to the mandatory provisions and thus need not become members of an RFA.[13]

As members of NFA, persons registered as FCMs will be subject to the minimum financial requirements of NFA. NFA recently raised its minimum dollar amount of adjusted net capital for member FCMs to $500,000. FCM members acting as counterparties of retail off-exchange foreign currency futures or option transactions are subject to even higher requirements (at least $1 million, $5 million if engaged in option transactions and $7.5 million if seeking to qualify certain affiliates as counterparties).[14]

The Commission also notes that RFAs, like the other SROs, function as frontline regulators of their members subject to Commission oversight. Adverse registration or disciplinary actions of an RFA are subject to Commission review in accordance with Sections 17(h) and (i) of the Act and Part 171 of the regulations promulgated thereunder. RFA rules must be submitted to the Commission in accordance with Section 17(j) of the Act, and Sections 17(b)(8) and (9) outline the procedures an RFA must follow in proceeding against members and applicants for membership.[15]

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act[16] requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The Proposed Amendment would affect persons that are registered as FCMs, even if they are not required to be so registered. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the Regulatory Flexibility Act.[17] The Commission previously determined that registered FCMs are not small entities for the purpose of the Regulatory Flexibility Act.[18]

B. Cost-Benefit Analysis

Section 15(a) of the Act[19] requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission, in its discretion, can

FCM if it solicits or accepts orders from customers for the purchase or sale of commodity futures contracts on or subject to the rules of a contract market or derivatives transaction execution facility and accepts customer funds related thereto. Some persons register with the Commission as FCMs even though they are not required to be registered. For example, a person may not currently handle exchange-traded customer business but may nonetheless register as an FCM or maintain its registration as an FCM if it anticipates handling exchange-traded futures business at a later date. Additionally, a person may be or become fully registered as a BD and wish to act as counterparty to off-exchange foreign currency futures or option transactions with retail customers. *See* 7 U.S.C. 2(c)(2)(B). The person may fully register as an FCM, although it engages in no other futures or options business and is not required to register as an FCM or become a member of NFA to act as a counterparty in these types of off-exchange foreign currency transactions.

[10] 48 FR 26304, 26310.

[11] *See* 7 U.S.C. 5(b).

[12] *See* 7 U.S.C. 6f(a)(4)(C)(i).

[13] *See* 66 FR 43080 (Aug. 17, 2001).

[14] *See* NFA Financial Requirements Sections 1(a) and 11(a), which can be accessed at: *http://www.nfa.futures.org/nfaManual/financialRequirements.asp.*

[15] Members of an RFA should not be concerned that they will have no right of appeal from an adverse action or that mandatory membership in an RFA will somehow deprive them of their due process rights under the Fifth Amendment to the United States Constitution. This issue was raised by the Antitrust Division in connection with the adoption of the Regulation, and the Commission addressed this concern when it announced adoption of the Regulation. *See* 48 FR 26304, 26307–08.

[16] 5 U.S.C. 601 *et seq.*

[17] 47 FR 18618 (Apr. 30, 1982).

[18] 47 FR 18618, 18619.

[19] 7 U.S.C. 19(a).

choose to give greater weight to any one of the five enumerated areas and determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Proposed Amendment will result in efficiency enhancements for the Commission and should have no effect on the following three enumerated areas: (1) Efficiency, competitiveness or the financial integrity of futures markets; (2) price discovery; and (3) sound risk management practices. Specifically, the Proposed Amendment, if adopted, will require all fully-registered FCMs, even those that are not required to be registered as FCMs, to become members of an RFA. This will make such FCMs subject to the self-regulatory jurisdiction and oversight programs of NFA.

After considering these factors, the Commission has determined to propose the amendment to Regulation 170.15 discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the Proposed Amendment with their comment letters.

List of Subjects in 17 CFR Part 170

Authority delegations (Government agencies), commodity futures, reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission proposes to amend 17 CFR part 170 as follows:

PART 170—REGISTERED FUTURES ASSOCIATIONS

1. The authority citation for part 170 continues to read as follows:

Authority: 7 U.S.C. 6p, 12a and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

Subpart C—Membership in a Registered Futures Association

2. Section 170.15 is amended by revising paragraph (a) to read as follows:

§ 170.15 Futures commission merchants.

(a) Except as provided in paragraph (b) of this section, each person registered as a futures commission merchant must become and remain a member of at least one futures association that is registered under section 17 of the Act and that provides for the membership therein of such futures commission merchant, unless no such futures association is so registered.

* * * * *

Issued in Washington, DC, on October 25, 2006, by the Commission.

Catherine D. Daniels,

Assistant Secretary of the Commission.

[FR Doc. E6–18270 Filed 10–31–06; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. FHWA–2006–25203]

RIN 2125–AF10

Temporary Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA proposes to supplement its regulation that governs work zone safety and mobility in highway and street work zones to include conditions for the appropriate use of, and expenditure of funds for, uniformed law enforcement officers, positive protective measures between workers and motorized traffic, and installation and maintenance of temporary traffic control devices during construction, utility, and maintenance operations. The proposed changes are intended to decrease the likelihood of fatalities and injuries to workers who are exposed to motorized traffic (vehicles using the highway for purposes of travel) while working on Federal-aid highway projects. This proposal is in response to section 1110 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, 119 Stat. 1227.

DATES: Comments must be received on or before January 2, 2007.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit* or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or print the acknowledgement page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Chung Eng, Office of Transportation Operations, (202) 366–8043; or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366–0791, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

Increasingly, maintenance and reconstruction of the nation's highways are taking place while traffic is maintained on the facility under repair. This has resulted in an increase in the exposure of workers to high-speed traffic and a corresponding increase in the risk of injury or death for highway workers, adding to worker safety concerns within an industry where the fatality rate for highway construction workers is already more than double that of other construction workers.[1]

[1] Road Construction Hazards Fact Sheet—Laborers' Health and Safety Fund of North America,

Continued

Over the last ten years, the number of fatalities in work zones has risen from 789 in 1995 to 1,068 in 2004.[2] Of the 1,068 fatalities in 2004, 89 percent, or 953 were either motorists or passengers. On average, more than 100 workers are killed and over 20,000 are injured each year in the highway and street construction industry.[3] According to the National Institute for Occupational Safety and Health, 55 percent of the work related fatalities in the U.S. highway construction industry between 1992 and 1998 were vehicle or equipment related incidents that occurred in a work zone. This same source indicated that highway worker fatalities where a worker on foot was struck by a vehicle were about equally likely to have been struck by a passing traffic vehicle versus a construction vehicle. Overall, highway worker safety represents a small but important and increasing part of the work zone safety problem.

Recognizing the growing concerns associated with injuries to workers resulting from work space intrusion crashes, the FHWA convened a task force of representatives from the highway industry in 2002 to further explore these concerns. This collaboration led to the publication of a brochure in 2003 that introduces the concept of positive protection as one approach to reducing injuries to workers and motorists.[4] The brochure recommended a three-step process to help reduce fatalities from intrusion crashes: (1) Increase awareness of the problem and the benefits of using positive protection by distributing the brochure; (2) synthesize available ''good practices'' information, including potential benefits, based on existing guidelines, practices, and safety data from individual agencies; and (3) initiate research to develop standardized guidelines for when to use positive protection in work zones. To date, steps one and two have been completed, and limited research has begun.

The synthesis, entitled ''Positive Protection Practices in Highway Work Zones'' and carried out as project 2–7(174) under the National Cooperative Highway Research Program (NCHRP), was completed in June 2005.[5] The synthesis indicated that while there have been numerous studies addressing the overall frequency and severity of work zone crashes, available information on work zone intrusion crashes and worker injuries remains very limited. Limited data available from two States indicate that intrusion crashes accounted for approximately 9 percent of all work zone crashes; 7 percent of fatal work zone crashes; and 8 percent of the fatal and serious injuries combined. This data also indicated that worker fatalities accounted for approximately 15 percent of fatal work zone intrusion crashes. While these numbers are relatively small, they represent an important component of the work zone safety picture. The synthesis found that because of the growing concern with work zone safety, State highway agencies are using a wide range of positive protection devices and other safety treatments. However, temporary barrier placement decisions were generally made on a case-by-case basis, and while worker safety is sometimes considered, no specific guidance on this subject was found.

Where positive protection is used, the portable concrete barrier was found to be the temporary barrier most widely used by highway agencies. In fact, it was found to be used to some extent by nearly every State highway agency. In spite of this, the review found that there are few specific situations where agencies require the use of portable concrete barriers in work zones, and these situations are limited almost exclusively to the protection of motorists from drop-offs, opposing traffic, and work space hazards rather than for the protection of workers. In current practice, the decision on portable concrete barrier use typically includes some element of engineering judgement or analysis.

In addition to portable concrete barriers, the synthesis review found that the combination of shadow vehicles equipped with truck mounted attenuators (SV/TMA) is also widely used by highway agencies. Information on their use was located for all but 11 States. While worker exposure is not frequently mentioned as a specific factor to be considered in the use of SV/TMAs, it is frequently considered indirectly based on the type of work operations and the overall characteristics of the roadways and work zones where agencies recommend its use. The overwhelming commonality in the use of SV/TMAs was found to be for moving and mobile operations, and work zones of short duration. In addition to specific factors to be considered, the decision on SV/TMA use also includes some elements of engineering judgement or analysis on occasion.

Besides portable concrete barriers and SV/TMAs, several other types of positive protection devices were also found to be in use by some State highway agencies, although to a much lesser extent. These include moveable concrete barriers, water-filled barriers, temporary guardrails, arrestor nets, and finally, a highly mobile longitudinal barrier that is characterized as an emerging technology.

The synthesis found that positive protection is generally considered by the State highway agencies to be very effective in improving work zone safety, particularly where workers are concerned. This was supported by limited crash data identified in the synthesis that clearly show TMAs as being highly effective in stopping errant vehicles with relatively few serious injuries to occupants of the impacting vehicles or the shadow vehicle driver. Limited crash data was also found confirming that portable concrete barriers are highly effective in terms of preventing intrusions into the work space or other hazardous areas.

The synthesis concluded that while positive protection provides a highly effective means of protecting workers and road users from risks associated with work space intrusions, this technique is not feasible or practical for all work zone situations. Based on serious and fatal injuries to vehicle occupants resulting from a number of crashes involving portable concrete barriers, it was recommended that these barriers should always be installed according to accepted design guidelines and only where needed to shield work zone hazards.

While the primary focus of the synthesis was on positive protection, the author also looked at other measures that are being used to reduce exposure and reduce intrusion risks. The synthesis found that the combined use of various measures involving other than positive means to reduce worker exposure or reduce intrusion risks, particularly police enforcement and

Washington, DC. It is available at the following URL: *http://wzsafety.tamu.edu/files/factsheet.stm.*

[2] Fatality Analysis Reporting System (FARS) maintained by the National Highway Traffic Safety Administration (NHTSA) and is available at the following URL: *http://www.fars.nhtsa.dot.gov/.*

[3] Department of Health and Human Services (DHHS), National Institute for Occupational Safety and Health (NIOSH) Publication No. 2001–128; Building Safer Highway Work Zones: Measures to Prevent Worker Injuries from Vehicles and Equipment. It is available at the following URL: *http://www.cdc.gov/niosh/2001128.html.*

[4] Federal Highway Administration (FHWA) Brochure on Positive Protection: Reducing Risk, Protecting Workers and Motorists. This brochure can be obtained from the AASHTO Bookstore through the following URL: *https://bookstore.transportation.org/Item_details.aspx?id=247.*

[5] Transportation Research Board (TRB), National Cooperative Highway Research Program (NCHRP) Project 20–7(174), A Synthesis of Highway Practice—Positive Protection Practices in Highway Work Zones, June 17, 2005. Available in the docket.

reduced work zone speed limits, may be more common than positive protective measures. Common usage of police in work zones to help enhance safety is supported by findings from a 2001 FHWA study indicating that a majority of States use uniformed police officers in at least some work zones where there are particular safety concerns.[6] However, this study also identified a number of key issues related to the use of police officers in work zones and provided several policy recommendations that would help improve the process as follows:

1. State transportation agencies using Federal-aid funds to assign uniformed police officers to highway work zones should coordinate with State law enforcement agencies to develop written policies and guidelines addressing the following:

a. Situations where uniformed police officers are recommended;

b. The work zone traffic control planning process; and

c. Officer pay, work procedures supervision, *etc.*

2. Police officers assigned to federally funded highway work zones should receive training on the requirements contained in the Manual on Uniform Traffic Control Devices (MUTCD).[7]

3. Agencies are encouraged to gather data on traffic safety incidents at federally funded highway work zones to better assess the effectiveness of work zone traffic control techniques.

4. In addition to uniformed police officers, agencies should also consider using new traffic control technologies such as automated enforcement and intrusion alarms to improve safety at highway work zones.

Related research that is currently under way includes the following:

1. National Cooperative Highway Research Program (NCHRP) study on the Design of Construction Work Zones on High-Speed Highways (Study details and status can be found at the following URL: *http://www4.trb.org/trb/crp.nsf/All+Projects/NCHRP+3-69*); and

2. NCHRP study on Traffic Enforcement Strategies in Work Zones (Study details and status can be found at the following URL: *http://www4.nationalacademies.org/trb/crp.nsf/All+Projects/NCHRP+3-80*).

This research is expected to yield additional design guidance that can be used to supplement what currently exists in the MUTCD and the American Association of State Highway and Transportation Officials (AASHTO) Roadside Design Guide.[8]

Legislation

Section 1110 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Public Law 109–59; August 10, 2005), directed the Secretary of Transportation to issue regulations establishing the conditions for the appropriate use of, and expenditure of funds for, uniformed law enforcement officers, positive protective measures between workers and motorized traffic, and installation and maintenance of temporary traffic control devices during construction, utility, and maintenance operations.

The FHWA is proposing to add a new subpart K to part 630 in title 23, Code of Federal Regulations (CFR) to implement this statutory requirement. The FHWA is proposing to emphasize the need to appropriately consider and manage worker safety by establishing conditions under which consideration for the appropriate use of, and expenditure of funds for, uniformed law enforcement officers, and positive protective measures between workers and motorized traffic would be required on all Federal-aid highway projects.

Section-by-Section Discussion of Proposed Rule

The FHWA proposes to emphasize the need to appropriately consider and manage worker safety as part of the project development process by providing guidance on key factors to consider in reducing worker exposure and risk from motorized traffic. The FHWA proposes to require that each agency's policy for the systematic consideration and management of work zone impacts, to be established in accordance with the recently updated 23 CFR part 630 subpart J (effective October 12, 2007), address the consideration and management of worker safety as follows:

1. Avoid or minimize worker exposure to motorized traffic through the application of appropriate positive protective strategies including, but not limited to, full road closures; ramp closures; crossovers; detours; and rolling road blocks during work zone setup and removal;

2. Where exposure cannot be adequately managed through the application of the above strategies, reduce risk to workers from being struck by motorized traffic through the use of appropriate positive protective devices;

3. Where exposure and risk reduction is not adequate, possible, or practical, manage risk through the application of appropriate intrusion countermeasures including, but not limited to, the use of uniformed law enforcement officers; and

4. Assure that the quality and adequacy of deployed temporary traffic control devices are maintained for the project duration.

This proposed rule would require that each agency develop and implement procedures for considering the need for positive protective measures between workers and motorized traffic; and a policy addressing the use of uniformed law enforcement on Federal-aid projects. The proposed subpart K would also require that each agency develop and implement quality standards for work zone traffic control devices to help ensure that the quality and adequacy of temporary traffic control devices on construction, utility, and maintenance operations is maintained for the project duration.

Section 630.1102 Purpose

This section would explain that the FHWA is taking this action to establish requirements and provide guidance for addressing worker exposure and risk from motorized traffic in order to decrease the likelihood of fatalities or injuries to workers who are exposed to motorized traffic while working on Federal-aid highway projects.

By emphasizing worker safety, the proposed rule would attempt to enhance the safety of both the motorist and worker during the project.

Section 630.1104 Definitions

This section would provide six definitions to assist in the proper understanding of the proposed rule.

A definition of ''agency'' would be provided to clarify that the term includes State and local highway agencies that receive Federal-aid highway funding.

A definition of ''Federal-aid highway project'' would be provided to clarify that the term includes construction, maintenance, and utility projects that are funded in whole or in part with Federal-aid highway funds.

[6] FHWA Study on the Use of Uniformed Police Officers on Federal-aid High Construction Projects, October 2001. This document can be found at the following URL: *http://safety.fhwa.dot.gov/wz/nwzaw/toc.htm.*

[7] The Manual on Uniform Traffic Control Devices (MUTCD) is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel. It can be found at the following URL: *http://mutcd.fhwa.dot.gov/index.htm.*

[8] The American Association of State Highway and Transportation Officials (AASHTO) Roadside Design Guide presents a synthesis of current information and operating practices related to roadside safety and is intended for use as a resource document from which individual highway agencies can develop standards and policies. It can be purchased from AASHTO thru the following URL: *https://bookstore.transportation.org/item_details.aspx?ID=148.*

A definition of ''intrusion countermeasures'' would be provided to differentiate between positive protective measures and other than positive protective measures.

A definition of ''motorized traffic'' would be provided to differentiate between the motorized traveling public versus motorized construction traffic.

A definition of ''positive protective measures'' would be included because the term is defined in section 1110 of SAFETEA–LU. This definition of positive protective measures would be further refined to differentiate between ''positive protective devices'' and ''positive protective strategies.''

''Positive protective devices'' would be defined as devices that contain and redirect vehicles and meet the crashworthiness evaluation criteria contained in National Cooperative Highway Research Program (NCHRP) report 350.[9]

''Positive protective strategies'' would be defined as traffic management strategies that would help avoid crashes involving workers and motorized traffic by eliminating or diverting traffic from the vicinity of the activity area. Such strategies would include the use of full road closures, detours, crossovers, and ramp/interchange closures.

Section 630.1106 Positive Protective Measures

This section would require that each agency's policy for the systematic consideration and management of work zone impacts, to be established in accordance with the recently updated 23 CFR part 630 subpart J, address the consideration and management of worker safety as part of the overall work zone safety analysis on Federal-aid highway projects. To implement this aspect of the policy, the agency would need to develop procedures that begin with the consideration of positive protective strategies that would avoid or minimize worker exposure to motorized traffic including, but not limited to, full road closures, ramp closures, crossovers, detours, and rolling road blocks during work zone setup and removal. Where the application of positive protective strategies is not possible, practical or adequate to manage exposure, the procedures would consider the use of appropriate positive protective devices, basing need on the project characteristics, the MUTCD, the AASHTO Roadside Design Guide, and factors including, but not limited to, the following:

- Project exposure and duration;
- Traffic speed;
- Traffic volume;
- Distance between traffic and workers;
- Geometrics (that adversely impact exposure—*e.g.*, poor sight distance, sharp curves);
- Vehicle mix;
- Type of work (as related to worker exposure);
- Time of day (*e.g.*, night work);
- Roadway classification;
- Consequences from/to motorists resulting from roadway departure;
- Potential hazard to traffic presented by device itself, and to workers and traffic during device placement;
- Access to/from work zone; and
- Work area restrictions (including impact on worker exposure).

No Escape Routes—The FHWA proposes that at a minimum, positive protective measures shall be required to separate workers from motorized traffic in all work zones conducted under traffic in areas that offer workers no means of escape (*e.g.*, tunnels, bridges, *etc.*), unless an engineering analysis determines otherwise. Work zones involving no escape areas generally present a higher level of risk for workers and therefore justify special consideration for applying positive protective measures. Rather than the typical approach of determining the need for positive protective measures based on an engineering analysis, the proposed language would emphasize the need to appropriately assess work zones involving no escape areas by requiring that positive protective measures be applied unless an engineering analysis determines that this would not be necessary or feasible based on other project characteristics.

The FHWA also proposes that the following minimum criteria for positive protective devices shall apply:

Temporary Longitudinal Traffic Barriers—Temporary longitudinal traffic barriers would be required to protect workers in stationary work zones lasting 2 weeks or more when the project design speed is 45 mph or greater, and the nature of the work requires workers to be less than a lane-width from the edge of an open travel lane, unless an engineering analysis determines otherwise.

While available information on work zone intrusion crashes and worker injuries is limited, there are two especially critical conditions where common sense would indicate a strong need for consideration of temporary longitudinal traffic barriers. The first is speed, specifically, speeds that are 45 mph or greater. Of the 1,068 highway fatalities in 2004 that occurred in work zones, 888, or 83 percent, occurred where the speed limit was 45 mph or greater.[10] The second is the proximity of workers to live traffic. In the presence of speeds of 45 mph and greater, common sense would indicate that workers within a lane-width of a live travel lane would be at high risk in terms of exposure, particularly in light of the many distractions that the average driver faces on a daily basis. A national survey of more than 4,000 drivers in 2002 showed that about 14 percent of drivers that have been involved in a crash in the past 5 years attribute the crash to their being distracted at the time.[11] This projects to an estimated 7.2 million distracted driver crashes over a 5 year period.

In addition to the critical conditions described, a determination of whether or not to use temporary longitudinal traffic barriers must also consider the work zone duration. The act of placing, relocating, and removing the barriers themselves poses a risk to the workers involved, as well as to the motorists. By their nature, temporary longitudinal traffic barriers tend to be heavy, bulky and time consuming to maneuver. While there is no data pointing to a specific duration as being an ideal ''tipping point'', the previously cited synthesis on Positive Protection Practices in Highway Work Zones indicates that three States specified a threshold value, all of which were two weeks or more, as one factor in considering the need for temporary longitudinal traffic barriers.

While the preceding are considered to be a critical combination of characteristics, the FHWA recognizes that consideration of other factors and project characteristics as part of an engineering analysis may determine the best solution to be something other than temporary longitudinal traffic barriers. Similar to the proposed approach for addressing work zones involving no escape areas, the intent is to emphasize the need to appropriately assess work zones with the specified critical combination of characteristics by requiring that temporary longitudinal

[9] Transportation Research Board (TRB), National Cooperative Highway Research Program (NCHRP) Report 350, Recommended Procedures for the Safety Performance Evaluation of Highway Features. This document is available at the following URL: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_350-a.pdf.*

[10] Fatality Analysis Reporting System (FARS) maintained by the National Highway Traffic Safety Administration (NHTSA) and is available at the following URL: *http://www-fars.nhtsa.dot.gov/.*

[11] Findings Report for National Survey of Distracted and Drowsy Driving Attitudes and Behaviors: 2002 submitted to NHTSA March 2003. The report can be found at the following URL: *http://www.nhtsa.dot.gov/people/injury/drowsy_driving1/survey-distractive03/index.htm.*

traffic barriers be applied unless an engineering analysis determines that this would not be necessary or feasible based on other project characteristics.

Shadow Vehicles and Truck Mounted Attenuators—The FHWA proposes that the determination of need and the priorities for application of protective shadow vehicles and truck-mounted attenuators shall be consistent with the guidance included in chapter 9 of the AASHTO Roadside Design Guide. The AASHTO Roadside Design Guide is a widely recognized document that is intended for use as a resource from which individual highway agencies can develop standards and policies, making modifications to fit local conditions as appropriate. The guidance in chapter 9 includes suggested priorities for the application of protective vehicles and truck mounted attenuators that appear to be very well thought out. Accordingly, the FHWA is proposing that these suggested priorities serve as the basis upon which decisions on need are made.

Other Requirements—When positive protective devices are required by an agency, the FHWA proposes to require that these devices shall be paid for on a unit pay basis, unless doing so would create a conflict with innovative contracting approaches such as design-build or some performance based contracts where the contractor is paid to assume a certain risk allocation, and payment is generally made on a lump sum basis.

The application of specific positive protective devices would be required to be in accordance with the work zone hardware recommendations in Chapter 9 of the AASHTO Roadside Design Guide: Traffic Barriers, Traffic Control Devices, and Other Safety Features for Work Zones' 2002, which is incorporated by reference into 23 CFR 630.1012(b)(1) in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, effective October 12, 2007, and is on file at the National Archives and Record 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.* The entire document is available for purchase from the American Association of State Highway and Transportation Officials (AASHTO), 444 North Capitol Street, NW., Suite 249, Washington, DC 2001 or thru the following URL: *https://bookstore.transportation.org/item_details.aspx?ID=148.*

Section 630.1108 Intrusion Countermeasures

This section would promote the consideration and use of other than positive protective measures to reduce the risk of motorized traffic intrusion into the work space where the provision of positive protective measures is not adequate, possible or practical. A wide range of motorized traffic intrusion countermeasures would be suggested for consideration including, but not limited to the following:

- Effective, credible signing;
- Variable message signs;
- Arrow boards;
- Warning flags and lights on signs;
- Longitudinal and lateral buffer space;
- Trained flaggers and spotters;
- Enhanced flagger station setups;
- Intrusion alarms;
- Rumble strips;
- Pace or pilot vehicle;
- High quality work zone pavement markings and removal of misleading markings;
- Channelizing device spacing reduction;
- Longitudinal channelizing barricades;
- Work zone speed limit reduction;
- Law enforcement;
- Automated speed enforcement (where permitted by State/local laws);
- Drone radar;
- Worker and work vehicle/equipment visibility; and
- Worker training.

It would be noted that these countermeasures are not mutually exclusive and should be considered in combination as appropriate.

This section would specifically recognize that the countermeasure of using uniformed law enforcement officers to maintain an appropriate speed through work zones is a common practice in many States. Law enforcement presence in work zones is generally recognized as an element that helps enhance safety.[12] The presence of a uniformed law enforcement officer and marked law enforcement vehicle in view of the traveling public on a highway project can affect driver behavior, helping to maintain the appropriate speeds and increasing driver awareness through the work zone. This is particularly important given the large number of distracted driver crashes cited previously, and that almost one out of every three traffic fatalities have been found to be related to speeding.[13]

This section would suggest conditions that should be considered in determining the need for uniformed law enforcement presence in work zones. These include, but are not limited to, the following:

- Operations occurring on high speed, high volume facilities where workers on foot are exposed to traffic;
- Operations, including temporary traffic control device set-up and removal, that occur closely adjacent to traffic without positive protection;
- Operations that require temporary or frequent shifts in traffic patterns;
- Night operations that may cause special concerns;
- Locations where traffic conditions and crash history indicate substantial problems may be encountered during the project;
- Operations that require brief closure of all lanes in one or both directions;
- Operations where traffic queuing is expected; and
- Other work sites where traffic conditions present a high risk for workers and the traveling public.

While full-time uniformed law enforcement presence in every work zone is not a reasonable expectation, policies that result in an increased driver expectancy for encountering law enforcement officers in work zones should help improve safety. This may be achieved through a combination of active enforcement (issuing citations) at selected work zones, law enforcement presence during high-risk activities, and occasional law enforcement presence at all major work zones. The previously cited FHWA study on the use of uniformed police officers recognized that a majority of States already use uniformed police officers in at least some work zones. However, this study also identified a number of issues that hinder more widespread and consistent use of uniformed police officers in work zones including:

- Some agencies had no policies regarding the use of officers;
- Where policies existed, they vary widely regarding the circumstances where officers are used;
- A majority of the agencies did not have a training program for officers assigned to work zones;
- It was not clear whether police officers were familiar with the MUTCD in all cases;
- Chain of command varied widely;

[12] FHWA Study on the Use of Uniformed Police Officers on Federal-aid Highway Construction Projects, October 2001. This document can be found at the following URL: *http://safety.fhwa.dot.gov/wz/nwzaw/toc.htm.*

[13] FHWA Safety Facts Flyer, which can be found at the following URL: *http://ntl.bts.gov/lib/23000/23100/23121/12SpeedCountsNumbers.pdf.*

• Conflicts exist between an officer's routine mission versus work zone duties;
• Nearly half of the agencies do not include the police when planning a project;
• Funding is not always available when officers are needed; and
• Officers are not always available when needed.

To address these issues, this section would require that each agency, in cooperation with the FHWA, develop a policy, or update an existing policy where appropriate, to address the use of uniformed law enforcement on work zone operations occurring on Federal-aid highways. The policy would address the following:

1. Law enforcement involvement during major project planning and development;
2. Situations where uniformed law enforcement officers are recommended;
3. Duties/expectations of the officers (and how they differ according to different situations);
4. Active enforcement versus presence;
5. Appropriate work zone safety and mobility training for the officers;
6. Communications and chain of command; and
7. Officer pay.

This section would emphasize that when uniformed law enforcement officers are used, they are to be used as a supplement to, and not a replacement for, temporary traffic control devices required by the MUTCD. The conditions regarding Federal-aid eligibility for using uniformed law enforcement officers would be clarified in this section. This section would also address the issue of funding shortfalls where payment for officers is part of an agency-wide program budget by requiring appropriate consideration of anticipated projects to more accurately estimate budget needs, and the establishment of contingency provisions to provide for instances when the initial budget proves insufficient.

Section 630.1110 Installation and Maintenance of Temporary Traffic Control Devices

The focus of this section would be to ensure that the proper temporary traffic control devices are installed and adequately maintained throughout the life of the project. Part 6 of the MUTCD includes requirements for temporary traffic control. The recently updated regulation in 23 CFR part 630 subpart J will require the development of a Temporary Traffic Control plan, in accordance with Part 6 of the MUTCD, as a component of a broader Transportation Management Plan (TMP) in order to facilitate the continuity of reasonably safe and efficient road user flow and highway worker safety when a work zone is necessary. Subpart J will also require that both the agency and the contractor each designate a trained person at the project level with the responsibility for implementing the TMP.

Typically, the installation and maintenance of temporary traffic control devices are both part of a basic contract item such as ''traffic control and protection,'' or ''protection and maintenance of traffic.'' Such items generally also cover maintenance. Requiring a separate pay item for the installation and maintenance of temporary traffic control devices would not be substantially different from current practice. The FHWA believes that section 1110 of SAFETEA–LU advocates a requirement that each agency develop and adopt a quality standard to help maintain the quality and adequacy of the temporary traffic control devices for the duration of the project.

The FHWA proposes to emphasize the maintenance aspect to ensure that quality is sustained throughout the life of the project by requiring that each agency develop and implement a quality standard to help maintain the quality and adequacy of the temporary traffic control devices for the duration of the project. Some agencies are already doing this, either by developing a variation of, or through direct reference to quality guidelines for work zone traffic control devices such as those developed by the American Traffic Safety Services Association (ATSSA).[14] This section would also require that there be an appropriate level of inspection to assure compliance with the quality standards.

Compliance Date

The FHWA proposes to establish a compliance date of October 12, 2008, for subpart K. Subpart K is proposed as a supplement to subpart J, which governs work zone safety and mobility in highway and street work zones, and has an effective date of October 12, 2007. Since subpart K is tied to the specific components of Subpart J, the proposed compliance date for subpart K would provide one year from the effective date of subpart J to implement the proposed requirements through revisions and/or additions to elements developed under subpart J.

National Congestion Initiative

The proposed rule includes measures that could further the goals of the Secretary of Transportation's new National Strategy to Reduce Congestion on America's Transportation Network, announced on May 16, 2006.[15] By requiring the development and implementation of a standard to help maintain the quality and adequacy of temporary traffic control devices on Federal-aid highway projects, we anticipate that the proposed rule will help reduce congestion by assuring that motorists are always provided with positive guidance while traveling through work zones.

Rulemaking Analysis and Notices

All comments received on or before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action would not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. A recent synthesis of positive protection practices in highway work zones indicates that a wide range of positive protective devices and other safety treatments are already being used by

[14] The American Traffic Safety Services Association's (ATSSA) Quality Guidelines for Work Zone Traffic Control Devices uses photos and written descriptions to help judge when a traffic control device has outlived its usefulness. These guidelines are available for purchase from ATSSA through the following URL: *http://www.atssa.com/store/bc_item_detail.jsp?productId=1.*

[15] Speaking before the National Retail Federation's annual conference on May 16, 2006, in Washington, DC, U.S. Transportation Secretary Norman Mineta unveiled a new plan to reduce congestion plaguing America's roads, rail, and airports. The National Strategy to Reduce Congestion on America's Transportation Network includes a number of initiatives designed to reduce transportation congestion. The transcript of these remarks is available at the following URL: *http://www.dot.gov/affairs/minetasp051606.htm.*

State highway agencies.[16] This synthesis found that among positive protective devices, portable concrete barriers and SV/TMAs were being used by nearly every State highway agency. The proposed regulatory action would emphasize the need to consider worker safety as an integral part of each State highway agency's process for considering and managing the overall impacts due to work zones. As such, any additional usage of positive protective devices resulting from the proposed action would be incremental to what many State highway agencies are already using to address work zone safety. In addition, the emphasis on first considering strategies that would avoid or minimize worker exposure to motorized traffic may decrease the overall need for positive protective devices. Accordingly, it is anticipated that the economic impact of this rulemaking would be minimal.

The proposed action is not anticipated to adversely affect, in a material way, any sector of the economy. In addition, the proposed action is not likely to interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Based on the information received in response to this NPRM, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of these proposed changes on small entities. This rule applies to all State and local highway agencies that use Federal-aid highway funding in the execution of their highway program. The proposed regulatory action would emphasize the need to consider worker safety as an integral part of each agency's process for considering and managing the overall impacts due to work zones on Federal-aid highway projects. As noted previously, a recent synthesis of positive protection practices in highway work zones indicates that a wide range of positive protective devices and other safety treatments are already being used by State highway agencies. This synthesis found that among positive protective devices, portable concrete barriers and SV/TMAs were being used by nearly every State highway agency. The FHWA believes that positive protective devices and other safety treatments are also widely used by many local agencies because the FHWA's research indicates that local agencies usually follow State practice with respect to MUTCD guidance. As such, any additional usage of positive protective devices resulting from the proposed action would be incremental to what many local highway agencies are already using to address work zone safety. In addition, the emphasis on first considering strategies that would avoid or minimize worker exposure to motorized traffic may decrease the overall need for positive protective devices. Accordingly, the FHWA has determined that the proposed regulation would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This notice of proposed rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, 109 Stat. 48, March 22, 1995). This proposed action would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year period to comply with these changes.

Additionally, the definition of ''Federal mandate'' in the Unfunded Mandate Reform Act excludes financial assistance of the type in which State, local or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The Federal-aid highway program permits this type of flexibility to the States.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States and local governments. The FHWA has also determined that this proposed rulemaking would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions and does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of highways.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. The purpose of this proposed rule is to improve worker safety on Federal-aid highway projects, and would not impose any direct compliance requirements on Indian tribal governments and will not have any economic or other impacts on the viability of Indian tribes. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been 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. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed action does not contain collection

[16] Transportation Research Board (TRB), National Cooperative Highway Research Program (NCHRP) Project 20–7(174), A Synthesis of Highway Practice—Positive Protection Practices in Highway Work Zones, June 17, 2005. Available in the docket.

information requirements for purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This proposed action 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.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed action 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.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Government contracts, Grant programs—transportation, Highway safety, Highways and roads, Project agreement, Traffic regulations.

Issued on: October 25, 2006.

J. Richard Capka,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to add Subpart K to title 23, Code of Federal Regulations, Part 630, as follows:

Subpart K—Temporary Traffic Control Devices

Sec.
630.1102 Purpose.
630.1104 Definitions.
630.1106 Positive Protective Measures.
630.1108 Intrusion Countermeasures.
630.1110 Installation and Maintenance of Temporary Traffic Control Devices.

Authority: 23 U.S.C. 109(c) and 112; Sec. 1110 of Pub. L. 109–59; 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart K—Temporary Traffic Control Devices

§ 630.1102 Purpose.

To establish requirements and provide guidance for addressing worker safety by limiting the exposure and risk from motorized traffic in order to decrease the likelihood of fatalities or injuries to workers on Federal-aid highway projects. This subpart is applicable to all State and local highway agencies that receive Federal-aid highway funding.

§ 630.1104 Definitions.

For the purposes of this subpart, the following definitions apply:

Agency means a State or local highway agency that receives Federal-aid highway funding.

Federal-aid Highway Project means highway construction, maintenance, and utility projects funded in whole or in part with Federal-aid funds.

Intrusion Countermeasures means strategies involving the use of other than positive protective measures to reduce the likelihood of motorized traffic intrusion into the work space.

Motorized Traffic means the motorized traveling public. This term does not include motorized construction or maintenance traffic.

Positive Protective Devices means the devices that contain and redirect vehicles and meet the crashworthiness evaluation criteria contained in NCHRP report 350.

Positive Protective Measures means the positive protective devices and positive protective strategies used to avoid motorized traffic crashes in work zones that can lead to worker injuries and fatalities through work space intrusions.

Positive Protective Strategies means the traffic management strategies that would help avoid crashes involving workers and motorized traffic by eliminating or diverting traffic from the vicinity of the activity area.

§ 630.1106 Positive Protective Measures.

(a) Each agency's policy for the systematic consideration and management of work zone impacts, to be established in accordance with 23 CFR 630.1006, shall include the consideration and management of highway worker safety on Federal-aid highway projects. These procedures should begin with the consideration of positive protective strategies that would avoid or minimize worker exposure to motorized traffic including, but not limited to, full road closures; ramp closures; crossovers; detours; and rolling road blocks during work zone setup and removal. Where these strategies are not possible, practical, or adequate to manage exposure, the procedures shall consider the use of appropriate positive protective devices, basing need on the project characteristics, the MUTCD, chapter 9 of the AASHTO Roadside Design Guide, and factors including, but not limited to, the following:

(1) Project exposure and duration;
(2) Traffic speed;
(3) Traffic volume;
(4) Distance between traffic and workers;
(5) Geometrics (that adversely impact exposure—*e.g.*, poor sight distance, sharp curves);
(6) Vehicle mix;
(7) Type of work (as related to worker exposure);
(8) Time of day (*e.g.*, night work);
(9) Roadway classification;
(10) Consequences from/to motorists resulting from roadway departure;
(11) Potential hazard to traffic presented by device itself, and to workers and traffic during device placement;
(12) Access to/from work zone; and
(13) Work area restrictions (including impact on worker exposure).

(b) At a minimum, positive protective measures shall be required to separate workers from motorized traffic in all work zones conducted under traffic in areas that offer workers no means of escape (*e.g.*, tunnels, bridges, etc.) unless an engineering analysis determines otherwise. In addition, the following minimum criteria for positive protective devices shall apply:

(1) Temporary longitudinal traffic barriers shall be used to protect workers in stationary work zones lasting two weeks or more when the project design speed is 45 mph or greater, and the nature of the work requires workers to be within one lane-width from the edge of a live travel lane, unless an engineering analysis determines otherwise.

(2) The determination of need and the priorities for application of protective shadow vehicles and truck-mounted attenuators shall be consistent with the guidance included in chapter 9 of the AASHTO Roadside Design Guide.

(c) When positive protective devices are necessary, these devices shall be paid for on a unit pay basis, unless doing so would create a conflict with innovative contracting approaches such as design-build or some performance based contracts where the contractor is paid to assume a certain risk allocation, and payment is generally made on a lump sum basis. Application of specific positive protective devices shall be in accordance with chapter 9 of the AASHTO Roadside Design Guide.

§ 630.1108 Intrusion Countermeasures.

(a) In situations where the provision of positive protective measures is not adequate, possible or practical, appropriate consideration should be given to the use of intrusion countermeasures to reduce the risk of motorized traffic intrusion into the work space. These countermeasures are not mutually exclusive and should be considered in combination as appropriate. A wide range of motorized traffic intrusion countermeasures should be considered including, but not limited to:

(1) Effective, credible signing;
(2) Variable message signs;
(3) Arrow boards;
(4) Warning flags and lights on signs;
(5) Longitudinal and lateral buffer space;
(6) Trained flaggers and spotters;
(7) Enhanced flagger station setups;
(8) Intrusion alarms;
(9) Rumble strips;
(10) Pace or pilot vehicle;
(11) High quality work zone pavement markings and removal of misleading markings;
(12) Channelizing device spacing reduction;
(13) Longitudinal channelizing barricades;
(14) Work zone speed limit reduction;
(15) Law enforcement;
(16) Automated speed enforcement (where permitted by State/local laws);
(17) Drone radar;
(18) Worker and work vehicle/equipment visibility; and
(19) Worker training.

(b) Among the intrusion countermeasures, uniformed law enforcement presence in work zones is generally recognized as an element that enhances safety. The presence of a uniformed law enforcement officer and marked law enforcement vehicle in view of the motorized traffic on a highway project can affect driver behavior, helping to maintain appropriate speeds and increase driver awareness through the work zone. Conditions that should be considered in determining the need for uniformed law enforcement presence in work zones include, but are not limited to, the following:

(1) Operations occurring on high speed, high volume facilities where workers on foot are exposed to traffic;
(2) Operations, including temporary traffic control device set-up and removal, that occur closely adjacent to traffic without positive protection;
(3) Operations that require temporary or frequent shifts in traffic patterns;
(4) Night operations that may cause special concerns;
(5) Locations where traffic conditions and crash history indicate substantial problems may be encountered during the project;
(6) Operations that require brief closure of all lanes in one or both directions;
(7) Operations where traffic queuing is expected; and
(8) Other work sites where traffic conditions present a high risk for workers and the traveling public.

(c) Each agency, in cooperation with the FHWA, shall develop a policy addressing the use of uniformed law enforcement on operations occurring on Federal-aid highways. The policy shall address the following:

(1) Law enforcement involvement during major project planning and development;
(2) Situations where uniformed law enforcement officers are recommended;
(3) Duties/expectations of the officers (and how they differ according to different situations);
(4) Active enforcement versus presence;
(5) Appropriate work zone safety and mobility training for the officers, consistent with the training requirements in 23 CFR 630.1008(d);
(6) Communications and chain of command; and
(7) Officer pay

(d) Uniformed law enforcement officers shall not be used in lieu of temporary traffic control devices required by the Part 6 of the MUTCD. Costs associated with the provision of uniformed law enforcement to help protect workers and maintain safe and efficient travel through highway work zones are eligible for Federal-aid participation. Federal-aid eligibility excludes law enforcement activities that would normally be expected in and around highway problem areas requiring management of traffic. Payment for the services of uniformed law enforcement in work zones may be included as part of the project budget, or be accommodated as part of an agency-level program budget. Payment for the use of uniformed law enforcement included as part of the project budget shall be on a unit pay basis. The process for establishing an agency-level program budget shall include:

(1) Appropriate consideration of anticipated projects to estimate budget needs; and
(2) Contingency provisions to address identified needs should the budget prove insufficient.

§ 630.1110 Installation and Maintenance of Temporary Traffic Control Devices.

To help ensure that the integrity of the temporary traffic control is sustained after implementation, each agency shall develop and implement quality standards to help maintain the quality and adequacy of the temporary traffic control devices for the duration of the project. Agencies may choose to adopt quality standards such as those developed by the American Traffic Safety Services Association (ATSSA).[1] A level of inspection necessary to assure compliance with the quality standards shall be provided.

[FR Doc. E6–18283 Filed 10–31–06; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 15, 18, 150, 152, and 179

Office of the Secretary

43 CFR Parts 4 and 30

RIN 1076–AE59

Indian Trust Management Reform

AGENCY: Bureau of Indian Affairs, Office of the Secretary, Interior.

ACTION: Notice of reopening of comment period for proposed rule.

SUMMARY: On August 8, 2006, the Bureau of Indian Affairs (BIA) and the Office of the Secretary proposed to amend several of their regulations related to Indian trust management (see 71 FR 45173). The purpose of the amendments is to further fulfill the Secretary's fiduciary responsibilities to federally recognized tribes and individual Indians and to meet the Indian trust management policies in the

[1] The American Traffic Safety Services Association's (ATSSA) Quality Guidelines for Work Zone Traffic Control Devices uses photos and written descriptions to help judge when a traffic control device has outlived its usefulness. These guidelines are available for purchase from ATSSA through the following URL: *http://www.atssa.com/store/bc_item_detail.jsp?productId=1.*

Indian Land Consolidation Act (ILCA), as amended by the American Indian Probate Reform Act of 2004 (AIPRA). These amendments address Indian trust management issues in the areas of probate, probate hearings and appeals, tribal probate codes, life estates and future interests in Indian land, the Indian land title of record, and conveyances of trust or restricted land. There is also an ''Application for Consolidation by Sale'' form that is associated with one of these amendments.

This notice reopens the comment period for an additional 60 days to January 2, 2007. The BIA and Office of Secretary are reopening the comment period for an additional 60 days to ensure that all interested parties, including tribes and individual Indians, have the opportunity to review the proposed rule and prepare their comments.

DATES: The comment period for the proposed rule published on August 8, 2006 (71 FR 45173) is extended to January 2, 2007.

ADDRESSES: You may submit comments, identified by the number 1076–AE59, by any of the following methods:

—*Federal rulemaking portal*: *http://www.regulations.gov.* Follow the instructions for submitting comments.
—Web site at *www.doitrustregs.com.*
—*E-mail: Michele_F_Singer@ios.doi.gov.* Include the number 1076–AE59 in the subject line of the message.
—*Fax:* (202) 208–5320. Include the number 1076–AE59 in the subject line of the message.
—*Mail:* U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 4141, Washington, DC 20240.
—*Hand delivery:* Michele Singer, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

Comments on the information collection burdens, including comments on or requests for copies of the ''Application for Consolidation by Sale'' form, are separate from those on the substance of the rule. Send comments on the information collection burdens to: Interior Desk Officer 1076–AE59, Office of Management and Budget, e-mail: *oira_docket@omb.eop.gov*; or 202/395–6566 (fax). Please also send a copy of your comments to BIA at the location specified under the heading **ADDRESSES**.

FOR FURTHER INFORMATION CONTACT: Michele Singer, Counselor to the Assistant Secretary—Indian Affairs, Department of the Interior, 1849 C Street, NW., Mail Stop 4141, Washington, DC 20240, telephone (202) 273–4680.

SUPPLEMENTARY INFORMATION: In developing the final rule, the Department will consider all comments received before January 2, 2007. Therefore, if you submitted comments at any time before January 2, 2007, you do not need to resubmit them.

In addition to making plain language revisions, the amendments revise the regulations to:

• *Incorporate AIPRA changes to probate:* AIPRA created a uniform probate code to standardize intestate succession rules for trust and restricted property. The uniform probate code reinforces tribal sovereignty by eliminating the application of state laws in the probate of trust and restricted assets while deferring to approved tribal probate codes. AIPRA also established new mechanisms for consolidating fractionated interests at probate and through sale of highly fractionated tracts. The proposed amendments to probate regulations would implement AIPRA's provisions by requiring the additional information needed to determine heirs and devisees to be included in the probate file, and by establishing the procedures for directional disclaimers, purchases at probate and consolidation agreements. These regulations continue to refer all probate cases to OHA. The amendments streamline the OHA process by shortening deadlines to more reasonable time periods. Amendments to life estate provisions reflect AIPRA's change in the valuation of a life estate to be ''without regard to waste'' and base the valuation on the four-year average Single Life Factor used by the U.S. Internal Revenue Service in Table S of the 7520 rate schedule, without regard to gender.

• *Promote consolidation (reduce fractionation) of interests:* Allotments owned by Indians have become increasingly fractionated with the probate of each generation, resulting in the division of the allotment into smaller and smaller interests. These amendments meet the policy expressed by Congress to reduce fractionation (i.e., the exponential increase in the number of ownership interests in a given parcel of land) of tribal and individual Indian interests in trust and restricted property through the use of several tools. These tools include the opportunities for tribes to establish a tribal land consolidation plan; purchase interests in land within their respective jurisdictions when offered for negotiated sale, gift, or exchange; make a tribal tract purchase (i.e., obtain fractionated interests of non-consenting trust and restricted owners under certain circumstances); and unify ownership and consolidate interests in a tract through partition. The amendments allow both tribes and individual Indians to obtain highly fractionated interests through a new mechanism, created by AIPRA: consolidation by sale (called ''partition of highly fractionated lands'' in AIPRA). Additionally, the new AIPRA mechanisms being incorporated in probate regulations will offer opportunities to reduce fractionation through the distribution of probate property.

• *Improve service to beneficiaries:* Amendments to the Land Titles and Records Office (LTRO) regulations will update and standardize LTRO title practices and recordation to ensure the Secretary is able to accurately track and record accounting of trust and restricted interest owners, allowing the Secretary to better serve the beneficiaries. Amendments to the probate process are aimed at facilitating the process to reduce the probate backlog and better serve beneficiaries. By clarifying the requirements and processes for probate, approval of tribal probate codes, obtaining LTRO services and products, and conveying trust and restricted property, the Department of the Interior improves communication and transparency, allowing better service to beneficiaries.

Authority: Regulatory amendments to these parts are proposed under the general authority of the American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. 4021 *et seq.*, and the Indian Land Consolidation Act of 2000, as amended by the American Indian Probate Reform Act of 2004, 25 U.S.C. 2201 *et seq.*

Dated: October 13, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–18396 Filed 10–31–06; 8:45 am]

BILLING CODE 4310–W7–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0564, FRL–8236–9]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Revisions to the Utah Administrative Code; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Utah on February 7, 2006. These changes to the Utah Administrative Code revise

some minor technical requirements of Utah's continuous emission monitoring rules and correct several grammatical errors. The intended effect of this action is to make federally enforceable those provisions that EPA is proposing to approve. This action is being taken under section 110 of the Clean Air Act.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before December 1, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0564, by one of the following methods:

—*www.regulations.gov.* Follow the on-line instructions for submitting comments.

—*E-mail*: *long.richard@epa.gov* and *kimes.jeffrey@epa.gov.*

—*Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

—*Mail:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466.

—*Hand Delivery:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kimes, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466, (303) 312–6445, *kimes.jeffrey @epa.gov.*

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 et seq.

Dated: September 27, 2006.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. E6–18379 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7668]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr. CFM, Acting Section Chief, Engineering Management Section, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	Range of elevations in feet (NAVD)+
City of Belleview, Marion County, Florida	
Unnamed ponding areas	+65
Unnamed ponding areas	+108

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Maps available for inspection at the Belleview City Hall, Public Works Department, 5343 Southeast Abshier Boulevard, Belleview, Florida.

Send comments to The Honorable Tammy Moore, Mayor of the City of Belleview, 5343 Southeast Abshier Boulevard, Belleview, Florida 34420.

Source of flooding and location	Range of elevations in feet (NAVD)+
City of Dunnellon, Marion County, Florida	
Unnamed ponding areas	+32
Unnamed ponding areas	+69

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Maps available for inspection at the Dunnellon City Hall, 20750 River Drive, Dunnellon, Florida.

Send comments to Mr. Edward Ericson, Dunnellon City Manager, 20750 River Drive, Dunnellon, Florida 34431.

Source of flooding and location	Range of elevations in feet (NAVD)+
Marion County, Florida (Unincorporated Areas)	
Unnamed ponding areas (*primarily*, but not exclusively located west of Interstate 75)	+6
Unnamed ponding areas (*primarily*, but not exclusively located west of Interstate 75)	+200

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Maps available for inspection at the Marion County Transportation Department, 412 Southeast 25th Avenue, Ocala, Florida. For more information, please contact the Marion County Stormwater Division at (352) 671–8686.

Send comments to Mr. Patrick G. Howard, Marion County Administrator, 601 Southeast 25th Avenue, Ocala, Florida 34471.

Source of flooding and location	Range of elevations in feet (NAVD)+
City of Ocala, Marion County, Florida	
Unnamed ponding areas	+48
Unnamed ponding areas	+133

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Maps available for inspection at the City of Ocala Engineering Department, 405 Southeast Osceola Avenue, Ocala, Florida.

Send comments to The Honorable Randy Ewers, Mayor of the City of Ocala, P.O. Box 1270, Ocala, Florida 34478–1270.

Special Considerations:

The new and revised flood elevations affect over 4,000 unnamed ponding areas in Marion County and its incorporated areas. This proposed rule lists the range of new and/or revised elevations affecting the communities listed above. Because the specific changes are too numerous to list, residents and lessees of property in Marion County and its incorporated areas are strongly encouraged to review the FEMA Flood Insurance Rate Maps at the community offices or online at *http://www.marioncountyfl.org.*

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
Bertie County, North Carolina and Incorporated Areas				
Brittons Creek	At the confluence with Roanoke River	None	+31	Unincorporated Areas of Bertie County.
	Approximately 900 feet upstream of Black Jack Road (State Route 1135).	None	+48	
Brittons Creek Tributary 1	At the confluence with Brittons Creek	None	+38	Unincorporated Areas of Bertie County.
	Approximately 1,900 feet upstream of the confluence with Brittons Creek.	None	+53	
Cashie River	Approximately 4.0 miles upstream of NC–45	+8	+7	Unincorporated Areas of Bertie County, Town of Roxobel.
	Approximately 1,150 feet upstream of the confluence of Cashie River Tributary 5.	None	+79	
Cashie River Tributary 1	Approximately 150 feet upstream of Peterson Lane	None	+9	Unincorporated Areas of Bertie County, Town of Windsor.
	Approximately 2.4 miles upstream of the confluence of Cashie River Tributary 1A.	None	+34	
Cashie River Tributary 1A	At the confluence with Cashie River Tributary 1	None	+9	Unincorporated Areas of Bertie County, Town of Windsor.
	Approximately 300 feet upstream of Clark Avenue	None	+19	
Cashie River Tributary 3	At the confluence with Cashie River	None	+64	Unincorporated Areas of Bertie County.
	Approximately 0.4 mile upstream of the confluence with Cashie River.	None	+68	
Cashie River Tributary 5	At the confluence with Cashie River	None	+76	Unincorporated Areas of Bertie County.
	Approximately 150 feet downstream of Harrells Siding Road (State Route 1208).	None	+80	

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
Cashie Swamp	At the confluence with Cashie River	None	+58	Unincorporated Areas of Bertie County.
	Approximately 1,500 feet upstream of Floyd Hall Road (State Route 437).	None	+82	
Cashie Swamp Tributary 1	At the confluence with Cashie Swamp	None	+61	Unincorporated Areas of Bertie County.
	Approximately 0.5 mile upstream of the confluence of Cashie Swamp Tributary 1A.	None	+74	
Cashie Swamp Tributary 1A	At the confluence with Cashie Swamp Tributary 1	None	+66	Unincorporated Areas of Bertie County.
	Approximately 0.5 mile upstream of Piney Wood Road	None	+74	
Cashie Swamp Tributary 2	At the confluence with Cashie Swamp	None	+67	Unincorporated Areas of Bertie County, Town of Kelford.
	Approximately 400 feet upstream of Railroad Street	None	+86	
Cashie Swamp Tributary 3	At the confluence with Cashie Swamp	None	+79	Unincorporated Areas of Bertie County, Town of Kelford.
	Approximately 1,950 feet upstream of North Main Street (State Highway 308).	None	+89	
Cashoke Creek	Approximately 50 feet upstream of State Highway 45	None	+7	Unincorporated Areas of Bertie County.
	Approximately 1,000 feet downstream of Sans Souci Road (State Route 1500).	None	+22	
Cashoke Creek Tributary 1	At the confluence with Cashoke Creek	None	+7	Unincorporated Areas of Bertie County.
	Approximately 550 feet upstream of Cooper Hill Road (State Highway 308).	None	+33	
Chiska Creek	At the confluence with Cashie River	+14	+16	Unincorporated Areas of Bertie County.
	Approximately 1.2 miles upstream of Governors Road (State Highway 308).	None	+50	
Coniott Creek	At the confluence with Roanoke River	None	+20	Unincorporated Areas of Bertie County.
	Approximately 0.7 mile upstream of Indian Woods Road (State Route 1108).	None	+40	
Connarista Swamp	At the confluence with Cashie River	None	+31	Unincorporated Areas of Bertie County.
	Approximately 0.6 mile upstream of Connarista Road (State Route 1200).	None	+63	
Cucklemaker Creek	At the confluence with Hoggards Mill Creek	None	+27	Unincorporated Areas of Bertie County.
	Approximately 1.8 miles upstream of Bull Hill Road (State Route 1301).	None	+37	
Flag Run Gut	At the confluence with Roanoke River	None	+30	Unincorporated Areas of Bertie County.
	Approximately 450 feet downstream of Governors Road	None	+73	
Flat Swamp	At the confluence with Hoggards Mill Creek	None	+27	Unincorporated Areas of Bertie County.
	Approximately 0.5 mile upstream of Browns School Road (State Route 1348).	None	+55	
Flat Swamp Tributary 1	At the confluence with Flat Swamp	None	+30	Unincorporated Areas of Bertie County.
	Approximately 50 feet downstream of Bakertown Road	None	+34	
Flat Swamp Tributary 2	At the confluence with Flat Swamp	None	+31	Unincorporated Areas of Bertie County.
	Approximately 1.4 miles upstream of Jessie Mack Road (State Route 1351).	None	+55	
Flat Swamp Tributary 3	At the confluence with Flat Swamp	None	+37	Unincorporated Areas of Bertie County.
	Approximately 1,500 feet upstream of Doc Baker Road (State Route 1350).	None	+52	
Flat Swamp Tributary 4	At the confluence with Flat Swamp	None	+43	Unincorporated Areas of Bertie County.
	Approximately 0.5 mile upstream of Browns School Road (State Route 1348).	None	+53	

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		Effective	Modified	
Hoggards Mill Creek	At the confluence with Cashie River	+11	+13	Unincorporated Areas of Bertie County.
	At the confluences of Cucklemaker Creek and Flat Swamp.	None	+27	
Indian Creek	At the confluence with Roanoke River	None	+25	Unincorporated Areas of Bertie County, Town of Lewiston Woodville.
	At the confluence of Jacks Branch	None	+40	
Indian Creek Tributary 1	At the confluence with Indian Creek	None	+40	Unincorporated Areas of Bertie County.
	Approximately 1.5 miles upstream of the confluence with Indian Creek.	None	+44	
Jacks Branch	At the confluence with Indian Creek	None	+40	Unincorporated Areas of Bertie County, Town of Lewiston Woodville.
	Approximately 0.5 mile downstream of Jack Branch Road (State Route 1119).	None	+53	
Mill Swamp	At the confluence with Roquist Creek	None	+9	Unincorporated Areas of Bertie County.
	Approximately 0.9 mile upstream of George Leggett Road (State Route 1523).	None	+20	
Redbud Branch	At the confluence with Whiteoak Swamp	None	+35	Unincorporated Areas of Bertie County, Town of Askewville.
	Approximately 600 feet upstream of North Askewville Railroad Street.	None	+58	
Roanoke River	Approximately 4.0 miles upstream of NC–45	+8	+7	Unincorporated Areas of Bertie County.
	Approximately 3.5 miles upstream of Burke/Northampton County boundary.	+36	+37	
Roanoke River Tributary 1	At the confluence with Roanoke River	None	+9	Unincorporated Areas of Bertie County.
	Approximately 0.4 mile upstream of Morning Road (State Route 1519).	None	+21	
Roanoke River Tributary 2	At the confluence with Roanoke River	None	+13	Unincorporated Areas of Bertie County.
	Approximately 150 feet downstream of Cedar Landing Road (State Route 1521).	None	+22	
Roanoke River Tributary 3	At the confluence with Roanoke River	None	+13	Unincorporated Areas of Bertie County.
	Approximately 1.5 miles upstream of Gillam Road (State Route 1542).	None	+16	
Roquist Creek	At the confluence with Cashie River	None	+8	Unincorporated Areas of Bertie County.
	Approximately 1,000 feet upstream of the confluence of Roquist Creek Tributary 5.	None	+39	
Roquist Creek Tributary 1	At the confluence with Roquist Creek	None	+27	Unincorporated Areas of Bertie County.
	Approximately 0.7 mile upstream of the confluence with Roquist Creek.	None	+33	
Roquist Creek Tributary 2	At the confluence with Roquist Creek	None	+29	Unincorporated Areas of Bertie County.
	Approximately 0.9 mile upstream of the confluence with Roquist Creek.	None	+35	
Roquist Creek Tributary 3	At the confluence with Roquist Creek	None	+29	Unincorporated Areas of Bertie County.
	Approximately 1.6 miles upstream of the confluence with Roquist Creek.	None	+36	
Roquist Tributary 4	At the confluence with Roquist Creek	None	+37	Unincorporated Areas of Bertie County.
	Approximately 1.0 mile upstream of the confluence with Roquist Creek.	None	+38	
Roquist Tributary 5	At the confluence with Roquist Creek	None	+39	Unincorporated Areas of Bertie County.
	Approximately 0.9 mile upstream of Old King Farm Road (State Route 1116).	None	+48	

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Roquist Tributary 5A	At the confluence with Roquist Creek Tributary 5	None	+41	Unincorporated Areas of Bertie County.
	Approximately 600 feet downstream of Governors Road (State Highway 308).	None	+47	
Sandy Run	At the confluence with Roanoke River	+36	+34	Unincorporated Areas of Bertie County.
	Approximately 0.7 mile upstream of Governors Road (State Highway 308).	None	+60	
Sandy Run Tributary 2	At the confluence with Sandy Run	None	+37	Unincorporated Areas of Bertie County.
	Approximately 0.5 mile upstream of the confluence with Sandy Run.	None	+58	
Sandy Run Tributary 4	At the confluence with Sandy Run	None	+39	Unincorporated Areas of Bertie County.
	Approximately 0.5 mile upstream of the confluence with Sandy Run.	None	+56	
Sandy Run Tributary 5	At the confluence with Sandy Run	None	+43	Unincorporated Areas of Bertie County.
	Approximately 0.7 mile upstream of the confluence with Sandy Run.	None	+56	
Sandy Run Tributary 6	At the confluence with Sandy Run	None	+46	Unincorporated Areas of Bertie County.
	Approximately 1,850 feet upstream of Byrd Club Road	None	+58	
Sutton Creek	At the confluence with Wading Place Creek	None	+8	Unincorporated Areas of Bertie County.
	Approximately 1.2 miles upstream of State Highway 308	None	+17	
Wading Place Creek	At the confluence with Cashie River	None	+8	Unincorporated Areas of Bertie County.
	Approximately 2.7 miles upstream of the confluence of Wading Place Creek Tributary 1.	None	+24	
Wading Place Creek Tributary 1.	At the confluence with Wading Place Creek	None	+10	Unincorporated Areas of Bertie County.
	Approximately 1.8 miles upstream of the confluence with Wading Place Creek.	None	+31	
Wahtom Swamp	At the confluence with Cashie River	None	+48	Unincorporated Areas of Bertie County, Town of Askewville.
	Approximately 0.4 mile upstream of Harrells Siding Road (State Route 1208).	None	+69	
Whiteoak Swamp	At the confluence with Cashie River	None	+24	Unincorporated Areas of Bertie County, Town of Askewville.
	Approximately 500 feet upstream of Charles Taylor Road (State Route 1221).	None	+57	
Whiteoak Swamp Tributary 1	At the confluence with Whiteoak Swamp	None	+26	Unincorporated Areas of Bertie County, Town of Askewville.
	Approximately 2,000 feet upstream of Pocosin Road (State Route 1343).	None	+33	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Unincorporated Areas of Bertie County
Maps available for inspection at the Bertie County Building Inspection Department, 106 Dundee Street, Windsor, North Carolina.
Send comments to Mr. Zee Lamb, Bertie County Manager, P.O. Box 530, Windsor, North Carolina 27983.

Town of Askewville
Maps available for inspection at the Bertie County Building Inspection Department, 106 Dundee Street, Windsor, North Carolina.
Send comments to The Honorable Meredith White, Mayor of the Town of Askewville, 113 West Askewville Street, Windsor, North Carolina 27983.

Town of Kelford
Maps available for inspection at the Bertie County Building Inspection Department, 106 Dundee Street, Windsor, North Carolina.
Send comments to The Honorable Wade Tim Emory, Mayor of the Town of Kelford, P.O. Box 99, Kelford, North Carolina 27847.

Town of Lewiston Woodville
Maps available for inspection at the Lewiston Woodville Town Hall, 103 West Church Street, Lewiston Woodville, North Carolina.

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	

Send comments to The Honorable Carl Lee, Mayor of the Town of Lewiston Woodville, P.O. Box 216, Lewiston Woodville, North Carolina 27849.

Town of Roxobel

Maps available for inspection at the Roxobel Town Hall, 204 South Main Street, Roxobel, North Carolina.

Send comments to The Honorable Gary Johnson, Mayor of the Town of Roxobel, P.O. Box 37, Roxobel, North Carolina 27872.

Town of Windsor

Maps available for inspection at the Windsor Town Hall, 128 South King Street, Windsor, North Carolina.

Send comments to The Honorable Robert Spivey, Mayor of the Town of Windsor, P.O. Box 508, Windsor, North Carolina 27938.

Catawba County, North Carolina and Incorporated Areas

Bakers Creek Tributary	Approximately 400 feet upstream of the confluence with Bakers Creek.	None	+891	Unincorporated Areas of Catawba County.
	Approximately 1.4 miles upstream of Swinging Bridge Road.	None	+980	
Bakers Creek Tributary 1	Approximately 300 feet upstream of the confluence with Bakers Creek.	None	+891	Unincorporated Areas of Catawba County.
	Approximately 0.7 mile upstream of Stratford Drive	None	+1,040	
Balls Creek	Approximately 600 feet downstream of Kale Road (State Route 1832).	None	+762	Unincorporated Areas of Catawba County.
	Approximately 970 feet upstream of Little Mountain Road	None	+1,034	
Barger Branch	At the confluence with Henry Fork	+860	+861	Unincorporated Areas of Catawba County, City of Hickory, Town of Brookford.
	Approximately 200 feet upstream of 8th Avenue Southeast.	None	+1,064	
Barger Branch Tributary 1	At the confluence with Barger Branch	+988	+987	City of Hickory.
	Approximately 800 feet upstream of 8th Avenue Southeast.	None	+1,083	
Barger Branch Tributary 2	At the confluence with Barger Branch Tributary 1	+995	+991	City of Hickory.
	Approximately 1,040 feet upstream of the confluence with Barger Branch Tributary 1.	None	+1,033	
Barger Branch Tributary 3	At the confluence with Barger Branch	+1,010	+1,005	City of Hickory.
	Approximately 130 feet upstream of 8th Avenue Southeast.	+1,083	+1,082	
Betts Branch	At the confluence with Clarks Creek	+808	+812	Unincorporated Areas of Catawba County.
	Approximately 1,900 feet upstream of the confluence with Clarks Creek.	+811	+812	
Bills Branch	At the confluence with Clarks Creek	+810	+813	Unincorporated Areas of Catawba County, City of Newton.
	Approximately 830 feet upstream of U.S. 321 South	None	+844	
Camp Creek	Approximately 0.5 mile upstream of the confluence with Jacob Fork.	+914	+915	Unincorporated Areas of Catawba County.
	At the Burke/Catawba County boundary	None	+1,020	
Camp Creek	Approximately 0.4 mile above the confluence of Balls Creek.	None	+762	Unincorporated Areas of Catawba County, City of Hickory.
	At the Burke/Caldlwell/Catawba County boundary	None	+936	
Catawba River	Approximately 0.4 mile above the confluence of Balls Creek.	None	+762	Unincorporated Areas of Catawba County, City of Hickory.
	At the Burke/Caldwell/Catawba County boundary	None	+936	
Catawba River Tributary 1	At the confluence with the Catwaba River	None	+936	Unincorporated Areas of Catawba County, City of Hickory.
	Approximately 1,100 feet upstream of 31st Avenue Northwest.	None	+1,026	
Clarks Creek	Approximately 850 feet downstream of U.S. 321	None	+790	Unincorporated Areas of Catawba County, City of Hickory, City of Newton, Town of Maiden.
	Approximately 2.5 miles upstream of I–40	None	+1,049	
Cline Creek	At the confluence with Clark Creek	+861	+864	Unincorporated Areas of Catawba County, City of Conover, City of Newton.

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	Approximately 150 feet downstream of I–40	None	+908	
Cline Creek North	At the confluence with Lyle Creek	+870	+869	Unincorporated Areas of Catawba County.
	Approximately 2.0 miles upstream of the confluence with Cline Creek North Tributary 1.	None	+1,047	
Cline Creek North Tributary 1	At the confluence with Cline Creek North	+897	+896	Unincorporated Areas of Catawba County.
	Approximately 0.5 mile upstream of Rifle Range Road	None	+1,105	
Cline Creek Tributary 1	At the confluence with Cline Creek	None	+886	City of Conover.
	Approximately 450 feet upstream of I–40	None	+903	
Cline Creek Tributary 2	At the confluence with Cline Creek	None	+898	City of Conover.
	Approximately 1,300 feet upstream of I–40	None	+911	
Conover Creek	At the confluence with Lyle Creek	+870	+868	Unincorporated Areas of Catawba County, City of Conover.
	Approximately 30 feet upstream of 5th Street Place Northeast.	+952	+953	
Cow Branch	At the confluence with Pott Creek	None	+861	Unincorporated Areas of Catawba County.
	Approximately 0.8 mile upstream of Grace Church Road (State Route 2030).	None	+910	
Cripple Creek	At the confluence with Frye Creek and Horseford Creek	+993	+995	City of Hickory.
	Approximately 1,070 feet upstream of 4th Street Drive Northwest.	None	−1,067	
Cripple Creek Tributary 1	At the confluence with Cripple Creek	+1,030	+1,029	City of Hickory.
	Approximately 1,900 feet upstream of the confluence with Cripple Creek.	None	+1,055	
Douglas Creek	At the confluence with Jacob Fork	None	+1,011	Unincorporated Areas of Catawba County.
	Approximately 200 feet upstream of the Burke/Catawba County boundary.	None	+1,048	
Falling Creek	At the confluence with Lake Hickory	+939	+936	Unincorporated Areas of Catawba County, City of Hickory.
	Approximately 50 feet downstream of 14th Avenue Northeast.	None	+1,093	
Falling Creek Tributary 1	Approximately 400 feet upstream of the confluence with Falling Creek.	+1,014	+1,015	City of Hickory.
	Approximately 275 feet upstream of 12th Avenue Northeast.	None	+1,088	
Falling Creek Tributary 2	At the confluence with Falling Creek	+1,058	+1,052	City of Hickory.
	Approximately 380 feet upstream of 12th Avenue Northeast.	None	+1,095	
Fitz Creek	At the confluence with Cripple Creek	+1,011	+1,013	City of Hickory.
	Approximately 30 feet upstream of the confluence with Cripple Creek.	+1,012	+1,013	
Frye Creek	At the confluence with Horseford Creek and Cripple Creek.	+993	+995	City of Hickory, Town of Long View.
	Approximately 50 feet downstream of 34th Street Northwest.	None	+1,119	
Geitner Branch	At the confluence with Henry Fork	+887	+890	City of Hickory.
	Approximately 1,900 feet upstream of 7th Avenue Southwest.	None	+1,080	
Geitner Branch Tributary 1	At the confluence with Geitner Branch	+1,011	+1,019	City of Hickory.
	Approximately 1,250 feet upstream of the confluence with Geitner Branch.	None	+1,043	
Geitner Branch Tributary 2	At the confluence with Geitner Branch	+984	+983	City of Hickory.
	Approximately 1,700 feet upstream of 7th Avenue Southwest.	+1,072	+1,074	
Haas Creek	At the confluence with Pott Creek	None	+814	Unincorporated Areas of Catawba County.
	Approximately 0.3 mile upstream of Bill and Beulah Lane	None	+910	
Henry Fork	Approximately 1,250 feet upstream of the confluence with Jacob Fork and South Fork Catawba River.	+822	+821	Unincorporated Areas of Catawba County, City of Hickory, City of Newton, Town of Brookford.
	At the Catawba/Burke County boundary	+927	+930	

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Henry Fork Tributary 1	At the confluence with Henry Fork	+849	+846	Unincorporated Areas of Catawba County, City of Hickory.
	Approximately 200 feet downstream of U.S. Route 70	+998	+999	
Henry Fork Tributary 2	At the confluence with Henry Fork	+886	+889	Town of Brookford, City of Hickory.
	Approximately 1,830 feet upstream of Brookford Boulevard.	+924	+921	
Henry Fork Tributary 3	At the confluence with Henry Fork	+822	+821	Unincorporated Areas of Catawba County.
	Approximately 0.4 mile upstream of Robinson Road	None	+855	
Herman Branch Creek	At the confluence with Lyle Creek	+914	+913	Unincorporated Areas of Catawba County, City of Conover.
	Approximately 175 feet upstream of the confluence with Lyle Creek.	+915	+914	
Hildenbran Creek	At the confluence with Clarks Creek	+837	+838	City of Newton.
	Approximately 150 feet upstream of A. C. Little Drive	+952	+953	
Holdsclaw Creek	At the upstream side of Railroad	None	+798	Unincorporated Areas of Catawba County.
	Approximately 1,500 feet upstream of the confluence of Holdsclaw Creek Tributary 1.	None	+798	
Holdsclaw Creek Tributary 1	At the confluence with Holdsclaw Creek	None	+798	Unincorporated Areas of Catawba County.
	Approximately 1,450 feet upstream of the confluence with Holdsclaw Creek.	None	+803	
Holly Branch	Approximately 220 feet downstream of the confluence of Holly Branch Tributary 1 and Shady Branch.	None	+821	Unincorporated Areas of Catawba County, Town of Maiden.
	At the confluence of Holly Branch Tributary 1 and Shady Branch.	None	+824	
Holly Branch Tributary 1	At the confluence with Holly Branch	None	+824	Unincorporated Areas of Catawba County, Town of Maiden.
	Approximately 200 feet upstream of South Main Avenue	None	+870	
Hop Creek	At the confluence with Jacob Fork	+834	+835	Unincorporated Areas of Catawba County.
	Approximately 2.7 miles upstream of the confluence with Jacob Fork.	None	+917	
Horseford Creek	At the confluence with the Catawba River	None	+936	City of Hickory.
	At the confluence with Frye Creek and Cripple Creek	+993	+995	
Howards Creek	At the Catawba/Lincoln County boundary	None	+972	Unincorporated Areas of Catawba County.
	Approximately 500 feet upstream of the Catawba/Lincoln County boundary.	None	+977	
Indian Creek	At the Catawba/Lincoln County boundary	None	+1,011	Unincorporated Areas of Catawba County.
	Approximately 550 feet upstream of the Catawba/Lincoln County boundary.	None	+1,014	
Jacob Fork	Approximately 175 feet upstream of Providence Church Road (State Route 1116).	None	+915	Unincorporated Areas of Catawba County.
	At the Catawba/Burke County boundary	None	+1,057	
Jacob Fork Tributary 1	At the confluence with Jacob Fork	None	+1,022	Unincorporated Areas of Catawba County.
	Approximately 1.3 miles upstream of Cooksville Road	None	+1,078	
Lippard Creek	At the Lincoln/Catawba County boundary	None	+869	Unincorporated Areas of Catawba County.
	Approximately 1,870 feet upstream of the Lincoln/Catawba County boundary.	None	+876	
Long Creek	At the confluence with McLin Creek	+861	+860	City of Conover, City of Claremont.
	Approximately 1,400 feet upstream of Railroad	None	+988	
Long Shoal Creek	Approximately 0.5 mile downstream of Sulphur Springs Road (State Route 1529).	None	+935	Unincorporated Areas of Catawba County, City of Hickory.
	Approximately 0.4 mile upstream of Pinecrest Drive Northeast.	None	+1,037	

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Long View Creek	At the confluence with Henry Fork	+887	+891	Unincorporated Areas of Catawba County, City of Hickory, Town of Long View.
	Approximately 1,500 feet upstream of U.S. 70 Southwest	+1,085	+1,081	
Long View Creek Tributary 1	At the confluence with Long View Creek	+987	+990	City of Hickory.
	Approximately 80 feet downstream of U.S. 70	+1,063	+1,061	
Long View Creek Tributary 2	Approximately 140 feet upstream of the confluence with Long View Creek.	+1,039	+1,038	City of Hickory, Town of Long View.
	Approximately 1,460 feet upstream of the confluence with Long View Creek.	+1,057	+1,053	
Lyle Creek	At the confluence with the Catawba River	+772	+773	Unincorporated Areas of Catawba County, City of Hickory, Town of Catawba.
	Approximately 550 feet upstream of 18th Avenue Northeast.	None	+1,116	
Lyle Creek Tributary	At the Shock Road (State Route 1711)	+832	+831	Unincorporated Areas of Catawba County.
	Approximately 2,000 feet upstream of Community Road	None	+892	
Lyle Creek Tributary 1	Approximately 1,600 feet upstream of the confluence with Lyle Creek.	+819	+820	Unincorporated Areas of Catawba County.
	Approximately 1.0 mile upstream of Crossing Creek Drive.	None	+931	
Maiden Creek	Approximately 1.3 miles upstream of Providence Mill Road.	None	+864	Unincorporated Areas of Catawba County.
	Approximately 80 feet downstream of North Olivers Cross Road.	None	+905	
McLin Creek	Approximately 500 feet upstream of East 20th Street	None	+940	City of Conover.
	Approximately 0.4 mile upstream of the confluence of Tributary of McLin Creek.	None	+970	
McLin Creek Tributary 1	Approximately 750 feet upstream of the confluence with McLin Creek.	None	+857	Unincorporated Areas of Catawba County, City of Claremont
	Approximately 1,250 feet upstream of Frazier Drive	None	+936	
Miller Branch	At the downstream side of 12th Avenue Southeast	+897	+894	Unincorporated Areas of Catawba County, City of Hickory.
	Approximately 1.9 miles upstream of the confluence with Clarks Creek.	None	+982	
Mountain Creek	At the upstream side of Slanting Bridge Road	None	+760	Unincorporated Areas of Catawba County.
	Approximately 1.6 miles upstream of the confluence of Mountain Creek Tributary 3.	None	+776	
Mountain Creek Tributary 2	At the confluence with Mountain Creek	None	+760	Unincorporated Areas of Catawba County.
	Approximately 1.6 miles upstream of the confluence with Mountain Creek.	None	+803	
Mountain Creek Tributary 2A	At the confluence with Mountain Creek Tributary 2	None	+760	Unincorporated Areas of Catawba County.
	Approximately 1.4 miles upstream of the confluence with Mountain Creek Tributary 2.	None	+763	
Mountain Creek Tributary 3	At the confluence with Mountain Creek	None	+760	Unincorporated Areas of Catawba County.
	Approximately 1.0 mile upstream of the confluence with Mountain Creek.	None	+778	
Mountain Creek Tributary 3A	At the confluence with Mountain Creek Tributary 3	None	+767	Unincorporated Areas of Catawba County.
	Approximately 0.5 mile upstream of the confluence with Mountain Creek Tributary 3.	None	+804	
Muddy Creek	Approximately 1,900 feet upstream of the confluence with Henry Fork.	None	+835	Unincorporated Areas of Catawba County.
	At the confluence of Muddy Creek Tributaries 2 and 3	None	+838	
Muddy Creek Tributary 1	At the confluence with Muddy Creek	None	+837	Unincorporated Areas of Catawba County.
	Approximately 0.7 mile upstream of Robinwood Road	None	+873	

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Muddy Creek Tributary 2	At the confluence with Muddy Creek	None	+838	Unincorporated Areas of Catawba County.
	Approximately 0.6 mile upstream of Robinwood Road	None	+863	
Muddy Creek Tributary 3	At the confluence with Muddy Creek	None	+838	Unincorporated Areas of Catawba County, City of Hickory.
	Approximately 1.3 miles upstream of the confluence with Muddy Creek.	None	+872	
Mull Creek	Approximately 1,000 feet upstream of the confluence with Lyle Creek.	+820	+819	Unincorporated Areas of Catawba County, City of Conover.
	Approximately 500 feet upstream of 9th Avenue Northeast.	None	+1,002	
Mundy Creek	At the confluence with Reed Creek	None	+760	Unincorporated Areas of Catawba County.
	Approximately 500 feet upstream of Lineberger Road	None	+776	
Mundy Creek Tributary 1	At the confluence with Mundy Creek	None	+760	Unincorporated Areas of Catawba County.
	Approximately 1,400 feet upstream of Grassy Creek Road.	None	+781	
Naked Creek	Approximately 2,000 feet downstream of the St. Peters Church Road (State Route 1453).	None	+936	Unincorporated Areas of Catawba County.
	Approximately 0.5 mile upstream of Timber Ridge Road	+1,009	+1,015	
Pinch Gut Creek	Approximately 120 feet upstream of St. James Church Road.	None	+851	Unincorporated Areas of Catawba County, Town of Maiden.
	Approximately 0.9 mile upstream of St. James Church Road.	None	+883	
Pinch Gut Creek Tributary 1	At the confluence with Pinch Gut Creek	None	+852	Unincorporated Areas of Catawba County.
	Approximately 0.5 mile upstream of the confluence with Pinch Gut Creek.	None	+886	
Pott Creek	Approximately 1,200 feet downstream of the confluence of Rhodes Mill Creek.	None	+801	Unincorporated Areas of Catawba County.
	Approximately 1.9 miles upstream of Plateau Road (State Route 2036).	None	+928	
Propst Creek	Approximately 0.4 mile downstream of Snipe Road (State Route 1492).	+989	+988	Unincorporated Areas of Catawba County, City of Hickory.
	Approximately 75 feet downstream of Snipe Road (State Route 1492).	+1,006	+1,005	
Reed Creek	At the confluence with Mountain Creek	None	+760	Unincorporated Areas of Catawba County.
	Approximately 1.1 miles upstream of Mount Pleasant Road.	None	+790	
Rhodes Mill Creek	At the confluence with Pott Creek	None	+802	Unincorporated Areas of Catawba County.
	Approximately 1,100 feet upstream of Leatherman Road (State Route 2025).	None	+855	
Rhodes Mill Creek Tributary 1.	At the confluence with Rhodes Mill Creek	None	+815	Unincorporated Areas of Catawba County.
	Approximately 0.4 mile upstream of the confluence with Rhodes Mill Creek.	None	+825	
Shady Branch	At the confluence with Holly Branch and Holly Branch Tributary 1.	None	+824	Unincorporated Areas of Catawba County, Town of Maiden.
	Approximately 500 feet upstream of South 11th Avenue	None	+959	
Shady Branch Tributary 1	At the confluence with Sandy Branch	None	+872	Unincorporated Areas of Catawba County, Town of Maiden.
	Approximately 1,800 feet upstream of South 8th Avenue	None	+927	
Smyre Creek	At the confluence with Clarks Creek	None	+831	Unincorporated Areas of Catawba County, City of Newton.
	Approximately 50 feet downstream of NC–16	+833	+875	

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
Smyre Creek Tributary 1	At the confluence with Smyre Creek	None	+868	Unincorporated Areas of Catawba County, City of Newton.
	Approximately 1,500 feet upstream of the confluence with Smyre Creek.	None	+877	
Snow Creek	At the confluence with the Catawba River	None	+935	Unincorporated Areas of Catawba County, City of Hickory.
	Approximately 1,040 feet upstream of 15th Avenue Northeast.	None	+1,097	
Snow Hill Branch	At the downstream side of State Route 16/East D Street	+870	+868	City of Newton.
	Approximately 1,100 feet upstream of East 11th Street	None	+944	
South Fork Catawba River	At the Catawba/Lincoln County boundary	None	+793	Unincorporated Areas of Catawba County, City of Newton.
	Approximately 125 feet downstream of NC–10	None	+816	
South Fork Catawba River Tributary 6.	At the confluence with South Fork Catawba River	None	+794	Unincorporated Areas of Catawba County.
	Approximately 530 feet upstream of Herter Road (State Route 2022).	None	+800	
South Fork Catawba River Tributary 7.	At the confluence with South Fork Catawba River	None	+800	Unincorporated Areas of Catawba County.
	Approximately 0.9 mile upstream of the confluence with South Fork Catawba River.	None	+811	
South Fork Catawba River Tributary 8.	At the confluence with South Fork Catawba River	None	+802	Unincorporated Areas of Catawba County.
	Approximately 0.7 mile upstream of Wilfong Road	None	+829	
South Fork Catawba Tributary 9.	At the confluence with South Fork Catawba River	None	+806	Unincorporated Areas of Catawba County.
	Approximately 1.1 miles upstream of US–321	None	+822	
South Fork Catawba Tributary 9A.	At the confluence with South Fork Catawba River Tributary 9.	None	+806	Unincorporated Areas of Catawba County.
	Approximately 1,500 feet upstream of the confluence with South Fork Catawba River Tributary 9.	None	+806	
Terrapin Creek	Approximately 500 feet upstream of Mollys Backbone Road.	+761	+762	Unincorporated Areas of Catawba County.
	Approximately 1.2 miles upstream of the confluence of Terrapin Creek Tributary 1.	None	+792	
Terrapin Creek Tributary 1	At the confluence with Terrapin Creek	+761	+766	Unincorporated Areas of Catawba County.
	Approximately 1.0 mile upstream of the confluence with Terrapin Creek.	None	+790	
Town Branch	At the confluence with the Catawba River	+772	+773	Unincorporated Areas of Catawba County, Town of Catawba.
	Approximately 0.5 mile upstream of 2nd Street Southwest.	None	+894	
Town Creek	Approximately 1,400 feet upstream of St. James Church Road.	None	+871	Unincorporated Areas of Catawba County, City of Newton.
	Approximately 0.8 mile upstream of State Route 10	None	+943	
Tributary to Lyle Creek Tributary.	At the confluence with Lyle Creek Tributary	None	+875	Unincorporated Areas of Catawba County.
	Approximately 0.7 mile upstream of the confluence with Lyle Creek Tributary.	None	+921	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Town of Brookford

Maps available for inspection at the Brookford Town Hall, 1700 South Center Street, Brookford, North Carolina.

Send comments to The Honorable Thomas Schronce, Mayor of the Town of Brookford, 1700 South Center Street, Brookford, North Carolina 28602.

Town of Catawba

Maps available for inspection at the Catawba Town Hall, 102 1st Street Northwest, Catawba, North Carolina.

Send comments to The Honorable Thomas Jones, Mayor of the Town of Catawba, P.O. Box 70, Catawba, North Carolina 28609.

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	

City of Claremont
Maps available for inspection at the City of Claremont Planning Department, 3288 East Main Street, Claremont, North Carolina.
Send comments to The Honorable Glenn A. Morrison, Mayor of the City of Claremont, 3288 East Main Street, Claremont, North Carolina 28610.
City of Conover
Maps available for inspection at the Conover City Hall, 101 First Street East, Conover, North Carolina.
Send comments to The Honorable Bruce Eckard, Mayor of the City of Conover, P.O. Box 549, Conover, North Carolina 28613.
City of Hickory
Maps available for inspection at the Hickory City Hall, 76 North Center Street, Hickory, North Carolina. Send comments to The Honorable G. Rudy Wright, Jr., Mayor of the City of Hickory, P.O. Box 398, Hickory, North Carolina 28603.
City of Newton
Maps available for inspection at the City of Newton Planning Department, 401 North Main Avenue, Newton, North Carolina.
Send comments to The Honorable Robert Mullinax, Mayor of the City of Newton, P.O. Box 550, Newton, North Carolina 28658.
Town of Long View
Maps available for inspection at the Long View Town Hall, 2404 1st Avenue Southwest, Hickory, North Carolina.
Send comments to The Honorable Norman Cook, Mayor of the Town of Long View, 2404 1st Avenue Southwest, Hickory, North Carolina 28602.
Town of Maiden
Maps are available for inspection at the Maiden Town Hall, 113 West Main Street, Maiden, North Carolina.
Send comments to The Honorable Robert Smyre, Mayor of the Town of Maiden, P.O. Box 125, Maiden, North Carolina 28650.
Unincorporated Areas of Catawba County
Maps available for inspection at the Catawba County Planning and Zoning Department, 100 A Southwest Boulevard, Newton, North Carolina.
Send comments to Mr. Tom Lundy, Catawba County Manager, P.O. Box 389, Catawba, North Carolina 28658.

McDowell County, North Carolina and Incorporated Areas

Alexander Branch	At the confluence with South Muddy Creek	None	+1,137	Unincorporated Areas of McDowell County.
	Approximately 0.8 mile upstream of the confluence with South Muddy Creek.	None	+1,174	
Armstrong Creek	At the confluence with North Fork Catawba River	+1,383	+1,382	Unincorporated Areas of McDowell County.
	At the confluence of House Branch	None	+1,959	
Bakers Creek	At the confluence with Second Broad River	None	+1,026	Unincorporated Areas of McDowell County.
	Approximately 1.3 miles upstream of the Railroad	None	+1,153	
Beaverdam Branch	At the confluence with Second Broad River	None	+1,270	Unincorporated Areas of McDowell County.
	Approximately 0.5 mile upstream of State Route 1148	None	+1,311	
Betsy Creek	At the confluence with Tom Creek	None	+1,442	Unincorporated Areas of McDowell County.
	Approximately 300 feet upstream of State Route 1434	None	+1,461	
Big Camp Creek	At the confluence with North Muddy Creek	None	+1,134	Unincorporated Areas of McDowell County.
	Approximately 370 feet downstream of Interstate 40	None	+1,197	
Bobs Creek	At the confluence with North Muddy Creek	None	+1,206	Unincorporated Areas of McDowell County.
	Approximately 1,050 feet upstream of State Route 1796	None	+1,219	
Boney Creek	At the confluence with Cove Creek	None	+1,137	Unincorporated Areas of McDowell County.
	Approximately 0.5 mile upstream of State Route 1143	None	+1,170	
Bradley Creek	At the confluence with Loom Branch	None	+1,420	Unincorporated Areas of McDowell County.
	Approximately 850 feet upstream of State Route 1133	None	+1,488	
Brevard Creek	At the confluence with Catawba River	+1,341	+1,342	Unincorporated Areas of McDowell County.
	Approximately 1.4 miles upstream of State Route 1241	None	+1,472	
Buck Creek	At the confluence with Catawba River	+1,242	+1,246	Unincorporated Areas of McDowell County.
	Approximately 0.5 mile upstream of Sugar Cove Road	None	+1,883	
Caleb Branch	At the confluence with North Muddy Creek	None	+1,163	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of State Route 1760	None	+1,224	
Camp Creek	At the confluence with Crooked Creek	None	+1,441	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of State Route 1131	None	+1,535	
Cane Creek (near Dysartsville).	At the McDowell/Rutherford County boundary	None	+975	Unincorporated Areas of McDowell County.

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
	Approximately 0.4 mile upstream of the confluence of Shoal Creek.	None	+1,044	
Cane Creek (near Greenlee)	Approximately 500 feet upstream of the confluence with Catawba River.	+1,291	+1,292	Unincorporated Areas of McDowell County.
	Approximately 250 feet upstream of U.S. Highway 70	None	+1,454	
Cane Creek Tributary 1 (near Dysartsville).	At the confluence with Cane Creek (near Dysartsville)	None	+1,037	Unincorporated Areas of McDowell County.
	Approximately 1,680 feet upstream of the confluence with Cane Creek (near Dysartsville).	None	+1,064	
Cane Creek Tributary 1 (near Greenlee).	At the confluence with Cane Creek (near Greenlee)	None	+1,332	Unincorporated Areas of McDowell County.
	Approximately 1,600 feet upstream of State Route 1230	None	+1,359	
Cane Creek Tributary 2 (near Greenlee).	At the confluence with Cane Creek (near Greenlee)	None	+1,418	Unincorporated Areas of McDowell County.
	Approximately 0.3 mile upstream of the confluence with Cane Creek (near Greenlee).	None	+1,458	
Catawba River	At the Burke/McDowell County boundary	None	+1,206	Unincorporated Areas of McDowell County, City of Marion, Town of Old Fort.
	Approximately 1.6 miles upstream of the confluence of Left Prong Catawba River.	None	+1,832	
Catawba River Tributary 3	At the confluence with Catawba River	+1,266	+1,269	Unincorporated Areas of McDowell County.
	Approximately 0.4 mile upstream of the confluence with Catawba River.	None	+1,281	
Clarks Branch	At the confluence with Little Crooked Creek	None	+1,476	Unincorporated Areas of McDowell County.
	Approximately 0.4 mile upstream of State Route 1106	None	+1,504	
Clear Creek	At the confluence with Catawba River	+1,263	+1,267	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of the confluence with Catawba River.	None	+1,285	
Conley Branch	At the confluence with North Fork Catawba River	+1,408	+1,402	Unincorporated Areas of McDowell County.
	Approximately 1,850 feet upstream of the confluence with Conley Branch Tributary 1.	None	+1,441	
Conley Branch Tributary 1	At the confluence with Conley Branch	None	+1,419	Unincorporated Areas of McDowell County.
	Approximately 0.4 mile upstream of the confluence with Conley Branch.	None	+1,443	
Cove Creek	Approximately 400 feet downstream of McDowell/Rutherford County boundary.	None	+1,128	Unincorporated Areas of McDowell County.
	At the confluences of West Fork Cove Creek and Morgan Creek (near Sugar Hill).	None	+1,196	
Cox Creek	At the confluence with Armstrong Creek	+1,422	+1,418	Unincorporated Areas of McDowell County.
	Approximately 250 feet upstream of the confluence of Rag Creek.	None	+1,528	
Crooked Creek	At the confluence with Catawba River	+1,322	+1,321	Unincorporated Areas of McDowell County.
	Approximately 620 feet upstream of State Route 1100	None	+1,845	
Curtis Creek	At the confluence with Catawba River	+1,374	+1,375	Unincorporated Areas of McDowell County, Town of Old Fort.
	Approximately 1,850 feet upstream of the confluence of Hickory Branch.	None	+1,926	
Dales Creek	At the confluence with Catawba River/Lake James	None	+1,206	Unincorporated Areas of McDowell County.
	Approximately 1.0 mile upstream of State Route 1552	None	+1,386	
Frasheur Creek	At the McDowell/Rutherford County boundary	None	+1,152	Unincorporated Areas of McDowell County.
	Approximately 0.7 mile upstream of State Route 1140	None	+1,223	
Glades Creek	At the confluence with Catawba River	+1,298	+1,300	Unincorporated Areas of McDowell County.
	Approximately 400 feet upstream of State Route 1161	None	+1,450	
Goose Creek	At the confluence with North Muddy Creek	None	+1,227	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of State Route 147	None	+1,306	

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
Greasy Creek	Approximately 400 feet downstream of County boundary	None	+1,148	Unincorporated Areas of McDowell County.
	Approximately 0.5 mile upstream of State Route 1142	None	+1,198	
Harris Creek (near Sugar Hill).	At the confluence with Cove Creek	None	+1,132	Unincorporated Areas of McDowell County.
	Approximately 1,400 feet upstream of State Route 1140	None	+1,168	
Harris Creek (near Woodlawn).	At the confluence with Tom Creek	None	+1,606	Unincorporated Areas of McDowell County.
	Approximately 850 feet upstream of the confluence with Tom Creek.	None	+1,636	
Haw Branch	At the confluence with Crooked Creek	None	+1,379	Unincorporated Areas of McDowell County.
	Approximately 1,600 feet upstream of State Route 1135	None	+1,432	
Hicks Branch	At the confluence with North Muddy Creek	None	+1,254	Unincorporated Areas of McDowell County.
	Approximately 1,800 feet upstream of State Route 1168	None	+1,322	
High Shoals Creek	At the confluence with South Muddy Creek	None	+1,218	Unincorporated Areas of McDowell County.
	Approximately 200 feet upstream of the confluence of Barnes Branch.	None	+1,225	
Honeycutt Creek	At the confluence with North Fork Catawba River	+1,489	+1,487	Unincorporated Areas of McDowell County.
	Approximately 340 feet downstream of the Railroad	None	+1,854	
Hoppers Creek	At the confluence with South Muddy Creek	None	+1,118	Unincorporated Areas of McDowell County.
	Approximately 1.7 miles upstream of State Highway 226	None	+1,201	
Jackson Creek	At the confluence with Lytle Creek	None	+1,492	Unincorporated Areas of McDowell County.
	Approximately 0.4 mile upstream of the confluence with Lytle Creek.	None	+1,534	
Jake Creek	At the upstream side of the Railroad	+1,275	+1,283	Unincorporated Areas of McDowell County.
	Approximately 0.5 mile upstream of State Route 1247	None	+1,346	
Jarrett Creek	At the confluence with Mill Creek	+1,472	+1,474	Unincorporated Areas of McDowell County.
	Approximately 2.6 miles upstream of the confluence with Mill Creek.	None	+1,791	
Johns Creek	At the confluence with Catawba River	+1,212	+1,214	Unincorporated Areas of McDowell County.
	Approximately 1,600 feet upstream of State Route 1501	None	+1,228	
Katy Creek	At the confluence with South Muddy Creek	None	+1,150	Unincorporated Areas of McDowell County.
	Approximately 1,100 feet upstream of State Route 1798	None	+1,252	
Left Prong Catawba River	At the confluence with Catawba River	+1,524	+1,527	Unincorporated Areas of McDowell County.
	Approximately 2.0 miles upstream of the confluence with Catawba River.	None	+1,739	
Licklog Creek	At the confluence with Buck Creek	None	+1,777	Unincorporated Areas of McDowell County.
	Approximately 1.3 miles upstream of the confluence with Buck Creek.	None	+2,064	
Little Buck Creek	At the confluence with Buck Creek/Lake Tahoma	None	+1,407	Unincorporated Areas of McDowell County.
	Approximately 200 feet downstream of the confluence of Long Branch.	None	+1,512	
Little Crooked Creek	At the confluence with Crooked Creek	None	+1,450	Unincorporated Areas of McDowell County.
	Approximately 100 feet downstream of State Route 1106	None	+1,536	
Little Crooked Creek Tributary 1.	At the confluence with Little Crooked Creek	None	+1,461	Unincorporated Areas of McDowell County.
	Approximately 1,470 feet upstream of the confluence with Little Crooked Creek.	None	+1,469	
Little Toe River	At the confluence with Crooked Creek	None	+1,388	Unincorporated Areas of McDowell County.
	Approximately 25 feet upstream of State Route 1240	None	+1,478	
Lonan Branch	At the confluence with Pepper Creek	None	+1,536	Unincorporated Areas of McDowell County.

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
	Approximately 1,500 feet upstream of the confluence with Pepper Creek.	None	+1,581	
Long Branch	At the confluence with Mill Creek	None	+1,816	Unincorporated Areas of McDowell County.
	Approximately 0.4 mile upstream of the Railroad	None	+1,953	
Loom Creek	At the confluence with Crooked Creek	None	+1,415	Unincorporated Areas of McDowell County.
	Approximately 0.8 mile upstream of the confluence of Bradley Creek.	None	+1,488	
Lytle Branch	At the confluence with Crooked Creek	None	+1,487	Unincorporated Areas of McDowell County.
	Approximately 1,100 feet upstream of State Route 1103	None	+1,525	
Mackey Creek	At the confluence with the Catawba River	None	+1,284	Unincorporated Areas of McDowell County.
	Approximately 2.8 miles upstream of U.S. Highway 70	None	+1,721	
Magazine Branch	At the confluence with Hoppers Creek	None	+1,145	Unincorporated Areas of McDowell County.
	Approximately 200 feet downstream of State Route 1771	None	+1,162	
Martin Branch	At the confluence with North Fork Catawba River	+1,439	+1,435	Unincorporated Areas of McDowell County.
	Approximately 350 feet upstream of State Route 1564	None	+1,469	
Mill Creek	Approximately 200 feet upstream of the confluence with Catawba River.	+1,409	+1,410	Unincorporated Areas of McDowell County, Town of Old Fort.
	Approximately 300 feet downstream of State Route 1408	None	+1,874	
Mollys Branch	At the confluence with Hoppers Creek	None	+1,129	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of State Route 1769	None	+1,170	
Morgan Creek (near Ledbetter Mountain).	At the confluence with Cove Creek	None	+1,173	Unincorporated Areas of McDowell County.
	Approximately 1,270 feet upstream of the confluence with Cove Creek.	None	+1,180	
Morgan Creek (near Sugar Hill).	At the confluence with Cove Creek and West Fork Cove Creek.	None	+1,196	Unincorporated Areas of McDowell County.
	Approximately 0.8 mile upstream of the confluence with Cove Creek and West Fork Cove Creek.	None	+1,217	
Muddy Creek	At the Burke/McDowell County boundary	None	+1,087	Unincorporated Areas of McDowell County.
	At the confluences of North Muddy Creek and South Muddy Creek.	None	+1,089	
Newberry Creek	At the confluence with Curtis Creek	None	+1,670	Unincorporated Areas of McDowell County.
	Approximately 1.3 miles upstream of the confluence with Curtis Creek.	None	+1,923	
Nicks Creek	At the confluence with Catawba River	+1,239	+1,240	Unincorporated Areas of McDowell County, City of Marion.
	Approximately 0.5 mile upstream of State Route 1250	None	+1,447	
North Fork Catawba River	At the confluence with Catawba River/Lake James	None	+1,206	Unincorporated Areas of McDowell County.
	Approximately 1.9 miles upstream of State Route 1571	None	+2,506	
North Muddy Creek	At the confluence with Muddy Creek and South Muddy Creek.	None	+1,089	Unincorporated Areas of McDowell County.
	Approximately 1.1 miles upstream of the confluence of North Muddy Creek Tributary 2.	None	+1,326	
North Muddy Creek Tributary 2.	At the confluence with North Muddy Creek	None	+1,297	Unincorporated Areas of McDowell County.
	Approximately 1.0 mile upstream of State Route 1168	None	+1,327	
North Muddy Creek Tributary No. 1.	At the confluence with North Muddy Creek	None	+1,094	Unincorporated Areas of McDowell County.
	Approximately 1,000 feet upstream of State Route 1763	None	+1,132	
Old Catawba River	At the confluence of Shadrick Creek	None	+1,091	Unincorporated Areas of McDowell County.
	Approximately 200 feet upstream of the confluence of Shadrick Creek.	None	+1,091	
Patten Branch	At the confluence with South Muddy Creek	None	+1,101	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of State Route 1763	None	+1,142	

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
Pepper Creek	At the confluence with North Fork Catawba River	+1,499	+1,446	Unincorporated Areas of McDowell County.
	Approximately 0.6 mile upstream of State Route 1566	None	+1,674	
Rock Creek	At the confluence with Second Broad River	None	+1,290	Unincorporated Areas of McDowell County.
	At the downstream of State Route 1145	None	+1,365	
Second Broad River	At the McDowell/Rutherford County boundary	None	+990	Unincorporated Areas of McDowell County.
	Approximately 0.8 mile upstream of State Route 1001	None	+1,369	
Shadrick Creek	At the confluence with Old Catawba River	None	+1,091	Unincorporated Areas of McDowell County.
	Approximately 2.1 miles upstream of the Railroad	None	+1,194	
Shoal Creek	At the confluence with Cane Creek (near Dysartsville)	None	+1,028	Unincorporated Areas of McDowell County.
	Approximately 1.2 miles upstream of State Route 1775	None	+1,345	
South Fork Tom Creek	At the confluence with Tom Creek	None	+1,457	Unincorporated Areas of McDowell County.
	Approximately 0.3 mile upstream of the confluence with Tom Creek.	None	+1,489	
South Muddy Creek	At the confluence with Muddy Creek and North Muddy Creek.	None	+1,089	Unincorporated Areas of McDowell County.
	Approximately 0.7 mile upstream of State Route 1780	None	+1,331	
South Muddy Creek Tributary 1.	At the confluence with South Muddy Creek	None	+1,107	Unincorporated Areas of McDowell County.
	At the Burke/McDowell County boundary	None	+1,124	
South Muddy Creek Tributary 2.	At the confluence with South Muddy Creek	None	+1,123	Unincorporated Areas of McDowell County.
	Approximately 600 feet upstream of State Route 1767	None	+1,143	
Stanfords Creek	At the confluence with Goose Creek	None	+1,239	Unincorporated Areas of McDowell County.
	Approximately 2.1 miles upstream of the confluence with Goose Creek.	None	+1,346	
Swannanoa Creek	At the confluence with Mill Creek	None	+1,603	Unincorporated Areas of McDowell County.
	Approximately 0.7 mile upstream of the confluence with Mill Creek.	None	+1,702	
Thompsons Fork	At the confluence with North Muddy Creek	None	+1,101	Unincorporated Areas of McDowell County.
	Approximately 200 feet downstream of State Route 1747	None	+1,181	
Tom Creek	At the confluence with Catawba River	+1,227	+1,229	Unincorporated Areas of McDowell County.
	Approximately 280 feet upstream of State Route 1440	None	+1,637	
Tom Creek Tributary 1	At the confluence with Tom Creek	None	+1,418	Unincorporated Areas of McDowell County.
	Approximately 1,300 feet upstream of State Route 1433	None	+1,488	
Walton Crowley Branch	At the confluence with North Muddy Creek	None	+1,119	Unincorporated Areas of McDowell County.
	Approximately 1,230 feet upstream of State Route 1760	None	+1,139	
West Fork Cove Creek	At the confluence with Cove Creek and Morgan Creek (near Sugar Hill).	None	+1,196	Unincorporated Areas of McDowell County.
	Approximately 1.3 miles upstream of State Route 1001	None	+1,259	
Youngs Fork	At the confluence with North Muddy Creek	None	+1,205	Unincorporated Areas of McDowell County, City of Marion.
	Approximately 125 feet downstream of Glenview Street	None	+1,327	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Marion
Maps available for inspection at the Marion City Hall, 194 North Main Street, Marion, North Carolina.
Send comments to The Honorable Averett Clark, Mayor of the City of Marion, P.O. Box 700, Marion, North Carolina 28752.
Town of Old Fort
Maps available for inspection at the Old Fort Town Hall, 38 South Catawba Avenue, Old Fort, North Carolina.
Send comments to The Honorable Garland Norton, Mayor of the Town of Old Fort, P.O. Box 520, Old Fort, North Carolina 28762.
Unincorporated Areas of McDowell County

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
Maps available for inspection at the McDowell County Administration Building, 60 East Court Street, Marion, North Carolina. Send comments to Mr. Charles Abernathy, McDowell County Manager, 60 East Court Street, Marion, North Carolina 28752.				
Northampton County, North Carolina and Incorporated Areas				
Black Duck Creek	At the confluence with Lees Creek	None	+66	Unincorporated Areas of Northampton County, Town of Gaston.
	Approximately 0.7 mile upstream of Cal Floyd Road (State Route 1210).	None	+193	
Bridges Creek Tributary 2	At the confluence with Bridges Creek	+40	+42	Unincorporated Areas of Northampton County.
	Approximately 250 feet downstream of Chapel Hill Road	None	+60	
Chockoyotte Creek	At the confluence with Roanoke River	+55	+57	Unincorporated Areas of Northampton County.
	At the confluence with Roanoke River (the Northampton/Halifax County boundary).	+56	+59	
Devils Branch	At the confluence with Roanoke River	+134	+135	Unincorporated Areas of Northampton County.
	Approximately 3.1 miles upstream of the confluence with Roanoke River.	None	+196	
Gumberry Swamp	At the downstream side of Barrows Mill Road (State Route 1126).	None	+47	Unincorporated Areas of Northampton County.
	Approximately 300 feet upstream of railroad	None	+124	
Lees Creek	At the confluence with Roanoke River	None	+66	Unincorporated Areas of Northampton County, Town of Gaston.
	Approximately 450 feet downstream of Graysburg Road	None	+85	
Lees Creek Tributary 1	At the confluence with Lees Creek	None	+69	Unincorporated Areas of Northampton County, Town of Gaston.
	Approximately 250 feet downstream of Graysburg Road	None	+136	
Lilly Pond Creek	Approximately 1.1 miles upstream of the confluence with Gumberry Swamp.	None	+47	Unincorporated Areas of Northampton County, Town of Jackson.
	Approximately 1,500 feet upstream of Depot Street	None	+92	
Occoneechee Creek	Approximately 4.5 miles upstream of the confluence with Roanoke River.	None	+47	Unincorporated Areas of Northampton County.
	Approximately 1.1 miles upstream of Jackson By-Pass Road (State Route 1311).	None	+109	
Occoneechee Creek Tributary 1.	At the confluence with Occoneechee Creek	None	+50	Unincorporated Areas of Northampton County.
	Approximately 0.9 mile downstream of the confluence with Occoneechee Creek.	None	+51	
Occoneechee Creek Tributary 2.	At the confluence with Occoneechee Creek	None	+81	Unincorporated Areas of Northampton County.
	Approximately 2.7 miles upstream of the confluence with Occoneechee Creek.	None	+97	
Roanoke River	At the Northampton/Bertie/Halifax County boundary	+35	+34	Unincorporated Areas of Northampton County, Town of Gaston.
	At the Northampton/Warren County boundary	+204	+203	
Roanoke River Tributary 12	At the confluence with Roanoke River	+134	+133	Unincorporated Areas of Northampton County.
	Approximately 0.5 mile upstream of NC–46	None	+196	
Roanoke River Tributary 12A	At the confluence with Roanoke River Tributary 12	None	+150	Unincorporated Areas of Northampton County.
	Approximately 0.4 mile upstream of Dr. Hall Road (State Route 1218).	None	+184	
Roanoke River Tributary 14	At the confluence with Roanoke River	+134	+133	Unincorporated Areas of Northampton County.
	Approximately 50 feet downstream of NC–46	None	+185	
Roanoke River Tributary 14A	At the confluence with Roanoke River Tributary 14	None	+164	Unincorporated Areas of Northampton County.
	Approximately 0.8 mile upstream of NC–46	None	+233	
Roanoke River Tributary 7	Approximately 1,500 feet upstream of the confluence with Roanoke River.	None	+45	Unincorporated Areas of Northampton County.

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
	Approximately 1.7 mile upstream of the confluence with Roanoke River.	None	+70	
Roanoke River Tributary 8	At the confluence with Roanoke River	+45	+46	Unincorporated Areas of Northampton County.
	Approximately 1.2 miles upstream of the confluence with Roanoke River.	None	+69	
Sandy River Tributary 3	At the confluence with Sandy Run	None	+37	Unincorporated Areas of Northampton County.
	Approximately 0.5 mile upstream of the confluence with Sandy Run.	None	+46	
Sandy Run	At the confluence with Roanoke River	+35	+34	Unincorporated Areas of Northampton County.
	Approximately 0.6 mile upstream of State Highway 308 ..	None	+60	
Sandy Run Tributary 1	At the confluence with Sandy Run	None	+37	Unincorporated Areas of Northampton County.
	Approximately 0.7 mile upstream of the confluence with Sandy Run.	None	+60	
Trouble Field Creek	At the confluence with Roanoke River	+53	+55	Unincorporated Areas of Northampton County.
	Approximately 1.8 miles upstream of the confluence with Roanoke River.	None	+61	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Town of Gaston
Maps available for inspection at the Gaston Town Hall, 223 Craig Street, Gaston, North Carolina.
Send comments to The Honorable Danny Tolbert, Mayor of the Town of Gaston, P.O. Drawer M, Gaston, North Carolina 27832.
Town of Jackson
Maps available for inspection at the Jackson Town Hall, 100 East Jefferson Street, Jackson, North Carolina.
Send comments to The Honorable John McKellar, Mayor of the Town of Jackson, P.O. Box 614, Jackson, North Carolina 27845
Unincorporated Areas of Northampton County
Maps available for inspection at the Northampton County Office, 108 West Jefferson Street, Jackson, North Carolina.
Send comments to Mr. Wayne Jenkins, Northampton County Manager, P.O. Box 808, Jackson, North Carolina 27845.

Person County, North Carolina and Incorporated Areas

Big Blue Wing Creek	Approximately 1,300 feet downstream of High View Church Road (State Route 1509).	None	+403	Unincorporated Areas of Person County.
	Approximately 0.7 mile upstream of Tatum Road (State Route 1511).	None	+506	
Big Blue Wing Tributary 1	Approximately 2,000 feet downstream of Wind Dancer Lane.	None	+399	Unincorporated Areas of Person County.
	Approximately 0.4 mile upstream of Epps-Martin Road (State Route 1506).	None	+450	
Bowes Branch	At the Virginia/North Carolina State boundary	None	+361	Unincorporated Areas of Person County.
	Approximately 1,440 feet upstream of Virginia/North Carolina State boundary.	None	+368	
Bredlov Creek	At the confluence with Big Blue Wing Creek	None	+407	Unincorporated Areas of Person County.
	Approximately 1,400 feet upstream of the confluence with Big Blue Wing Creek.	None	+413	
Broachs Mill Creek	At the confluence with South Hyco Creek	None	+433	Unincorporated Areas of Person County.
	Approximately 0.9 mile upstream of Hester's Store Road (State Route 1162).	None	+515	
Castle Creek	At the confluence with Hyco River	None	+360	Unincorporated Areas of Person County.
	Approximately 790 feet downstream of Shiloh Church Road (State Route 1322).	None	+394	
Cattail Branch	At the confluence with Big Blue Wing Creek	None	+428	Unincorporated Areas of Person County.
	Approximately 1,750 feet upstream of the confluence with Big Blue Wing Creek.	None	+437	

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
Cobbs Creek	Approximately 0.8 mile upstream of the confluence with Hyco Lake.	None	+413 +414	Unincorporated Areas of Person County.
	At the Person/Caswell County boundary	None	+510	
Ghents Creek	At the confluence with Hyco River	None	+367	Unincorporated Areas of Person County.
	Approximately 1,400 feet upstream of Edwin Robertson Road (State Route 1322).	None	+387	
Hyco River	Approximately 1.4 miles downstream of Railroad	None	+358	Unincorporated Areas of Person County.
	At the Hyco Dam	None	+380	
Hyco River Tributary 1	At the confluence with Hyco River	None	+380	Unincorporated Areas of Person County.
	Approximately 600 feet upstream of the confluence with Hyco River.	None	+380	
Marlowes Creek	At the upstream side of Cavel Chub Lake Road	+470	+469	Unincorporated Areas of Person County, City of Roxboro.
	Approximately 860 feet upstream of Depot Street	+617	+610	
Marlowes Creek Tributary 1	At the confluence with Marlowes Creek	+470	+469	Unincorporated Areas of Person County.
	Approximately 840 feet upstream of Chub Lake Road (State Route 1337).	None	+680	
Marlowes Creek Tributary 1A	At the confluence with Marlowes Creek Tributary 1	None	+464	Unincorporated Areas of Person County.
	Approximately 0.5 mile upstream of Chub Lake Road (State Route 1337).	None	+656	
Marlowes Creek Tributary 2	At the confluence with Marlowes Creek	+554	+552	Unincorporated Areas of Person County, City of Roxboro.
	Approximately 0.5 mile upstream of Broad Road (State Route 1534).	None	+617	
Mayo Creek	Approximately 740 feet downstream of Mayo Lake Road (State Route 1501).	None	+349	Unincorporated Areas of Person County.
	Approximately 0.8 mile upstream of Denny's Store Road (State Route 1536).	None	+511	
Mayo Creek Tributary 14	At the confluence with Mayo Creek	None	+444	Unincorporated Areas of Person County.
	Approximately 1,300 feet upstream of the confluence with Mayo Creek.	None	+444	
Mayo Creek Tributary 15	At the confluence with Mayo Creek	None	+450	Unincorporated Areas of Person County.
	Approximately 0.5 mile upstream of the confluence with Mayo Creek.	None	+475	
Mill Creek	Approximately 400 feet downstream of Street's Store Road (State Route 1519).	+444	+445	Unincorporated Areas of Person County.
	Approximately 530 feet upstream of Todd Road (State Route 1547).	None	+559	
Powells Creek	At the confluence with Hyco River	None	+367	Unincorporated Areas of Person County.
	Approximately 0.7 mile upstream of the confluence with Hyco River.	None	+367	
Satterfield Creek	At the confluence with Storys Creek	None	+489	Unincorporated Areas of Person County.
	Approximately 1.2 miles upstream of City Lala Road (State Route 1836).	None	+491	
South Hyco Creek	At the upstream side of Brewer Road (State Route 1343)	None	+415	Unincorporated Areas of Person County.
	Approximately 1.0 mile upstream of State Highway 49	None	+543	
South Hyco Creek Tributary 2.	At the confluence with South Hyco Creek	None	+516	Unincorporated Areas of Person County.
	Approximately 1,900 feet upstream of the confluence with South Hyco Creek.	None	+553	
South Hyco Creek Tributary 8.	At the confluence with South Hyco Creek	None	+540	Unincorporated Areas of Person County.
	Approximately 400 feet upstream of Jones Road (State Route 1100).	None	+602	

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
Storys Creek	At the confluence with Hyco River	None	+366	Unincorporated Areas of Person County.
	Approximately 0.6 mile upstream of City Lake Road (State Route 1336).	None	+489	
Tanyard Branch	At the downstream side of Railroad	+569	+570	City of Roxboro.
	Approximately 1,300 feet upstream of North Morgan Street.	None	+658	

* National Geodetic Vertical Datum.
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+ North American Vertical Datum.

ADDRESSES

City of Roxboro
Maps available for inspection at the Roxboro City Planning Department, 105 South Lamar Street, Roxboro, North Carolina.
Send comments to The Honorable Steve Joyner, Mayor of the City of Roxboro, P.O. Box 128, Roxboro, North Carolina 27573.
Unincorporated Areas of Person County
Maps available for inspection at the Person County Planning and Zoning Department, 20A Court Street, Roxboro, North Carolina.
Send comments to Mr. Steve Carpenter, Person County Manager, 304 South Morgan Street, Room 212, Roxboro, North Carolina 27573.

Union County, North Carolina and Incorporated Areas

Bates Branch	At the confluence with East Fork Twelvemile Creek	+525	+526	Unincorporated Areas of Union County, Town of Mineral Springs.
	Approximately 150 feet downstream of McNeely Road	None	+603	
Blue Branch	At the confluence with Cane Creek	None	+510	Unincorporated Areas of Union County.
	Approximately 0.4 mile upstream of Bud Huey Road (State Route 115).	None	+549	
Blythe Creek	At the confluence with East Fork Twelvemile Creek	+511	+510	Unincorporated Areas of Union County, Town of Waxhaw.
	Approximately 1.0 mile upstream of Waxhaw Highway	None	+607	
Blythe Creek Tributary	At the confluence with Blythe Creek	None	+554	Unincorporated Areas of Union County.
	Approximately 0.4 mile upstream of the confluence with Blythe Creek.	None	+564	
Booger Branch	At the confluence with Cane Creek	None	+514	Unincorporated Areas of Union County.
	Approximately 0.7 mile upstream of the confluence with Booger Branch Tributary 2.	None	+577	
Booger Branch Tributary 1	At the confluence with Booger Branch	None	+514	Unincorporated Areas of Union County.
	Approximately 0.8 mile upstream of Bud Huey Road (State Route 1115).	None	+561	
Booger Branch Tributary 2	At the confluence with Booger Branch	None	+550	Unincorporated Areas of Union County.
	Approximately 1.4 miles upstream of the confluence with Booger Branch.	None	+611	
Cane Creek	Approximately 300 feet downstream of the Lancaster County, South Carolina/Union County, North Carolina State boundary.	None	+502	Unincorporated Areas of Union County.
	Approximately 250 feet upstream of Rocky River Road (State Route 522).	None	+647	
Cane Creek Tributary 1	At the confluence with Cane Creek	None	+562	Unincorporated Areas of Union County.
	Approximately 1.1 miles upstream of Cane Creek Road (State Route 1221).	None	+612	
Cane Creek Tributary 2	At the confluence with Cane Creek	None	+580	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of the confluence with Cane Creek.	None	+607	
Cane Creek Tributary 3	At the confluence with Cane Creek	None	+586	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of the confluence with Cane Creek.	None	+604	

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
Cowhorn Branch	At the confluence with Tarkill Branch	None	+552	Unincorporated Areas of Union County, Village of Marvin.
	Approximately 0.4 mile upstream of Waxhaw Marvin Road (State Route 1307).	None	+572	
Culvert Branch	Approximately 700 feet upstream of the confluence with West Fork Twelvemile Creek.	+557	+558	Unincorporated Areas of Union County.
	Approximately 1,000 feet upstream of Timber Lane	None	+647	
Davis Branch	At the confluence with Waxhaw Creek	None	+512	Unincorporated Areas of Union County.
	Approximately 1.5 miles upstream of the confluence with Davis Branch Tributary 1.	None	+584	
Davis Branch Tributary 1	At the confluence with Davis Branch	None	+535	Unincorporated Areas of Union County.
	Approximately 1.5 miles upstream of the confluence with Davis Branch.	None	+614	
Davis Mine Creek	Approximately 120 feet downstream of Waxhaw-Indian Trail Road.	None	+601	Unincorporated Areas of Union County, Village of Wesley Chapel, Town of Indian Trail, Town of Stallings, Town of Weddington.
	Approximately 650 feet upstream of Lakewood Drive	None	+722	
Davis Mine Creek Tributary 1	At the confluence with Davis Mine Creek	None	+649	Town of Indian Trail.
	Approximately 1,500 feet upstream of McLendon Road	None	+682	
East Fork Twelvemile Creek	Approximately 0.9 mile upstream of the confluence with Twelvemile Creek and West Fork Twelvemile Creek.	+512	+511	Unincorporated Areas of Union County, Village of Wesley Chapel, Town of Indian Trail, Town of Mineral Springs, Town of Waxhaw.
	Approximately 1,710 feet upstream of Grayson Parkway	None	+621	
East Fork Twelvemile Creek Tributary 1.	At the confluence with East Fork Twelvemile Creek	+521	+520	Unincorporated Areas of Union County, Village of Wesley Chapel.
	Approximately 735 feet upstream of Farm Creek Road	None	+560	
East Fork Twelvemile Creek Tributary 2.	At the confluence with East Fork Twelvemile Creek	+524	+522	Unincorporated Areas of Union County, Village of Wesley Chapel.
	Approximately 1.1 miles upstream of the confluence with East Fork Twelvemile Creek.	None	+545	
East Fork Twelvemile Creek Tributary 3.	At the confluence with East Fork Twelvemile Creek	None	+562	Unincorporated Areas of Union County, City of Monroe, Village of Wesley Chapel.
	Approximately 1,300 feet upstream of Sanford Lane (State Route 1394).	None	+650	
East Fork Twelvemile Creek Tributary 4.	At the confluence with East Fork Twelvemile Creek	None	+583	Unincorporated Areas of Union County, Village of Wesley Chapel, Town of Indian Trail.
	Approximately 1.2 miles upstream of Mayflower Trail	None	+620	
East Fork Twelvemile Creek Tributary 5.	At the confluence with East Fork Twelvemile Creek	None	+597	Unincorporated Areas of Union County, City of Monroe, Town of Indian Trail.
	Approximately 725 feet downstream of Capital Drive	None	+639	
East Fork Twelvemile Creek Tributary 6.	At the confluence with East Fork Twelvemile Creek	None	+610	Unincorporated Areas of Union County, Town of Indian Trail.
	Approximately 0.5 mile upstream of the confluence with East Fork Twelvemile Creek.	None	+629	
Glen Branch	At the confluence with Waxhaw Creek	None	+592	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of Nesbit Road (State Route 1131).	None	+633	

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
Keener Branch	At the confluence with Waxhaw Creek	None	+513	Unincorporated Areas of Union County.
	Approximately 0.9 mile upstream of Farmbrook Drive (State Route 1271).	None	+539	
Lee Branch	At the confluence with Bates Branch	None	+541	Town of Mineral Springs.
	Approximately 375 feet downstream of Waxhaw-Monroe Road (State Route 111).	None	+618	
Lee Branch Tributary 1	At the confluence with Lee Branch	None	+603	Town of Mineral Springs.
	Approximately 0.5 mile upstream of the confluence with Lee Branch.	None	+625	
Lee Branch Tributary 1A	At the confluence with Lee Branch Tributary 1	None	+603	Town of Mineral Springs.
	Approximately 1,250 feet upstream of the confluence with Lee Branch Tributary 1.	None	+617	
Little Twelvemile Creek	Approximately 50 feet downstream of Potter Road (State Route 1162).	None	+553	Unincorporated Areas of Union County, Town of Mineral Springs.
	Approximately 0.9 mile upstream of Crow Road	None	+635	
Little Twelvemile Creek Tributary 1.	At the confluence with Little Twelvemile Creek	None	+563	Unincorporated Areas of Union County.
	Approximately 925 feet upstream of Porter Drive (State Route 2552).	None	+600	
Little Twelvemile Creek Tributary 2.	At the confluence with Little Twelvemile Creek	None	+588	Unincorporated Areas of Union County, Town of Mineral Springs.
	Approximately 1,500 feet upstream of Old Waxhaw-Monroe Road (State Route 1149).	None	+626	
Machine Branch	At the confluence with East Fork Twelvemile Creek	+516	+517	Unincorporated Areas of Union County.
	Approximately 780 feet downstream of Waxhaw-Indian Trail Road (State Route 1008).	None	+573	
Marvin Branch	At the confluence with Sixmile Creek	+572	+577	Village of Marvin.
	Approximately 1,150 feet upstream of Saddle Avenue	None	+605	
McBride Branch	At the confluence with Sixmile Creek	+580	+583	Unincorporated Areas of Union County, Village of Marvin.
	Approximately 385 feet upstream of Kentucky Derby Drive (State Route 3248).	None	+652	
McBride Branch Tributary 1	At the confluence with McBride Branch	None	+601	Unincorporated Areas of Union County.
	Approximately 950 feet upstream of Beckford Glen Drive (State Route 2679).	None	+624	
McNeely Branch	At the confluence with Blythe Creek	None	+571	Unincorporated Areas of Union County, Town of Waxhaw.
	Approximately 1.6 miles upstream of Waxhaw Highway	None	+616	
Missouri Branch	At the confluence with Davis Branch	None	+533	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of Shady Oak Drive	None	+599	
Molly Branch	At the confluence with East Fork Twelvemile Creek	+547	+549	Unincorporated Areas of Union County.
	Approximately 30 feet downstream of Willoughby Road (State Route 1334).	None	+613	
Mundys Run	At the confluence with West Fork Twelvemile Creek	+533	+535	Unincorporated Areas of Union County, Town of Weddington.
	Approximately 0.5 mile upstream of the confluence of Mundys Run Tributary 3.	None	+635	
Mundys Run Tributary 1	At the confluence with Mundys Run	None	+568	Unincorporated Areas of Union County, Town of Weddington.
	Approximately 1,130 feet upstream of Skytop Road	None	+613	
Mundys Run Tributary 2	At the confluence with Mundys Run	None	+573	Unincorporated Areas of Union County, Town of Weddington.
	Approximately 0.8 mile upstream of the confluence with Mundys Run.	None	+605	
Mundys Run Tributary 3	At the confluence with Mundys Run	None	+614	Town of Weddington.
	Approximately 1,460 feet upstream of Weddington Road	None	+638	

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
Price Mill Creek	Approximately 450 feet upstream of the confluence of Davis Mine Creek.	None	+592	Unincorporated Areas of Union County, Town of Indian Trail.
	Approximately 650 feet upstream of Kennerly Drive	None	+650	
Price Mill Creek Tributary 1	At the confluence with Price Mill Creek	None	+599	Unincorporated Areas of Union County, Town of Indian Trail.
	Approximately 100 feet upstream of Old Charlotte Highway.	None	+646	
Price Mill Creek Tributary 2	At the confluence with Price Mill Creek	None	+633	Town of Indian Trail.
	Approximately 1,400 feet upstream of the confluence with Price Mill Creek.	None	+646	
Robin Branch	At the confluence with Booger Branch	None	+522	Unincorporated Areas of Union County.
	Approximately 500 feet upstream of Shaw Avenue	None	+568	
Rone Branch	Approximately 200 feet downstream of the Lancaster County, South Carolina/Union County, North Carolina, State boundary.	None	+507	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of Rehobeth Road (State Route 1107).	None	+591	
Rone Branch Tributary 1	At the confluence with Rone Branch	None	+515	Unincorporated Areas of Union County.
	Approximately 0.3 mile upstream of the confluence with Rone Branch.	None	+560	
Simpson Branch	Approximately 500 feet upstream of the confluence with Cane Creek.	None	+502	Unincorporated Areas of Union County.
	Approximately 250 feet downstream of Huey Drive	None	+518	
Sixmile Creek	Approximately 200 feet upstream of the Lancaster County, South Carolina/Mecklenburg and Union County, North Carolina, State boundary.	+570	+575	Unincorporated Areas of Union County, Town of Weddington, Village of Marvin.
	Approximately 500 feet upstream of the Mecklenburg/Union County boundary.	+625	+626	
Sixmile Creek Tributary 1	At the confluence with Sixmile Creek	+577	+579	Unincorporated Areas of Union County, Village of Marvin.
	Approximately 920 feet upstream of Marvin Weddington Road (State Route 1316).	None	+630	
Sixmile Creek Tributary 2	Approximately 700 feet upstream of the confluence with Sixmile Creek.	+580	+601	Unincorporated Areas of Union County.
	Approximately 1.2 miles upstream of the confluence with Sixmile Creek.	None	+633	
Stewart Branch	At the confluence with Cane Creek Tributary 1	None	+562	Unincorporated Areas of Union County.
	Approximately 1,125 feet upstream of the Dam	None	+661	
Stewart Branch Tributary 1	At the confluence with Stewart Branch	None	+562	Unincorporated Areas of Union County.
	Approximately 250 feet downstream of Tom Green Road	None	+607	
Tarkill Branch	At the Lancaster County, South Carolina/Union County, North Carolina, State boundary.	None	+545	Unincorporated Areas of Union County, Town of Weddington, Village of Marvin.
	Approximately 1.4 miles upstream of New Town Road	None	+644	
Twelvemile Creek Tributary 1	Approximately 500 feet upstream of the confluence with Twelvemile Creek.	None	+502	Unincorporated Areas of Union County, Town of Waxhaw.
	Approximately 0.5 mile upstream of Fox Hound Lane	None	+537	
Twelvemile Creek Tributary 2	Approximately 800 feet upstream of the confluence with Twelvemile Creek.	None	+504	Unincorporated Areas of Union County, Town of Waxhaw.
	Approximately 0.8 mile upstream of the confluence with Twelvemile Creek.	None	+523	
Twelvemile Creek Tributary 3	Approximately 1,600 feet upstream of the confluence with Twelvemile Creek.	None	+507	Unincorporated Areas of Union County, Town of Waxhaw, Village of Marvin.
	Approximately 0.5 mile upstream of Rainbow Drive	None	+558	

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
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Twelvemile Creek Tributary 4	Approximately 1,600 feet upstream of the confluence with Twelvemile Creek.	+507	+508	Unincorporated Areas of Union County, Town of Waxhaw.
	Approximately 300 feet upstream of Waxhaw Parkway	None	+574	
Underwood Creek	Approximately 1,500 feet upstream of the confluence with Little Twelvemile Creek.	None	+547	Unincorporated Areas of Union County.
	Approximately 0.8 mile upstream of New Town Road	None	+619	
Waxhaw Creek	Approximately 1,650 feet downstream of Maggie Robinson Road (State Route 1103).	None	+487	Unincorporated Areas of Union County.
	Approximately 100 feet downstream of Lancaster Highway/State Highway 200.	None	+609	
Waxhaw Creek Tributary 1 ...	At the confluence with Waxhaw Creek	None	+491	Unincorporated Areas of Union County.
	Approximately 0.7 mile upstream of Mini-Ranch Road (State Route 1102).	None	+526	
Waxhaw Creek Tributary 2 ...	At the confluence with Waxhaw Creek	None	+499	Unincorporated Areas of Union County.
	Approximately 2.8 miles upstream of the confluence with Waxhaw Creek.	None	+705	
Waxhaw Creek Tributary 3 ...	At the confluence with Waxhaw Creek	None	+516	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of Winslow Drive	None	+539	
Waxhaw Creek Tributary 4 ...	At the confluence with Waxhaw Creek	None	+555	Unincorporated Areas of Union County.
	Approximately 1.4 miles upstream of Morrison Avenue	None	+616	
Waxhaw Creek Tributary 5 ...	At the confluence with Waxhaw Creek	None	+559	Unincorporated Areas of Union County.
	Approximately 0.7 mile upstream of the confluence with Waxhaw Creek.	None	+597	
Waxhaw Creek Tributary 6 ...	At the confluence with Waxhaw Creek	None	+560	Unincorporated Areas of Union County.
	Approximately 0.7 mile upstream of the confluence with Waxhaw Creek.	None	+583	
Waxhaw Creek Tributary 7 ...	At the confluence with Waxhaw Creek	None	+565	Unincorporated Areas of Union County.
	Approximately 1,750 feet upstream of the Dam	None	+658	
Waxhaw Creek Tributary 7A	At the confluence with Waxhaw Creek Tributary 7	None	+578	Unincorporated Areas of Union County.
	Approximately 0.4 mile upstream of Nesbit Road (State Route 1131).	None	+609	
Waxhaw Creek Tributary 7B	At the confluence with Waxhaw Creek Tributary 7	None	+583	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of the confluence with Waxhaw Creek Tributary 7.	None	+610	
Waxhaw Creek Tributary 7C	At the confluence with Waxhaw Creek Tributary 7	None	+591	Unincorporated Areas of Union County, Town of Waxhaw.
	Approximately 0.5 mile upstream of Parkwood School Road.	None	+613	
West Fork Twelvemile Creek	At the upstream side of Cuthbertson Road (State Route 1321).	+512	+514	Unincorporated Areas of Union County, Village of Wesley Chapel, Town of Indian Trail, Town of Stallings, Town of Waxhaw, Town of Weddington.
	Approximately 1,070 feet upstream of the confluence of West Fork Twelvemile Creek Tributary 4.	None	+680	
West Fork Twelvemile Creek Tributary 1.	At the confluence with West Fork Twelvemile Creek	+525	+526	Unincorporated Areas of Union County, Town of Waxhaw, Town of Weddington.
	Approximately 0.4 mile upstream of New Town Road (State Route 1315).	None	+634	
West Fork Twelvemile Creek Tributary 1A.	At the confluence with West Fork Twelvemile Creek Tributary 1.	None	+536	Unincorporated Areas of Union County, Town of Waxhaw.

Source of flooding	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD)		Communities affected
		Effective	Modified	
	Approximately 0.8 mile upstream of the confluence with West Fork Twelvemile Creek Tributary 1.	None	+576	
West Fork Twelvemile Creek Tributary 2.	At the confluence with West Fork Twelvemile Creek	+582	+587	Unincorporated Areas of Union County, Town of Weddington.
	Approximately 700 feet upstream of the Dam	None	+681	
West Fork Twelvemile Creek Tributary 2A.	At the confluence with West Fork Twelvemile Creek Tributary 2.	None	+638	Town of Weddington.
	Approximately 1,790 feet upstream of the confluence with West Fork Twelvemile Creek Tributary 2.	None	+653	
West Fork Twelvemile Creek Tributary 2B.	At the confluence with West Fork Twelvemile Creek Tributary 2.	None	+661	Town of Weddington.
	Approximately 960 feet upstream of the confluence with West Fork Twelvemile Creek Tributary 2.	None	+673	
West Fork Twelvemile Creek Tributary 3.	At the confluence with West Fork Twelvemile Creek	None	+657	Unincorporated Areas of Union County, Town of Indian Trail, Town of Stallings.
	Approximately 520 feet upstream of Fairforest Drive	None	+684	
West Fork Twelvemile Creek Tributary 4.	At the confluence with West Fork Twelvemile Creek	None	+672	Unincorporated Areas of Union County, Town of Indian Trail, Town of Stallings.
	At the Mecklenburg/Union County boundary	None	+690	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Town of Indian Trail
Maps available for inspection at the Indian Trail Planning Department, 109 Navejo Trail Road, Indian Trail, North Carolina.
Send comments to The Honorable Sandy Moore, Mayor of the Town of Indian Trail, 4900 Pioneer Lane, Indian Trail, North Carolina 28079.
Village of Marvin
Maps available for inspection at the Marvin Village Hall, 10004 New Town Road, Marvin, North Carolina.
Send comments to The Honorable Mike Cognac, Mayor of the Village of Marvin, P.O. Box 399, Waxhaw, North Carolina 28177.
Town of Mineral Springs
Maps available for inspection at the Town of Mineral Springs Volunteer Fire and Rescue Department, 5804 Waxhaw Highway, Mineral Springs, North Carolina.
Send comments to The Honorable Rick Becker, Mayor of the Town of Mineral Springs, 6603 Sadler Road, Waxhaw, North Carolina 28173.
City of Monroe
Maps available for inspection at the City of Monroe Planning Department, 300 West Crowell Street, Monroe, North Carolina.
Send comments to The Honorable Bobby Kilgore, Mayor of the City of Monroe, 300 West Crowell Street, Monroe, North Carolina 28112.
Town of Stallings
Maps available for inspection at the Stallings Town Hall, 315 Stallings Road, Stallings, North Carolina.
Send comments to The Honorable Lynda Paxton, Mayor of the Town of Stallings, 112 Eaglecrest Drive, Stallings, North Carolina 28104.
Unincorporated Areas of Union County
Maps available for inspection at the Union County Planning Department, 407 North Main Street, Room 149, Monroe, North Carolina.
Send comments to Mr. Mike Shalati, Union County Manager, 500 North Main Street, Room 925, Monroe, North Carolina 28112.
Town of Waxhaw
Maps available for inspection at the Waxhaw Town Hall, 317 North Broom Street, Waxhaw, North Carolina.
Send comments to The Honorable Gary Underwood, Mayor of the Town of Waxhaw, P.O. Box 6, Waxhaw, North Carolina 28173.
Town of Weddington
Maps available for inspection at the Weddington Town Hall, 1924 Weddington Road, Weddington, North Carolina.
Send comments to The Honorable Nancy Anderson, Mayor of the Town of Weddington, 1924 Weddington Road, Weddington, North Carolina 28104.
Village of Wesley Chapel
Maps available for inspection at the Village of Wesley Chapel Town Hall, 1101 A Airport Road, Monroe, North Carolina.
Send comments to The Honorable Tracy Clinton, Mayor of the Village of Wesley Chapel, 1505 Golden Rain, Wesley Chapel, North Carolina 28104.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 4, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–18328 Filed 10–31–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7470]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified
Town of Hulett, Wyoming					
WY	Town of Hulett	Belle Fourche River	Approximately 2.0 miles downstream of State Highway 24 (at cross section A).	None	+3,738
	.....	.....	Approximately 0.33 miles downstream of State Highway 24 (approximate cross section G).	None	+3,750
WY	Town of Hulett	Belle Fourche River	Approximately 0.31 miles upstream of State Highway 24 (approximate cross section J).	None	+3,753
	.....	.....	Approximately 0.43 miles upstream of State Highway 24 South (at cross section T).	None	+3,764

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Town of Hulett

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified

Maps are available for inspection at the Town of Hulett, 123 Hill Street, Hulett, Wyoming.
Send comments to the Honorable Shawn Tabke, Mayor, 123 Hill Street, Hulett, Wyoming 82720.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Houston County, Georgia and Incorporated Areas				
Howard Branch	At confluence with Sandy Run Creek	+308	+304	City of Warner.
	Approximately 690 feet upstream of confluence with Sandy Run Creek.	+308	+307	Robins, Houston County (Unincorporated Areas).
Redding Branch	At confluence with Sandy Run Creek	+270	+269	Houston County (Unincorporated Areas).
	Approximately 630 feet upstream of confluence with Mossy Creek.	+270	+269	
Sandy Run Creek	Approximately 1,700 feet upstream of Leisure Lake Dam.	+301	+302	Houston County (Unincorporated Areas).
	Approximately 11,950 feet upstream of confluence of Howard /Branch.	+309	+310	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Houston County (Unincorporated Areas)
Maps are available for inspection at Houston County Building Inspections Department, 200 Carl Vinson Parkway, Warner Robins, Georgia.

Send comments to Mr. Timothy E. Andrews, Building Official/Zoning Officer, Houston County Building Inspections Department, 200 Carl Vinson Parkway, Warner Robins, Georgia 31088.

City of Warner Robins

Maps are available for inspection at the City of Warner Robins Engineering Department, 700 Watson Boulevard, Warner Robins, Georgia.

Send comments to Mr. Walter Gray, III, City Engineer, 700 Watson Boulevard, Warner Robins, Georgia 31093.

Sangamon County Illinois and Incorporated Areas				
Lake Springfield	From Spaulding Dam south to Lindsey Bridge	None	+561	City of Springfield, Sangamon County (Unincorporated Areas).

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Springfield

Maps are available for inspection at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield IL 62701.

Send comments to The Honorable Tim Davlin, Mayor, City of Springfield, 300 Municipal Center East, Springfield, IL 62701.

Unincorporated Areas of Sangamon County

Maps are available for inspection at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield IL 62701.

Send comments to The Honorable Andy Van Meter, County Board Chairman, 200 South Ninth, Springfield, IL 62701.

Carroll County, Kentucky and Incorporated Areas				
Ohio River	Western County boundary with Trimble County	None	+465	Carroll County (Unincorporated Areas).
	Eastern County boundary with Gallatin County	None	+472	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ National American Vertical Datum.

ADDRESSES

Carroll County Unincorporated Areas

Maps are available for inspection at Carroll Emergency Operations Center, 829 Polk Street, Carrollton, Kentucky 41008.

Send comments to Harold Tomlinson, Jr., Carroll County Judge/Executive, Carroll County Fiscal Court, 440 Main Street, 2nd Floor, Courthouse, Carrollton, Kentucky 41008.

Franklin County, Kentucky and Incorporated Areas

Penitentiary Branch	Approximately 660 feet upstream of the confluence with the Kentucky River.	None	+493	Franklin County (Unincorporated Areas), City of Franklin.
	Approximately 2,820 feet upstream of U.S. Route 127	None	+493	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Franklin County Unincorporated Areas

Maps are available for inspection at 313 West Main Street, Frankfort, Kentucky 40601.

Send comments to Teresa Barton, Franklin County Judge/Executive, 313 West Main Street, County Courthouse, Frankfort, Kentucky 40601.

City of Franklin

Maps are available for inspection at 315 West Second Street, Frankfort, Kentucky 40602.

Send comments to William I. May, Jr., Mayor, City of Frankfort , 315 West Second Street, Frankfort, Kentucky 40602.

Hardin County, Kentucky and Incorporated Areas

Buffalo Creek	Approximately 750 feet upstream of Poplar Street	None	+708	City of Elizabethtown, Hardin County (Unincorporated Areas).
	Approximately 2,065 feet downstream of Bluegrass Road.	None	+812	
Hawkins Steel Tributary	Approximately 130 feet downstream of Steel Drive	None	+745	City of Elizabethtown, Hardin County (Unincorporated Areas).
	Approximately 615 feet upstream of Hodgenville Road	None	+763	
Park Lane Tributary	From the confluence with Freeman Creek	*697	+702	City of Elizabethtown, Hardin County (Unincorporated Areas).
	Approximately 60 feet downstream of Meadow Lane	*731	+737	
Pear Orchard Tributary	Approximately 545 feet downstream of Village Drive	*715	+716	City of Elizabethtown, Hardin County (Unincorporated Areas).
	Approximately 80 feet upstream of Pear Orchard Road.	*793	+789	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Hardin County (Unincorporated Areas)

Maps are available for inspection at 14 Public Square, 3rd Floor, Elizabethtown, Kentucky 42701.

Send comments to Harry Berry, County Judge/Executive, 100 Public Square 3rd Floor, Elizabethtown, Kentucky 42701.

City of Elizabethtown

Maps are available for inspection at 200 West Dixie Avenue, Elizabethtown, Kentucky 42701.

Send comments to David Willmoth, Mayor, 411 West Lincoln Trail Blvd., Elizabethtown, Kentucky 40160.

Santa Fe County, New Mexico and Incorporated Areas

Admin Arroyo	At the confluence of Admin Arroyo and Rio Tesuque	None	+6291	Santa Fe County (Unincorporated Areas).
	Approximately 4000 feet upstream of the intersection of Admin Arroyo and Highway 84.	None	+6509	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Arroyo Saiz	Confluence of Arroyo Saiz and Santa Fe River	+7034	+7033	City of Santa Fe, Santa Fe County (Unincorporated Areas).
	Approximately 4600 feet upstream from confluence with Santa Fe River.	+7180	+7171	
Arroyo Seco	Approximately 2500 feet upstream of the intersection of Highway 399 (106) and Jara Lane.	None	+5640	Santa Fe County (Unincorporated Areas).
	Intersection of Arroyo Seco and Highway 84/285	None	+5723	
Batchelor Draw	Intersection of Batchelor Draw and Abajo Drive	None	+6622	Santa Fe County (Unincorporated Areas).
	Intersection of Batchelor Draw and Quiet Valley Loop	None	+6693	
Pojoaque River	Approximately 2300 feet upstream from confluence with Rio Grande.	None	+5543	Santa Fe County (Unincorporated Areas).
	Confluence of the Pojoaque River and Pojoaque Creek.	None	+5774	
Rio Tesuque	At the confluence of Rio Tesuque and Pojoaque Creek.	None	+5783	Santa Fe County (Unincorporated Areas).
	Downstream face of intersection of Rio Tesuque and Highway 502.	None	+5811	
Santa Fe River	Approximately 2000 feet downstream from the intersection of Sante Fe River and Paseo Real.	None	+6261	City of Santa Fe, Santa Fe County (Unincorporated Areas).
	Approximately 300 feet upstream from intersection of Santa Fe River and Cerro Gordo Road.	None	+7290	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Santa Fe

Maps are available for inspection at 200 Lincoln Ave., P.O. Box 909, Santa Fe, NM 87504.

Send comments to The Honorable David Coss, Mayor, 200 Lincoln Ave., Santa Fe, NM 87501.

Unincorporated Areas of Santa Fe County

Maps are available for inspection at Santa Fe County Courthouse, 102 Grant Ave., Santa Fe, NM 87504.

Send comments to Mr. Gerald Gonzales, County Manager, P.O. Box 276, Santa Fe, NM 87504.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 5, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–18326 Filed 10–31–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7923]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management

requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Fairfield County, Ohio and Incorporated Areas				
Blacklick Creek	Just upstream of Tussing Road	*827	*826	Fairfield County (Unincorporated Areas).
	Approximately 190 feet Downstream of U.S. Interstate 70 Eastbound.	*829	*828	
Georges Creek	Approximately 350 feet downstream of Long Road	*793	*791	City of Pickerington.
	Approximately 150 feet upstream of Pickerington Ridge Drive.	None	*816	
Georges Creek Overflow	Approximately 2,690 feet downstream of the divergence from Georges Creek.	None	*800	City of Pickerington.
	At the divergence from Georges Creek	None	*807	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Fairfield County (Unincorporated Areas)
Maps are available for inspection at the Community Map Repository, Fairfield County Regional Planning Commission, 210 East Main Street, Lancaster, Ohio.
Send comments to Ms. Judy Shupe, President, Board of County Commissioners, 210 East Main Street, Lancaster, Ohio 43140.
City of Pickerington, Fairfield and Franklin Counties
Maps are available for inspection at the Community Map Repository, City of Pickerington, City Hall, 100 Lockville Road, Pickerington, Ohio.
Send comments to The Honorable David B. Shaver, Mayor, City of Pickerington, City Hall, 100 Lockville Road, Pickerington, Ohio 43147.

Franklin County, Ohio and Incorporated Areas				
Blacklick Creek	Approximately 3,930 feet upstream of Refugee Road	*802	*803	City of Columbia.
	Approximately 300 feet downstream of U.S. Interstate 70 Eastbound.	*829	*828	
Coble-Bowman Ditch	Approximately 500 feet downstream of Bixby Road/County Highway 229.	*741	*742	Franklin County (Unincorporated Areas).
	Approximately 4,500 feet upstream of Winchester Pike/County Highway 376.	None	*760	
Georges Creek	Approximately 90 feet upstream of Conrail	*748	*749	Franklin County (Unincorporated Areas)
	Approximately 2,200 feet upstream of Long Road/County Highway 220 (limit of flooding affecting Franklin County.	*801	*799	Village of Canal Winchester City of Columbus.
Georges Creek Overland Flow.	At the confluence with Georges Creek	*748	*749	Franklin County (Unincorporated Areas).
	Approximately 1,440 feet upstream of confluence with Georges Creek.	*748	*749	
Georges Creek Split Flow	At the convergence with Georges Creek	*779	*777	Franklin County (Unincorporated Areas).
	At the divergence from Georges Creek	*785	*784	City of Columbus.
Georges Creek Overflow	Approximately 150 feet upstream of the convergence with Blacklick Creek.	*795	*796	City of Columbus.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 3,560 feet upstream of the convergence with Blacklick Creek.	None	*800	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Village of Canal Winchester
Maps are available for inspection at The Canal Winchester Municipal Building, 36 South High Street, Canal Winchester, Ohio.
Send comments to The Honorable Jeffery J. Miller, Mayor, Village of Canal Winchester, 36 South High Street, Canal Winchester, Ohio 43110.
City of Columbus
Maps are available for inspection at The Building Services Division, 757 Carolyn Avenue, Columbus, Ohio.
Send comments to The Honorable Michael B. Coleman, Mayor, City of Columbus, 90 West Broad Street, Room 247, Columbus, Ohio 43215.
Franklin County (Unincorporated Areas)
Maps are available for inspection at Franklin County Economic Development and Planning Department, 280 East Broad Street, Room 202, Columbus, Ohio.
Send comments to Ms. Paula Brooks, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, Ohio 43215.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 5, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–18325 Filed 10–31–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 091106B]

RIN 0648–AU84

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action extends the comment period for 12 days on an October 5, 2006, proposed rule regarding the first 2007 fishing season for Atlantic sharks. Due to late dealer reports that may substantially change landings estimates of large and small coastal sharks during the first trimester of 2006 for the Gulf of Mexico, NMFS is extending the comment deadline on that proposed rule from November 1, 2006, until November 13, 2006.

DATES: The deadline for written comments on the October 5, 2006 (71 FR 58778) proposed rule has been extended from November 1 to no later than 5 p.m. on November 13, 2006.

ADDRESSES: Written comments on the proposed rule may be submitted to Michael Clark, Highly Migratory Species Management Division via:

- Email: *SF1.091106B@noaa.gov*.
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark on the outside of the envelope ''Comments on Proposed Rule for 2007 1st Trimester Season Lengths and Quotas.''
- Fax: 301–713–1917.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Include in the subject line the following identifier: ''I.D. 091106B''.

Copies of the associated draft Environmental Assessment (EA) and other relevant documents are available on the Highly Migratory Species Management Division's website at *www.nmfs.noaa.gov/sfa/hms* or by contacting Michael Clark (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Michael Clark or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS recently finalized a Consolidated Highly Migratory Species Fishery Management Plan (HMS FMP) that consolidated and replaced previous FMPs for Atlantic Billfish and Atlantic Tunas, Swordfish, and Sharks (October 2, 2006; 71 FR 58058). The HMS FMP is implemented by regulations at 50 CFR part 635.

On October 5, 2006 (71 FR 58778), NMFS published a proposed rule that requested comments on the draft EA and scheduled three public hearings throughout October 2006 to receive comments from fishery participants and other members of the public regarding the first 2007 fishing season for Atlantic sharks. Based on late dealer reports that may substantially change landings estimates of large and small coastal sharks in the Gulf of Mexico during the first trimester of 2006, NMFS is extending the comment period on this proposed rule. NMFS is still updating the landings estimates and will release them in a future **Federal Register** notice. At this time, NMFS does not expect the landings estimates or the proposed measures to change substantially in the South Atlantic or North Atlantic regions. In order to incorporate these updated landings and to provide adequate opportunities for public comment by constituents, NMFS is extending the public comment period on the proposed rule and draft EA to 5 p.m., November 13, 2006.

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

Dated: October 26, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–9008 Filed 10–27–06; 2:36 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AU80

[Docket No.061016268–6268–01; I.D. 100506E]

Fisheries of the Northeastern United States; Regulatory Amendment to Modify Recordkeeping and Reporting and Observer Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: Upon a request received by the New England Fishery Management Council (Council), NMFS proposes measures to modify the existing reporting and recordkeeping requirements for federally permitted seafood dealers/processors, and the observer requirements for participating hagfish vessels. The Council has determined that the modifications are necessary to gather additional information on the unique aspects of the hagfish fishery and its interaction with other federally managed fisheries. The information collected from fishery participants (dealers/processors and vessels) would help the Council to determine the need for, and potentially develop , a hagfish Fishery Management Plan (FMP).

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on December 1, 2006.

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

- E-mail: *HagfishIC@noaa.gov*. Include in the subject line the following identifier: ''Comments on Hagfish Information Collection Program.''
- Federal e-Rulemaking portal: *http://www.regulations.gov*.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Hagfish Information Collection Program.''
- Fax: (978) 281–9135.

Copies of the Regulatory Impact Review (RIR) and other supporting documents are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Northeast Regional Office at the above address and by email to *David_Rostker@omb.eop.gov*, or by fax to (202) 395 7285.

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Policy Analyst, (978) 281–9244.

SUPPLEMENTARY INFORMATION:

Background

A request for an information collection on hagfish under the provisions of section 402(a) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) was received by the Council on October 3, 2006. The request is based on the need to improve upon the quality and quantity of information available on the hagfish resource and its fishery operations to enable the Council to determine the potential need to develop future management measures for hagfish under an FMP. Without this information collection on hagfish, future management measures may not capture accurately the geographic and seasonal aspects of the fishery, which reflect overseas demand, and ensure that the resource may be sustained in future years. This collection of information (with changes, as appropriate) may be extended through the development and implementation of a Hagfish FMP. NMFS has made a preliminary determination that the Council's need for a collection of information program on hagfish is valid and justified, and is proposing to implement this request through the publication of this rule as required by section 402(a) of the Magnuson-Stevens Act. The Atlantic hagfish (Myxine glutinosa) fishery in New England (hagfish fishery) was developed in the early 1990s, with the first reported landings of around 1 million lb (454 mt) in 1993. Korean buyers quickly recognized that a fishery in the New England area could provide the high-quality hagfish skins used in making leather, as well as hagfish meat for human consumption. Reported hagfish landings quadrupled during the first 4 years of the fishery (1993–1996), exceeding the highest reported landings in other North American hagfish fisheries (including British Columbia, Oregon, Washington, California, and Nova Scotia) by 1994.

Today the hagfish fishery relies on revenues from the export of whole frozen hagfish product overseas, primarily to South Korea, for meat consumption. The hagfish fishery prosecuted off the coast of Gloucester, MA, has changed from an inshore fishery comprised of small vessels to an offshore fishery that consists of large vessels. According to reports from a workshop that was held to identify the challenges in collecting information on this fishery, the reason for this change in the way the fishery is being conducted is that the fishery has experienced localized depletion in nearshore waters, necessitating movement of fishing effort to areas not historically fished for hagfish.

Dealer/Processor Permitting and Reporting Requirements

To meet the Council's request for information, this proposed rule would require all seafood dealers who intend to purchase hagfish caught in or from the Exclusive Economic Zone (EEZ) to be permitted under § 648.6, and to submit, on a weekly basis, an electronic dealer report containing the required trip-level information for each purchase of hagfish made from fishing vessels as per the regulations at § 648.7. Hagfish dealers would be required to obtain an initial dealer permit upon implementation of the hagfish information collection requirements and to renew the permit annually thereafter. Reports furnished by permitted dealers would help determine the level of discards and discard mortality of hagfish culled at sea in response to rejection by the dealer in port. In addition, the collection of purchase reports would help to verify landings reported in Vessel Trip Reports (VTRs) for those vessels that have VTR requirements, and for those that do not, the dealers would be required to report vessel identifiers. It is unlikely that additional dealers would join the fishery because the fishery is driven by a narrowly focused export market (South Korea only), which is currently in equilibrium with supply. However, this permitting and reporting requirement would also enable the identification of any new vessel and/or dealer entrants into the fishery.

Dealer/Processor Reports

All federally permitted seafood dealers subject to this proposed rule would be required to complete all sections of the Annual Processed Products Report (§ 648.7). The report

could be used by the Council in developing an FMP, to estimate processing capacity, and to forecast and subsequently measure the potential economic impact of fishery management regulations on fish and shellfish supplies. Employment data collected through the report could also be used to analyze the seasonality of the fishery.

Observer Requirement

Under the hagfish information collection program, any vessel owner/operator that fishes for, catches, or lands hagfish, or intends to fish for, catch, or land hagfish in or from the EEZ would be required to carry an observer when requested by the Regional Administrator (RA) in accordance with § 648.11. Consistent with current observer regulations, hagfish vessel owners/operators would be required to call to arrange deployment of NMFS-approved observers on their vessels and to ensure adequate space for the observer aboard their vessels, once requested to carry an observer by the RA. Observer coverage, however, is funded by NMFS. (at no cost to them), once requested to carry an observer by the RA These requests would be made for the purpose of monitoring fishing activities, collecting biological data, and complying with the information collection program requirements. Observers are particularly important because of the high discard rates that have been reported to occur in the hagfish fishery at sea due to rejection of hagfish at the docks and because the proportion of the catch that is rejected by the dealer and later discarded at sea is not currently measured.

The hagfish observer coverage objectives will focus on the collection of basic fleet information and observations of fishing behavior, including, but not limited to, the distribution of fishing effort, number of hauls per trip, area/depth fished, trip length, soak time, discard rates of hagfish or other species, gear type/configuration, and gear deployment methodology. Understanding and quantifying the likelihood of marine mammal and sea turtle entanglements that may occur in hagfish gear in the areas fished is also an important observer program objective. There have been two large whale entanglements documented in the hagfish fishery: one in 1997 involving entanglement of a finback whale, and one in 2002 involving a humpback whale. In addition, the configuration of hagfish gear is similar enough to lobster gear that it is believed to pose the same or similar entanglement threat to large whales.

NMFS looked at two alternatives to the proposed action; i.e., the no action alternative and an alternative that requires that only dealer permits/reporting be implemented (Alternative 2). Alternative 2 would include the requirement for dealers to obtain Federal dealer permits to purchase hagfish and to report their hagfish purchases, but it would not include the requirement for observer coverage on board participating vessels. The hagfish fishery is included in the Category II listing for Mixed Pot/Trap Fisheries as per the 2005 List of Fisheries under the Marine Mammal Protection Act. This alternative was not selected because of the importance of observer coverage for the hagfish fishery. Observer coverage could help NMFS gather information on the high discard rates that have been reported in the hagfish fishery because of rejection of hagfish at the docks due to size or quality, and because the proportion of catch that is rejected by the dealer and later discarded at sea is not currently measured. Observer coverage would also be important because the hagfish fishery is included in the Category II listing for Mixed Pot/Trap Fisheries as per the 2006 List of Fisheries under the Marine Mammal Protection Act. Category II fisheries are those commercial fisheries determined by the Assistant Administrator to have occasional incidental mortality and serious injury of marine mammals. Therefore, understanding and quantifying the likelihood of marine mammal and sea turtle entanglements that may occur in hagfish gear in the areas fished is a necessary and integral part of the hagfish collection of information program.

Under the no action alternative, the Council would not have the basic fishery information they need to develop an FMP for this fishery. Increased knowledge of this fishery may also help managers and scientists understand the factors that have contributed to this species' localized depletion. Localized depletion if left to continue could lead to increased economic impacts, as well as overall depletion of the species. Therefore, the no action alternative would not achieve the objectives of the collection of information program and was not considered a viable alternative.

Classification

E.O. 12866

This proposed rule is not significant under Executive Order 12866. NMFS prepared an RIR that describes the impact this proposed rule, if adopted, would have on hagfish fishery participants.

Certification Under § 605 of the Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis and purpose of this proposed rule is described in the preamble to this document and is not repeated here. It is estimated that five vessels and two dealers, all of which are considered to be small businesses under the relevant Small Business Administration definition of a small entity (North American Industry Classification SystemAICS code 114111, finfish fishing, with annual receipts not in excess of $4.0 million), would be impacted by this proposed rule. Since all hagfish vessels are considered small entities, there would be no disproportionate economic impact between small and large vessels resulting from this proposed rulemaking. In addition, there would be no disproportionate economic impacts among vessels resulting from different vessel length, gear type, or location of homeport, because the proposed action applies to all participants in the hagfish fishery.

NMFS has determined that this proposed rule would not have a significant economic impact on a substantial number of small business entities because: (1) most dealers are already subject to the requirements of electronic reporting, so the additional electronic reporting requirements will not impose significant additional burden on them, and all dealers would likely find electronic reporting economically beneficial to them, as the information entered into the system can be used for multiple business purposes; (2) for those dealers not already subject to the requirements for electronic dealer reporting, such reporting represents a minute portionelectronic dealer reporting would only represent a minute portion of the firms' overall cost of doing business (or less than 1 percent of average annual revenues at an estimated average annual startup cost per dealer of $116, for the first year, and $652, per dealer, thereafter for yearly operating costs)due to the small size of this fishery compared to other Northeast fisheries (approximately 5 participating vessels); and (3) the direct and indirect costs to dealers/processors and vessels associated with completing the Annual Processed Products Rreport and

complying with the observer requirements are minimal (less than $50 annually), due to the fact that processor reports are mailed with postage-paid envelopes and observer coverage is funded at 100 percent by NMFS (vessel owners are responsible for calling to arrange for observers and to ensure adequate space for observers on their vessels). Based on the above analysis, this proposed rule is not expected to have a significant impact on a substantial number of vessels or dealers. As a result, an initial regulatory flexibility analysis was not required for this action and none was prepared.

Collection-of-Information Requirements under the Paperwork Reduction Act

This proposed rule contains four collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new and revised reporting requirements and the estimated time for a response are as follows: 2 minutes to request an observer; 4 minutes for a dealer purchase report; 15 minutes and 5 minutes for initial dealer permit application/renewal application, respectively; and 30 minutes for the Annual Processed Products Report.

Public comment is sought regarding: 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; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 26, 2006.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, a new definition for Atlantic hagfish is added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic hagfish means *Myxine glutinosa.*

* * * * *

3. In § 648.6, paragraph (a)(1) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * * (1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; Atlantic hagfish dealers and/or processors, and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species.

* * * * *

4. In § 648.7, paragraph (a)(3)(iv) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(3) * * *

(iv) Atlantic hagfish processors must complete and submit all sections of the Annual Processed Products Report.

* * * * *

5. In § 648.11, paragraph (a) is revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-approved sea sampler/observer. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a NMFS-approved sea sampler/observer when requested by the RA in accordance with the requirements of this section.

* * * * *

[FR Doc. E6–18391 Filed 10–31–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 061024277–6277–01; I.D. 101206C]

RIN 0648–AU94

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Advance Notice of Proposed Rulemaking to Establish a Control Date

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS and the Pacific Fishery Management Council (Council) are beginning to develop a groundfish fishery management plan (FMP) amendment and management measures to reduce harvest capacity in the open access portion of the Pacific Coast groundfish fishery in Federal waters off Washington, Oregon, and California. This document announces a control date for the open access portion of September 13, 2006, and is intended to discourage new entrants into this fishery and increased fishing effort based on economic speculation while the Council determines whether and how access should be controlled. The announcement is intended to promote awareness of potential eligibility criteria for future access to the open access portion of the Pacific Coast groundfish fishery. Vessels entering the fisheries after September 13, 2006, may be subject to restrictions different from those that apply to vessels in the fishery prior to September 13, 2006. If catch history is used as a basis for future participation or allocation, it is likely

that participation in the fishery after September 13, 2006, would not count toward future allocations or participation in a limited access scheme. Because potential eligibility criteria for future management measures may be based on historical participation, fishery participants may need to preserve records that substantiate and verify their participation in the groundfish fishery in Federal waters.

ADDRESSES: You may submit comments, on issues and alternatives, identified by 111505A by any of the following methods:

- E-mail: *pfmc.comments@noaa.gov*. Include ''Open Access Limitation'' in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*.
- Fax: 503–820–2299.
- Mail: Dr. Donald McIsaac, Pacific Fishery Management Council, 7700 NE Ambassador Pl., Suite 101, Portland, OR, 97220.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Pacific Fishery Management Council, phone: 503–820–2280, fax: 503–820–2299 and email: *john.devore@noaa.gov*; or Ms. Yvonne deReynier NMFS, Northwest Region, phone: 206–526–6129, fax: 206–526–6426 and email: *yvonne.dereynier@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *www.gpoaccess.gov/fr/index/html*.

Background

The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982 (47 FR 43964, October 5, 1982), and has been amended 19 times. Implementing regulations for the FMP and its amendments are codified at 50 CFR part 660. On November 16, 1992, NMFS published final regulations implementing Amendment 6 to the FMP. Amendment 6 and its implementing regulations established a license limitation program and divided the Pacific Coast commercial groundfish fishery into limited entry and open access segments. The limited entry fishery is comprised of permitted vessels using trawl, longline and/or trap (pot) gear. The open access fishery is comprised of unpermitted vessels that use all other gear, as well as vessels that do not have limited entry permits endorsed for use with longline or trap gear but make small landings with longline or trap gear.

NMFS had previously made an announcement that the Council is considering additional management measures to further limit harvest capacity or to allocate between or within the limited entry commercial and the recreational groundfish fisheries. In order to discourage fishers from intensifying their fishing efforts for the purpose of amassing catch history that they speculate may aid them with any allocation or additional limited access program developed by the Council, the Council announced on April 9, 1998, that any program would not include consideration of catch landed after that date. NMFS announced that the Council was planning to consider catch history through the 1997 season (63 FR 53637, October 6, 1998). At its April 1999 meeting, the Council reviewed a proposal to create a limited entry program to limit new entrants into the open access fishery. At its June 1999 meeting, the Council further examined the proposal to create a limited entry program to limit new entrants into the open access fishery.

Members of the Council expressed concerns that restricting new entrants into the fishery would not adequately address harvest capacity concerns. Even though the need to limit new entrants into the open access fleet was recognized, this measure did not go forward for further development. Limited access and participation in the open access fisheries were further discussed at the November 1999 Council meeting, resulting in establishment of a November 5, 1999, control date notifying the public that the Council was considering the need to impose additional management measures to restrain harvest capacity in the open access fishery. However, other Council initiatives, such as development of rebuilding plans for overfished groundfish species, caused a delay in limiting access in the Pacific Coast groundfish open access fishery.

At its September 2006 meeting, the Council revisited this issue and decided to proceed with an FMP amendment to limit access and participation in the open access fishery. The Council also decided the established November 5, 1999, control date (65 FR 6577, February 10, 2000) was no longer useful for deciding eligibility requirements for a new Federal limited entry permit for the open access fishery. The Council noted the open access fishery had changed dramatically since November 1999 and new participants are not the same as those who have traditionally relied on the open access fishery. Therefore, at their September 2006 meeting in Foster City, California, the Council recommended a new control date of September 13, 2006, be established to give the public advance notice of the intent to limit entry and participation in the open access groundfish fishery.

If catch history is used as a basis for participation or allocation, it is likely that participation in the fishery after September 13, 2006, would not count toward future allocations in a limited access scheme. Fishermen are not guaranteed future participation in the groundfish fishery, regardless of their date of entry or level of participation in the fishery. This action does not commit the Council to develop any particular management regime or to use any specific criteria for determining entry to the fishery. This action also does not commit the Council to developing a management regime that uses fishing history in 2006 as criteria for determining future entry to the fishery. The Council may choose a different control date, or may choose a management program that does not make use of such a date. Implementation of any management measures for the fishery will require amendment of the regulations implementing the FMP, and will also require amending the FMP. Any action will require Council development of amendatory and regulatory proposals with public input and a supporting analysis, NMFS approval, and publication of implementing regulations in the **Federal Register**. The Council also announced their intent to further develop a timeline and the next steps in pursuing this FMP amendment next year. Additional information on the time and location for future meetings addressing capacity reduction and limited access in the open access fishery will be provided when these meetings are announced in the **Federal Register**. This information will also be posted on the Council website (*www.pcouncil.org*) (see **ADDRESSES**).

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

Dated: October 26, 2006.

Samuel D. Rauch III,

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

[FR Doc. E6–18384 Filed 10–31–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060929252–6252–01; I.D. 080106C]

RIN 0648–AS84

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Development Quota Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to modify the Individual Fishing Quota (IFQ) Program for the fixed-gear commercial Pacific halibut fishery and sablefish fishery by revising regulations specific to those fisheries. This action is intended to improve the effectiveness of the Halibut and Sablefish IFQ Program (IFQ Program) and is necessary to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to the IFQ fisheries.

DATES: Comments must be received no later than December 18, 2006.

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

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Fax: 907–586–7557.
- E-mail: *0648–AS84@noaa.gov*. Include in the subject line of the e-mail the following document identifier: IFQ Halibut Sablefish RIN 0648–AS84. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of the Categorical Exclusion (CE), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from the North Pacific Fishery Management Council (Council) at 605 West 4th, Suite 306, Anchorage, Alaska 99501–2252, 907–271–2809, or the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Walsh, and on the Alaska Region, NMFS, website at *http://www.noaa.fakr.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Alaska Region, and by email to *David_Rostker@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228 or *jay.ginter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The IPHC and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Halibut Act. The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). The IPHC publishes regulations as annual management measures pursuant to 50 CFR 300.62. Additional management regulations not in conflict with regulations adopted by the IPHC (such as the IFQ Program) may be recommended by the Council and implemented by the Secretary through NMFS to allocate harvesting privileges among U.S. fishermen.

The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands (BSAI) in the exclusive economic zone (EEZ) are managed by NMFS under fishery management plans (FMPs). The FMPs were prepared by the Council under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and are implemented by regulations at 50 CFR part 679. NMFS manages fishing for sablefish (*Anoplopoma fimbria*) through regulations established under the authority of the Magnuson-Stevens Act. NMFS manages sablefish as a groundfish species under the FMP for Groundfish of the Gulf of Alaska. Sablefish also remain subject to the same IFQ Program that allocates halibut harvesting privileges among U.S. fishermen.

The Council recommended a limited access system for the fixed gear halibut and sablefish fisheries off Alaska, the IFQ Program, in 1992. NMFS approved the IFQ Program in January 1993, and initially implemented the program on November 9, 1993 (58 FR 59375). Fishing under the IFQ Program began on March 15, 1995. The Council and NMFS developed the IFQ Program to resolve the conservation and management problems commonly associated with open access fisheries. The preamble to the proposed rule published December 3, 1992 (57 FR 57130) describes the background issues leading to the Council's initial action recommending the adoption of the IFQ Program.

The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding quota share (QS) in specific management areas. Federal regulations at 50 CFR part 679 established under the authority of the Magnuson-Stevens Act implement the IFQ Program for the halibut and sablefish fishery. Additional Federal regulations at 50 CFR part 300, subpart E, and 50 CFR part 679, established under the authority of the Halibut Act, also govern the halibut fishery.

The Council and NMFS designed the IFQ Program to provide economic stability to the commercial halibut and sablefish fisheries. The IFQ management approach was chosen to provide fishermen with the ability to decide how much and what type of investment they wished to make to harvest halibut or sablefish. Quota shares equate to individual harvesting privileges given effect on an annual basis through the issuance of IFQ permits. An annual IFQ permit authorizes the permit holder to harvest a specified amount of an IFQ species in a regulatory area. The specific amount (in pounds) is determined by the number of QS units held for that species, the total number of QS units issued for that species in a specific regulatory area, and the total amount of the species allocated for IFQ fisheries in a particular year. If the abundance of halibut or sablefish decreases over time, the total allowable catch (TAC) for that species will decrease and, subsequently, the number of pounds on a person's annual IFQ permit also will decrease. By ensuring access to a certain amount of the TAC at the beginning of the season and by extending the season over a longer period, QS holders may determine where and when to fish, how much gear to deploy, and how much overall investment to make in harvesting.

The Council and NMFS also intended the IFQ Program to improve the long-term productivity of the sablefish and halibut fisheries by further promoting the conservation and management objectives of the Magnuson-Stevens Act and the Halibut Act while retaining the character and distribution of the fishing

fleets as much as possible. The IFQ Program includes several provisions, such as ownership caps and vessel use caps, to protect small producers, part-time participants, and entry-level participants that could be adversely affected by excessive consolidation. The IFQ Program also includes other restrictions intended to prevent the fishery from being dominated by large boats or by any particular vessel class.

NMFS initially assigned QS to vessel categories based on vessel size and kind of fishery and issued QS specifically by vessel class and IFQ regulatory area. The Council and NMFS also designed a ''block program'' to guard against excessive consolidation of QS and consequent social impacts on the fishery and dependent communities. The block program reduced the amount of QS consolidation permissible under the IFQ Program, and slowed consolidation by restricting QS transfers. The Council later relaxed restrictions on using QS across vessel categories, providing a ''fish down'' provision allowing QS derived from larger catcher vessels to be fished on smaller vessels, with an exception for Southeast Alaska. Another design feature of the IFQ Program requires IFQ holders to be on board the vessel to maintain a predominantly ''owner-operated'' fishery with a narrow exemption for initial recipients of QS. The Council created each of these design features of the IFQ Program to support the conservation and management objectives of the Magnuson-Stevens Act and the Halibut Act while retaining the character and distribution of the fishing fleets as much as possible. However, the characteristics and needs of the fishermen changed with the evolution of the halibut and sablefish IFQ fisheries.

This proposed rule would amend the IFQ Program regulations to implement seven separate actions recommended by the Council in December 2004. Those actions affecting the halibut fishery are proposed under the authority of the Halibut Act. Those actions affecting the sablefish fishery are proposed under the authority of the Magnuson-Stevens Act. To implement Action 7 (described below) for the sablefish fishery, proposed Amendment 67 to the Fishery Management Plan for Groundfish of the GOA must also be approved by the Secretary.

The proposed actions would (1) allow IFQ holders to transfer their IFQ, avoiding owner-on-board requirements, in the event of a medical condition which precludes their participation; (2) narrow restrictions for using hired masters to fish IFQ; (3) add vessel clearance requirements to the sablefish IFQ fisheries in the Bering Sea and Aleutian Islands regulatory areas; (4) change the product recovery rate (PRR) for bled sablefish; (5) amend the halibut QS block program; (6) allow halibut IFQ derived from category D QS to be fished on category C vessels in Areas 3B and 4C; and (7) allow category B QS to be used on vessels of any length for halibut and sablefish in all regulatory areas. A separate **Federal Register** notice of availability requests comment on the proposed Amendment 67 (Action 7) as it relates to the sablefish fishery under the Magnuson-Stevens Act. NMFS also provides two administrative changes in this proposed rule. The first administrative change clarifies the existing regulation related to the use of sablefish IFQ with respect to the state waters sablefish fishery. The second administrative change converts the nomenclature and application of the ''IFQ Card'' to an ''IFQ Hired Master Permit.'' Each of the proposed actions is discussed separately below.

Medical Transfers

Current regulations require catcher vessel QS holders to be aboard the vessel during harvest and offloading of IFQ species, except under limited circumstances where initial recipients of QS qualify to use hired masters or when a QS holder experiences an emergency while at sea. Therefore, QS holders who experience a short-term medical condition that prevents them from fishing their IFQs cannot temporarily transfer those IFQs. Despite a prohibitive medical condition, QS holders generally must be aboard the vessel when fishing their QS. In the event of an injury or illness, fishermen who may not hire a master must either divest their QS or forego the economic benefits of their QS until they recover.

The Council originally prohibited emergency medical transfers to support the IFQ policy of maintaining an owner-operated fleet with restrictive leasing provisions. Since 1995, NMFS and the Council received several anecdotal accounts of injured or sick IFQ holders being transported on and off of fishing vessels to meet the owner-on-board requirements. Because of loan repayment obligations and financial dependence on the IFQ Program, QS holders reportedly also engaged in private arrangements to sell and repurchase their QS, which circumvents Council intent and places the seller and buyer at increased financial risk.

NMFS previously declined to implement a proposed medical transfer because the agency did not possess the necessary expertise to make medical assessments, which previous Council proposals required. NMFS determined that any medical transfer program must remove the responsibility for making a medical assessment from NMFS, and that a temporary medical transfer must be based on a physician's recommendation. This proposed emergency medical transfer system would grant individuals the ability to transfer their quota to an eligible individual for a short time to allow principal QS holders to recuperate from the medical condition precluding their participation.

In December 2004, the Council recommended a program that would allow medical transfers without jeopardizing its policy of maintaining an owner-operated fleet. The Council's recommended program would establish requirements for eligibility, application, transfer, restrictions, and appeals. Specifically, the program would allow the temporary transfer of an annual IFQ permit or permits by an ill or injured QS holder to a recipient eligible under 50 CFR 679.41(d). The eligible IFQ transferee would presumably compensate the QS holder for the transfer of his IFQ, thereby allowing the injured QS holder to recoup a portion of his economic losses. Therefore, medical transfers would allow QS holders to benefit from the fishery through transfer of their IFQ under limited circumstances without substantially undermining the original owner-on-board IFQ Program design.

The Council recommended several provisions to ensure that the medical transfer would be limited to legitimate medical conditions. First, the Council recommended including a declaration or affidavit signed by a ''certified medical professional'' as part of the application form that will be provided by NMFS. The signed declaration would remove any discretionary responsibility from NMFS to determine whether an injury or illness is substantial enough to preclude fishing and would be presumed dispositive if signed by the submitting certified medical professional. Second, the Council recommended clearly defining which medical professionals would be allowed to sign the medical declaration. Thus, NMFS defined certified medical professionals as physicians that fall into three categories based on the Council's recommendation. NMFS proposed definitions for ''licensed medical doctor,'' ''advanced nurse practitioner,'' and ''primary community health aide'' based on definitions implemented by the State of Alaska. Certified medical professional definitions would include practitioners in states other than Alaska. NMFS proposes these definitions

because they are well-established and longstanding definitions of the proposed terms within the State system and the medical profession. Lastly, as part of the application, the licensed medical doctor, advanced nurse practitioner, or primary community health aide would be required to document the medical condition and certify that the condition would prevent the applicant from participating in the halibut or sablefish IFQ fisheries.

The Council also recommended several additional restrictions to the medical transfer provision to prevent potential abuse. Medical transfers would be valid for only the calendar year in which the permit is issued. For instance, an individual who receives a medical transfer for a medical condition near the end of the season in November 2006 would have to apply for and receive a new medical transfer prior to the new IFQ season in 2007 if his or her medical condition persists. Additionally, subsequent applications for medical transfers based on the same medical condition would be denied unless a certified medical professional attests to a reasonable likelihood of recovery. Furthermore, NMFS would not approve a medical transfer if the applicant has received a medical transfer in any 2 of the previous 5 years for the same medical condition. Medical transfer provisions and their restrictions would be found at a revised § 679.42(d) along with the emergency waiver provision.

The application process for a medical transfer would be similar to existing transfer applications under the IFQ Program. The application would consist of a form provided by NMFS that also describes the requirements necessary to receive an approved medical transfer. If NMFS denies an application for a medical transfer, the applicant may appeal the denial according to existing appeal procedures found at § 679.43.

Owner-on-board Exception

Requiring the owner of catcher vessel QS to be on board the vessel while fishing is a key element of maintaining the owner/operator nature of the halibut and sablefish fishing fleet. Hence, this requirement is intended to ensure that catcher vessel QS would continue to be held by professional fishermen instead of by absentee owners or investment speculators. An exception to the owner-on-board requirement is provided, however, for individuals who received initial allocations of QS in vessel category B, C, and D (catcher vessel QS). Initial recipients of catcher vessel QS may be absent from a vessel conducting IFQ halibut or sablefish fishing, provided the QS holder can demonstrate ownership of the vessel which harvests the IFQ halibut or sablefish and representation on the vessel by a hired master. This exception allows fishermen who historically operated their fishing businesses using hired masters before the implementation of the IFQ Program to retain the flexibility of using hired masters under the IFQ Program. By limiting this exception to initial recipients, the owner-on-board exception will expire with the eventual transfer of all QS from initial recipients.

The Council and NMFS did not initially define ''ownership'' and received anecdotal accounts of QS holders retaining nominal ownership in a vessel, in some cases as little as one percent, to meet the ownership requirement to fish their IFQ under the owner-on-board exception. In 1997, the Council and NMFS recognized that nominal ownership in a vessel confounded the intent of the IFQ Program to maintain an owner-operated fleet and recommended that changes to the owner-on-board requirement were necessary.

In 1999, NMFS revised the owner-on-board exception regulations (64 FR 24960, May 10, 1999) to require QS holders to demonstrate vessel ownership of at least 20 percent before issuing associated IFQ to a person other than the named QS holder. The revised owner-on-board exception allows initial recipients of catcher vessel QS to employ a hired master to fish his or her IFQ provided the QS holder demonstrates ownership of at least 20 percent of the vessel on which the hired master intends to use the IFQ. However, current regulations do not require specific documentation of ownership. In December 2004, the Council recommended requiring explicit ownership documentation to meet the exception to the owner-on-board requirement.

This action proposes to require catcher vessel QS holders who wish to use hired masters to harvest IFQ halibut or sablefish on a Federally-licensed vessel to file a U.S. Abstract of Title issued by the U.S. Coast Guard with NMFS. Catcher vessel QS holders who wish to use hired masters to harvest IFQ halibut or sablefish on a State-licensed vessel would be required to file the State of Alaska vessel registration with NMFS. NMFS would require the U.S. Abstract of Title or State of Alaska vessel registration in addition to any other information indicating ownership. The required documentation must establish that the QS holder maintained 20 percent ownership of the vessel for 12 months prior to application for IFQ to be used by a hired master. For instance, a catcher vessel QS holder who is eligible to hire a master under the owner-on-board exception would have to wait 12 months after purchasing any vessel, regardless of whether the vessel is newly built or used, before he or she may use a hired master to fish his or her IFQ. The 12-month restriction would eliminate the opportunity for QS holders to form short-term agreements which transfer vessel ownership for the duration of a fishing trip or trips, thus circumventing Council intent for maintaining an owner-operated fleet.

This action also proposes to allow vessel owners who qualify for the owner-on-board exemption to continue to fish under the exemption if they experience an actual or constructive loss of their vessel. NMFS would adapt similar vessel loss language from the American Fisheries Act (Public Law 105–277, Title II of Division C) to address the vessel loss provision for the IFQ Program. This exemption would allow the use of hired masters by qualified QS owners who lose their vessels due to fire or sinking until the vessel is replaced exclusive of the 12-month ownership requirement. However, this action proposes to allow the use of the vessel loss exemption only if it was a legitimate actual or constructive vessel loss and not when the loss results from fraud or malfeasance. The revisions to the owner-on-board provisions would be located at 50 CFR 679.42(i).

Sablefish Vessel Clearance Requirements

To address possible misreporting in the BSAI by harvesters fishing in the western GOA, the Council recommended implementing vessel clearance requirements including check-in/check-out procedures or vessel monitoring system (VMS) for all vessels that participate in the BSAI sablefish fisheries. The Council believes fishing location misreporting is occurring due to increasing killer whale depredation in the BSAI, increased costs of traveling to the BSAI, and relatively low catch rates in the BSAI. Current regulations require self-reporting of fishing location in the BSAI sablefish fisheries. Although no direct evidence indicates fishing location misreporting, misreporting could affect sablefish biomass estimates and, as a result, impact the allowable biological catch (ABC) of sablefish or associated quotas.

The IFQ sablefish harvest fell short of the sablefish TAC in the BSAI in several recent years. The 2003 sablefish landings were the lowest relative to the TAC since the IFQ Program began.

Killer whale depredation may be one reason for reduced sablefish harvests in the BSAI. In 1996, the IFQ Program was revised to allow the use of longline pots in the Bering Sea for sablefish after BSAI sablefish hook-and-line fishermen faced increasing predation of hooked sablefish by killer whales (61 FR 49076, September 18, 1996). NMFS does not recognize killer whale depredation as a significant biological factor affecting sablefish stocks. However, industry anecdotal accounts suggest that BSAI sablefish QS holders began fishing in the Western GOA in an effort to avoid killer whales, which could result in fishing location misreporting of GOA sablefish harvests as BSAI sablefish harvests. Industry also cites higher prices for sablefish in the GOA than in the BSAI as another reason for potential misreporting of BSAI sablefish as taken in the GOA.

NMFS determined that fishing location misreporting would not affect biomass estimates or the ABC for sablefish in the Alaska EEZ as long as fishermen report the total amount of catch correctly. However, misreporting, if occurring, might affect area apportionments of ABCs because NMFS bases area allocation of ABC on survey and fishery catch rates by area. For example, if higher catch rates occur in the Western GOA than the BSAI, misreporting GOA sablefish as BSAI sablefish would inflate nominal catch rates for the BSAI and affect the ABC estimates in the BSAI. Consequently, misreporting of Western GOA catches as BSAI catches may increase the area apportionment for the BSAI and decrease the apportionment for the GOA, thus decreasing the TAC available to GOA sablefish IFQ holders.

This proposed action to implement vessel clearance requirements for the BSAI sablefish IFQ fisheries would correspond to existing halibut IFQ fishery vessel clearance requirements in the analogous halibut IFQ areas. The IPHC has successfully used vessel clearance through a visual clearance procedure in the halibut fisheries since the 1960s. More recently, the IPHC allowed a VMS option as a vessel clearance mechanism in the BSAI halibut IFQ fisheries. Current information indicates that 85 unique BSAI sablefish IFQ holders also hold Area 4 halibut IFQ and are already subject to IPHC vessel clearance requirements including a VMS option. Additionally, 26 sablefish IFQ participants already possess a VMS endorsement on their Federal Fisheries Permit (FFP) to comply with Steller sea lion avoidance measures in the groundfish fisheries. This leaves approximately 100 BSAI sablefish QS holders who do not currently possess a VMS endorsement for other fisheries. Therefore, a majority of the sablefish IFQ vessels subject to this action currently participate in vessel clearance requirements under other programs and would not be subject to additional burden under this action.

This action proposes vessel clearance requirements in the BSAI sablefish fisheries to reduce the potential for misreporting of sablefish harvests from the Western GOA as BSAI landings. The Council recommended NMFS adopt an option for fishermen to use either visual clearance (a paper check-in/check-out procedure) or VMS when participating in the BSAI IFQ sablefish fisheries. However, VMS is the most effective mechanism to verify vessel location and to effect vessel clearance. Also, the NMFS Office for Law Enforcement (OLE) maintains it does not possess the infrastructure to support the visual clearance proposal.

NMFS does not support a visual clearance for several reasons. First, OLE may not delegate enforcement authority to a private entity. As a result, OLE may not allow processors in the BSAI to conduct vessel clearances similar to the IPHC's procedures for visual clearance. Therefore, vessel clearance would require an authorized officer, such as an OLE or Coast Guard officer. Second, the Council proposed allowing clearances from Adak, Atka, Akutan, St. Paul, St. George, and Dutch Harbor. Neither OLE nor the Coast Guard maintain offices or regularly station officers in these ports, except for Dutch Harbor. Even in Dutch Harbor, however, OLE cannot ensure continuous staffing for vessel clearance purposes. Third, OLE lacks personnel to monitor and review faxed vessel clearance reports. Without the appropriate authorization, a faxed vessel clearance has no enforcement value. Therefore, without authorized officers stationed in the proposed clearance ports and available personnel to review the faxed reports, the proposed visual vessel clearance program loses all enforcement value and becomes a regulatory burden with no corresponding enforcement benefit. Consequently, OLE maintains that VMS represents the only viable option.

VMS consists of a NMFS-approved transmitter on a vessel that automatically transmits a vessel's position to a NMFS-approved communications service provider who relays the information to NMFS. A vessel owner who wishes to use the BSAI sablefish VMS exemption would obtain a NMFS-approved VMS transmitter and install it onboard his or her vessel in accordance with NMFS instructions. VMS would allow BSAI sablefish QS holders to use the existing VMS procedures and equipment described in 50 CFR 679.28. The proposed VMS vessel clearance requirement for BSAI sablefish vessels would be located at 50 CFR 679.42(l).

The Council proposed the visual clearance options, in part, to accommodate small vessels that would find the VMS requirement economically infeasible. Although OLE recommends requiring VMS for all vessels in the BSAI IFQ sablefish fisheries, NMFS recognizes that VMS on small vessels may be economically prohibitive because VMS operation and total costs are disproportionate to small vessel income. The OLE believes that a minimum vessel size requirement for VMS would be an acceptable alternative for the visual clearance or VMS requirements.

NMFS specifically seeks public comment on the VMS requirements of this proposed rule. NMFS has analyzed alternatives for VMS requirements in the GOA that would further reduce costs for small vessels (less than 32 ft (9.8 m) length overall (LOA)). Public comment could help NMFS decide whether less comprehensive BSAI VMS coverage would meet goals and reduce small vessel burden.

Bled Sablefish PRR

The Council recommended changing the PRR for bled sablefish from 0.98 to 1.00. A PRR represents the ratio of the weight of product divided by the round weight expressed as a percentage. The Council proposed that the current PRR for bled sablefish is unreasonable, provides no conservation benefit, provides a disincentive to improved quality through bleeding, and represents an unfair reduction in sablefish IFQs because the current PRR is inaccurate. However, accurate reporting remains the main objective in applying PRRs to landed fish and the PRR of 0.98 for bled sablefish appears accurate as provided by the scientific record. Moreover, an accurate PRR allows for more accurate accounting of biomass removals, thus ensuring the harvest of sablefish remains below the total allowable catch consistent with the conservation goals of NMFS.

NMFS established the regulation creating a PRR for bled sablefish in the mid–1980s. However, some processors might have incorrectly reported bled sablefish as ''round'' or whole fish by not applying the bled sablefish PRR until recently. When those buyers began appropriately applying the required PRR to bled sablefish after contact with OLE

officers, the sablefish QS holders affected by the correction lost revenues associated with the 2 percent of the IFQs deducted from their landed weights.

NMFS based the bled sablefish PRR on research developed by the Observer Program in the 1980s. In 2002–2003, NMFS scientists conducted a cooperative study with sablefish fishermen to determine the expected blood loss for bled sablefish and round sablefish. NMFS scientists concluded that the cooperative study results were consistent with the original Observer Program research and the current product recovery rate of 0.98 for bled sablefish remained the correct one. Thus, NMFS notes serious concerns that the proposal may not be based on sufficient scientific evidence. However, NMFS has determined that the proposal is sufficient for publication as a proposed rule for public comment. NMFS specifically requests public comment on the appropriate product recovery rate for this product type.

Halibut Block Program Amendments

The IFQ Program includes an element to prevent excessive consolidation in the halibut and sablefish fisheries and maintain the diversity of the IFQ longline fleet. All initially issued QS that resulted in less than 20,000 lb (9.1 mt) of IFQ was ''blocked'' or issued as an inseparable unit. Under current regulations, no person may own more than two QS blocks per species in any regulatory area, or one QS block if the person also holds unblocked QS for that area. For more information on the specifics of the block program see the proposed rule for the original IFQ Program (57 FR 57130, December 3, 1992).

The regulations also include a ''sweep up'' provision designed to minimize creation of small blocks that are often economically disadvantageous to harvest. The sweep up provision allows small individual QS blocks to be permanently consolidated as long as the resulting block does not exceed a set limit. NMFS originally set the maximum sweep up level at 1,000 lb (0.45 mt) for halibut and 3,000 lb (1.36 mt) for sablefish, based on 1994 TAC limits for those species. After the first IFQ season, fishermen reported that the established sweep-up levels were insufficient. Subsequently, NMFS increased maximum sweep-up levels to 3,000 lb (1.36 mt) for halibut and 5,000 lb (2.27 mt) for sablefish based on the 1996 TACs (61 FR 67962, December 26, 1996).

Recently, halibut QS holders indicated that the existing block and sweep-up restrictions unreasonably restrain their efficiencies and flexibility in fishing operations. Large quota increases, consolidation, and changing use patterns within the fleet suggest that the block and sweep-up provisions should be changed. This action proposes to (1) increase halibut block limits to 3 blocks unless unblocked QS is held, in which case the limit would remain one block; (2) divide QS blocks yielding more than 20,000 lb (9.1 mt) into one block of 20,000 lb (9.1 mt), based on the 2004 TACs, and unblock the remainder in regulatory Areas 3B and 4A; and (3) increase sweep-up levels in regulatory Areas 2C and 3A to the 5,000 lb (2.27 mt) equivalent in 1996 QS units. The Council recommended these actions to improve the halibut block program while maintaining the diversity of the IFQ longline fleet and preventing excessive consolidation. Further description of the proposed changes follows.

Block Limit Increase

The proposed change would increase the limit on the number of blocks of halibut QS that may be held by a person to 3 blocks unless unblocked QS is held. Increasing the halibut block limit to 3 blocks would increase flexibility of QS holders in arranging transfers of QS. Existing vessel and ownership caps would continue to limit consolidation of QS.

Overall, this proposed action would provide an opportunity for increased economic efficiency among blocked halibut QS holders by relaxing the current restrictions. The relaxed restrictions would also enhance operational flexibility among QS holders because individual QS holders could hold more blocks available for transfer, making transfers logistically more simple among owners. The value of blocked QS holdings would likely increase. However, unblocked QS values may decrease as the price differential between the two QS classes narrows. Although this action may lead to increased consolidation, small holdings would remain blocked. Therefore, while entry-level opportunities in the fishery may become less available because of this action, they are not necessarily precluded.

Block Exception for Areas 3B and 4A

This proposal would divide QS blocks in regulatory Areas 3B and 4A that yield more than 20,000 lb (9.1 mt) into one block and unblock the remainder based on the 2004 TACs. This change potentially may benefit QS holders in western areas by allowing them to acquire and hold more unblocked QS than currently allowed. Likewise, increased availability of unblocked QS would benefit buyers if it is accompanied by a decrease in the unit price of unblocked QS. However, the lack of availability of small lots of QS over time could adversely affect persons seeking entry-level opportunities in the fishery.

This proposed action would permanently adjust the proportion of blocked versus unblocked QS in Areas 3B and 4A and responds to the increase in halibut TACs since the initiation of the IFQ Program, which has reportedly resulted in operational difficulties due to large block sizes. Large block sizes make transfers prohibitively expensive because the price of IFQ associated with a QS block increases along with the TAC. Overall, this proposal would increase economic efficiency in Areas 3B and 4A by expanding the holdings of unblocked halibut QS, which may be transferred more inexpensively in smaller increments than a block. Thus, it would provide individual fishermen with flexibility to increase revenues and decrease costs by reversing the proportion of unblocked versus blocked QS available in these areas. Existing holders of unblocked QS may experience some decrease in the value of the holdings as more unblocked QS is generated.

This proposed action could result in a QS holder possessing unblocked QS in an amount much larger than their 20,000 lb (9.1 mt) QS block. For instance, apportionment of 50,000 lb (22.68 mt) of QS under this proposed action would result in one 20,000 lb (9.1 mt) block and 30,000 lb (13.61 mt) of unblocked QS. The resulting 30,000 lb (13.61 mt) of QS would be fully tradable in any increment as unblocked QS.

An exemption would be awarded to QS holders who, as a result of this action, end up with two blocks and unblocked QS. QS holders who hold two blocks would be grandfathered in to allow them to hold two blocks of QS plus additional unblocked QS, until such time as they transfer one of their blocks. Under the exemption, QS holders who possess two blocks would be allowed to freely trade unblocked QS. However, once an exempted QS holder transfers a block, they would no longer be eligible for the exemption. QS holders would remain subject to any applicable QS use and vessel limitations under § 679.42 as part this proposed action.

Implementation of this action would require NMFS to reassign QS as unblocked prior to the start of the IFQ season. QS certificates would be reissued to all affected QS holders.

Increased management costs for the year would be partially reimbursed by the IFQ cost recovery fee and NMFS does not anticipate additional administrative, enforcement, or information costs.

Sweep-up Levels

This proposed change also would increase sweep-up levels for halibut in Areas 2C and 3A to the recommended equivalent of 5,000 lb (2.27 mt) in 1996 QS units. In 1996, the Council previously responded to information from the fishing industry that the previous sweep-up levels were lower than the harvest amount of a worthwhile fishing trip by increasing the sweep-up levels in 1996. This action would increase the sweep-up limits in Areas 2C and 3A consistent with the other halibut regulatory areas and would provide economic incentives for currently unfished QS blocks to be fully harvested. Although NMFS currently does not know how many QS holders would take advantage of the increased sweep-up limit, the change would allow some QS holders whose QS holdings currently exist at the 3,000 lb sweep-up limit and the block limit to incrementally increase their QS holding without first selling one of their blocks. Under the proposed changes, a modest increase in consolidation could occur, but it would not preclude entry level participation.

Halibut QS Vessel Category Amendments

The Council originally designed the IFQ Program to preserve the diversity of the fleet and maintain entry-level opportunity in the fisheries. This was achieved in part by assigning QS holdings to halibut vessel categories A, B, C, and D, and restricting the use of IFQ derived from QS of one category on vessels of other categories. The QS category determines whether harvested fish may be processed onboard and the size of vessel on which the catcher vessel IFQ may be harvested. Halibut IFQ derived from category A QS may be harvested and processed onboard the assigned vessel. Category B IFQ may be fished only on vessels greater than 60 feet LOA, category C IFQ may be fished on vessels greater than 35 feet but less than or equal to 60 feet LOA, and category D IFQ may be fished on vessels less than or equal to 35 feet LOA. A 1996 regulatory amendment (61 FR 43312, August 22, 1996) allowed halibut IFQ derived from category B or C QS to be fished on smaller vessels in all halibut areas except Area 2C.

In 1999, industry members proposed that the restrictions governing the use of IFQ derived from category D QS presented a serious safety issue in Areas 3B and 4C because weather conditions restrict smaller vessels to shorter harvesting windows. Additionally, affected fishermen claim that fishing during peak safety conditions may not be possible for small vessels because processors may not be accepting halibut during the peak of the salmon fisheries, which tend to coincide with the best weather conditions. Therefore, category D vessels may be limited to a substantially shortened season in less safe conditions to harvest their IFQ. As an additional result of these conditions, category D vessel owners have reported that they prefer to purchase category B and C QS because it allows them to use the resulting IFQ on larger vessels.

This action proposes to allow category D QS to be fished on vessels less than or equal to 60 ft (18.29 m) LOA in Areas 3B and 4C only. Implementation in Area 3B would address economic hardship and safety concerns resulting from fishing in small vessels. Implementation in Area 4C would address reduced catches of IFQ derived from category D QS in this area and would act in combination with a separate action allowing Area 4C IFQ holders to fish their quota in Area 4D (70 FR 43328, July 27, 2005). The Council did not consider recommending this change in other regulatory areas.

Area 2C QS Restriction Amendment

In 1996, NMFS implemented regulations (61 FR 43312, August 22, 1996) that allow under 60 ft (18.29 m) LOA vessels to fish IFQ derived from category B QS. This is known colloquially as the ''fish down'' provision. However, at that time, the Council recommended excluding Southeast Outside District sablefish and Area 2C halibut fisheries from the fish down provision to ensure market availability of category B QS for vessels over 60 ft (18.29 m) LOA. Area 2C and Southeast Outside District fishermen subject to the restriction recently identified the ''fish down'' exclusion as unnecessary, inefficient, and burdensome because the market conditions originally expected to justify the provision never materialized.

Under current regulations, IFQ derived from category B QS must be used on vessels greater than 60 ft (18.29 m) LOA in Area 2C (for halibut) and the Southeast Outside District (for sablefish), unless the QS is a block of less than or equal to 5,000 lb (2.27 mt), based on 1996 TACs. Category B QS represents a small percentage of total halibut QS in Area 2C and a relatively small proportion of total sablefish QS in the Southeast Outside District. Only IFQ derived from category B QS blocks of less than 5,000 lb (2.27 mt), based on the 1996 TACs, is eligible to be fished down on vessels smaller than 60 ft (18.29 m) LOA. Currently, 75 percent of halibut IFQ derived from category B QS and 96 percent of sablefish IFQ derived from category B QS cannot be fished down. Of the halibut IFQ derived from category B QS that must be fished on a vessel greater than 60 ft (18.29 m) LOA, about half is blocked, with block sizes ranging from 6,000 lb (2.72 mt) to 17,000 lb (7.71 mt), based on the 2004 TACs. For sablefish, only 7 percent of the IFQ derived from category B QS that is ineligible to be fished down is blocked. The affected fishing industry and the Council contend that the discrepancy between the use restrictions on category B QS in Southeast Alaska compared to the rest of the State is discriminatory because the intended effect never occurred and assert that all category B QS should be eligible for fish down to achieve equity.

This action proposes to allow QS holders to fish all IFQ derived from category B QS on a vessel of any length in all areas, including Area 2C and the Southeast Outside District. Over time, this action might contribute to a change in the diversity of the IFQ fleet in Southeast Alaska by decreasing the number of large catcher vessels that are typically greater than 60 ft (18.29 m) LOA. A maximum of 1,414 category B, C, and D halibut QS holders operate in Area 2C and a maximum of 440 category B and C sablefish QS holders operate in the Southeast Outside District. A total of 1,996,568 QS units of halibut and 12,891,624 QS units of sablefish would become eligible for the fish down provision under this action.

IFQ derived from category B QS would likely become more valuable because the QS could be used on a vessel of any size. However, the increase in category B QS value might result in an undetermined corresponding decrease in the value of category C and D QS. The proposed change also might negatively affect vessels greater than 60 ft (18.29 m) LOA by making QS less available for those vessels, because those vessels may only harvest IFQ derived from category B QS. Over the long term, this action may contribute to a change in the diversity of the IFQ fleet in Southeast Alaska by decreasing the number of catcher vessels greater than 60 ft (18.29 m) LOA participating in the fishery.

Administrative Changes

Current regulations at 50 CFR 679.1(d)(1)(i)(B) provide that the Federal IFQ regulations govern commercial

fishing for sablefish with fixed gear in the waters of the State of Alaska adjacent to the BSAI and the GOA, provided that a person who holds QS, an IFQ permit, or an IFQ hired master permit is aboard the vessel engaged in the fishery. The proposed change would clarify NMFS' intent that this provision applies only to persons who hold sablefish quota shares, sablefish IFQ permits, or sablefish IFQ hired master permits. If a sablefish IFQ fisherman fishes any of his IFQ in the Federal EEZ, this provision prohibits him or her from harvesting additional sablefish with fixed gear in State waters in the same fishing year because his or her total IFQ poundage has been debited from his or her IFQ account.

An IFQ fisherman who either holds QS or has harvested some part of his or her annual IFQ may not participate in a State open access sablefish fishery unless he or she debits all the sablefish harvested in the state fishery from his or her IFQ allocation.

Additionally, this action proposes to change the name of the ''IFQ card'' found at 50 CFR 679.4(d)(2) and all subsequent occurrences to ''IFQ hired master permit'' to provide consistency and clarity in the regulations. The IFQ card originally served as a catch accounting tool necessary for both identification and catch reporting through a swipe card computer accounting system. However, the swipe card computer accounting system has since been replaced, making the IFQ card redundant and technologically obsolete. This administrative correction would eliminate the redundant requirement for QS owners present on board the vessel during fishing to possess an ''IFQ card'' in addition to the ''IFQ permit.'' Hired masters would still be required to carry the IFQ hired master permit for identification purposes. The administrative correction eliminating the redundancy of the ''IFQ card'' for QS owners would relieve an unnecessary and burdensome requirement.

Finally, this action also proposes to remove language at 50 CFR 679.42(a)(1)(i) through (ii), which applied only to harvesting IFQ species in Area 4C and Area 4D during the 2005 IFQ fishing season. This proposed change would not alter the rights and obligations of persons fishing in Area 4C or Area 4D in the current or future fishing seasons and remains consistent with the final rule implementing the Area 4C and Area 4D regulatory area exemption (70 FR 43328, July 27, 2005).

Classification

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by Office of Management and Budget (OMB) under OMB Control Number 0648–0445. Public reporting per response is estimated to average 12 minutes for a VMS check-in report, 6 hours for VMS installation, and 4 hours for VMS maintenance.

This proposed rule also contains a collection-of-information requirement subject to review and approval by OMB under the PRA and which has been submitted to OMB for approval under OMB Control Number 0648–0272. Public reporting per response is estimated to average 2 hours for Application for Emergency Medical Transfer of IFQ and 1 hour for each proof-of-ownership document for the hired master changes. Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSEES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

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

No duplicative or overlapping rules exist that are associated with this proposed rule. This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council recommended this action to the Secretary for adoption pursuant to its authority under the Magnuson-Stevens Act and the Halibut Act. An RIR/IRFA for the proposed regulatory amendments describe the management background, the purpose and need for action, the management alternatives, and the socioeconomic impacts of the alternatives (see **ADDRESSES**).

The RIR assesses costs and benefits of available regulatory alternatives. The Council considered all quantitative and qualitative measures and chose a preferred alternative based on those measures that maximize net benefits to affected individuals and communities under the halibut and sablefish IFQ and CDQ programs.

The IRFA prepared for each action assess potential impacts on small entities for purposes of the Regulatory Flexibility Act (RFA). The Council reviewed multiple alternatives for each individual action, including a ''no action'' alternative and a preferred alternative, in independent IRFAs. Each independent IRFA describes the potential adverse impacts on small entities, attributable to the proposed alternatives for each action.

The objectives of the proposed actions are to amend halibut and sablefish IFQ regulations to increase efficiency and flexibility for fishermen subject to the Halibut and Sablefish IFQ Program. The legal basis for the proposed action is explained in the preamble of this proposed rule. In summary, NMFS manages the North Pacific halibut fisheries in Convention waters under the authority of the Halibut Act and the sablefish fisheries in the waters of the EEZ under the authority of the Magnuson-Stevens Act. Regulations at 50 CFR 300.60 through 300.65 govern the halibut fishery in the waters of the United States. The annual Pacific halibut management measures for 2005 were published in the **Federal Register** on February 25, 2005 at 70 FR 9242. Regulations at 50 CFR 679.1 through 50 CFR 679.28 govern the sablefish fishery. Regulations at 50 CFR 679.30 through 50 CFR 679.45 govern the halibut and sablefish IFQ and CDQ programs.

NMFS defines all halibut and sablefish vessels as small businesses, for the purpose of this analysis. In 2003, 1,338 unique vessels made IFQ halibut landings, and 409 unique vessels made sablefish landings.

The number of small entities operating as fishing vessels in the IFQ fisheries may be deduced from certain restrictions placed on those vessels. The IFQ Program restricts the amount of annual IFQ that may be landed from any individual vessel. A vessel may be used to land up to 0.5 percent of all halibut IFQ TAC, or up to 1 percent of all sablefish TAC. In 2003, 295,050 lb of halibut constituted 0.5 percent of all the halibut IFQ TAC and 348,635 lb of

sablefish constituted 1 percent of all the sablefish IFQ TAC. NMFS annually publishes standard prices for halibut and sablefish that are estimates of the ex-vessel prices received by fishermen for their harvests. NMFS uses these prices for calculating IFQ holder cost recovery fee liabilities. In 2003, price data suggested that the prevailing prices were approximately $2.92 per pound for halibut and $2.36 per pound for sablefish (68 FR 71036, December 22, 2003). In combination, the harvest limits and prices imply maximum ex-vessel revenues of about $1.68 million for halibut and sablefish together. Although some halibut and sablefish IFQ operations participate in other revenue generating activities, the halibut and sablefish IFQ fisheries probably represent the largest single source of annual gross receipts.

Based upon available data, and more general vessel economic activity information of vessels in these IFQ fisheries, no vessel subject to these restrictions could have been used to land more than $3.5 million in combined gross receipts in 2003. Therefore, all halibut and sablefish vessels have been assumed to be ''small entities,'' for purposes of the IRFA. However, this simplifying assumption likely overestimates the true number of small entities, since it does not take account of vessel affiliations. No reliable data exists on vessel affiliation. The IRFA for each action is summarized separately below.

Emergency Medical Transfers

Since the initial implementation of the halibut and sablefish IFQ Programs in 1995, individuals have submitted numerous petitions to NMFS and the Council requesting the temporary transfer of IFQs for medical reasons. These individuals sought medical transfers due to the inability of IFQ holders to physically be onboard the vessel as IFQs were fished. NMFS was previously unable to implement a medical transfer program recommended by the Council due to legal and administrative constraints. The approach proposed in this action would resolve the issues arising from previous approaches.

This action could directly affect 3,350 halibut QS holders and 875 sablefish QS holders. NMFS currently does not have sufficient ownership and affiliation information to determine the precise number of small entities in the IFQ Program or the number that would be adversely impacted by the proposed action. Approximately 12 QS holders contact NMFS or the Council each year for information about medical transfers in the IFQ Program. However, it is not possible to estimate how many QS holders did not contact NMFS or the Council, but would have requested a medical transfer if it were available. This analysis assumes that all halibut and sablefish QS operations are small for RFA purposes.

This analysis summary reviews the status quo of no temporary transfers and an alternative to allow medical transfers. Alternative 1 is the no action or status quo alternative and would not have any associated adverse economic impacts on directly regulated small entities. Alternative 2 would allow medical transfers, but would require an applicant to document his or her medical emergency with NMFS. A medical professional would also be required to file an affidavit that describes the medical condition affecting the applicant and attests to the inability of the applicant to participate in the IFQ fisheries for which he or she holds IFQ permits during the IFQ season. In the case of a medical condition involving a family member, the medical professional's affidavit would describe the necessity for the IFQ permit holder to tend to an immediate family member who suffers from the medical condition.

An individual must submit an Emergency Medical Transfer form to receive a medical transfer. Submission of information would be minimized under the requirements of the Paperwork Reduction Act.

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

Owner-on-board Exception

The requirement for catcher vessel QS holders to be onboard the vessel during harvest and offloading of IFQ species constitutes a key element of the halibut and sablefish IFQ Program. The Council remains concerned about alleged abuses of the regulatory provision allowing vessel owners who received QS at initial allocation to hire masters to harvest their IFQs without being onboard the vessel. The objective of the preferred alternative is to improve adherence to the owner-on-board provisions of the original program, while providing an opportunity to hire a master when appropriate.

The preferred alternative could directly regulate 4,300 halibut and sablefish QS holders who hold category B, C, or D QS. NMFS currently does not have sufficient ownership and affiliation information to determine precisely the number of small entities in the IFQ Program or the number that would be adversely impacted by the present action. The analysis of the proposed hired master changes assumes that all operations are small for RFA purposes.

The analysis of the proposed hired master provisions reviews the status quo, an alternative to limit the use of the hired master exception, and the preferred alternative. Alternative 1 would maintain the current 20 percent vessel ownership requirement for catcher vessel QS holders to hire a master to harvest IFQs. Current regulations do not require vessel ownership legal documentation and, therefore, the requirement cannot be monitored, verified, or enforced. Alternative 2 would amend the regulations to require documentation of ownership of the catcher vessel before use of the hired master exception. Options under Alternative 2 would require continuous ownership of the catcher vessel upon which the IFQ would be fished, for a period between 6 months and two years to hire a skipper. The preferred alternative modified Alternative 2 by designating a 12-month period during which ownership must be documented to allow the use of a hired master.

Catcher vessel QS holders who wish to hire a master to catch their IFQs on a federally licensed vessel would be required to file a U.S. Abstract of Title issued by the U.S. Coast Guard with NMFS. Catcher vessel QS holders who wish to hire a master to catch their IFQs on a State-licensed vessel would be required to file the State of Alaska vessel registration with NMFS.

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

Sablefish Vessel Clearance Requirements

This section summarizes the impacts on small entities of the proposed alternatives for adding vessel clearance requirements to the BSAI sablefish fisheries. The BS and AI sablefish fixed gear sectors have not fully harvested their TACs since the beginning of the IFQ Program. Reasons for harvest shortfalls include predation by killer whales, increased costs of traveling to the BSAI, and relatively low catch rates in the BSAI that may result in harvesters fishing in the western GOA and possible misreporting in the BS or AI. The industry has expressed concern that a lack of enforcement may have resulted in misreporting of harvests taken in the GOA as having come from the BSAI.

One-hundred and sixty-three unique persons hold QS in the AI or BS and GOA. Of these, 42 unique persons hold QS in all three areas, 34 unique persons

hold QS in the AI and GOA, and 43 unique persons hold QS in both the BS and GOA for a total of 119 directly affected small entities under Alternative 2. This analysis assumes that all operations are small.

The analysis of vessel clearance alternatives reviews the status quo and the preferred alternative to add either visual clearance or VMS requirements. Alternative 1 would result in no change to the regulations. The preferred alternative would implement either or both visual clearance or VMS requirements to the sablefish IFQ fishery in the BSAI as a disincentive to misreporting of catch areas.

The operator of any vessel who fishes for sablefish in the BS or AI management area must obtain a vessel clearance for the management area in which fishing is to occur. Under the preferred alternative, an operator has two options. Under option one, an operator obtaining a vessel clearance must obtain the clearance in person from the authorized clearance personnel and sign the NMFS form documenting that a clearance was obtained. Except when the clearance is obtained via VHF radio, the authorized clearance personnel must sign the form documenting that the clearance was obtained. Under option two, any vessel that carries a transmitting VMS transmitter while fishing for sablefish in the BS or AI management area and until all sablefish caught in any of these areas is landed, is exempt from the clearance requirements, provided that the operator of the vessel complies with VMS regulations. If VMS is used, the operator of the vessel must notify the OLE within 72 hours before fishing and receive a VMS confirmation number.

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

Bled Sablefish PRR

This action could directly affect 876 sablefish QS holders, although only an unknown subset of these IFQ holders land their catch as bled fish. At present, NOAA Fisheries does not have sufficient ownership and affiliation information to determine precisely the number of small entities in the IFQ Program or the number that would be adversely impacted by this action. This analysis assumes that all operations are small.

This analysis summary reviews the status quo and two alternatives to change the PRR for bled sablefish. Alternative 1 would not revise the PRR for bled sablefish, which would remain at 0.98. Alternative 2, the preferred alternative, would change the PRR to 1.0 for bled sablefish, which would effectively eliminate the PRR. Alternative 3 would change the PRR to 0.99.

No additional recordkeeping or reporting requirements are associated with this action.

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

Halibut Block Program Amendments

Since implementation of the IFQ Program, the halibut fleet has experienced large quota increases, consolidation, and changing use patterns. Halibut QS holders have indicated that the existing block and sweep-up restrictions are cumbersome, and changing the restrictions could improve flexibility and efficiency in fishing operations.

This action would directly regulate holders of halibut QS blocks in all IFQ areas. There are 3,205 persons, both individual and collective entities, who hold at least one block of halibut QS in all IFQ management areas off Alaska. At least one block is owned by 80–90 percent of all halibut QS holders in all regulatory areas, except Area 4C, where only 69 QS holders own at least one block. At present, NOAA Fisheries does not have sufficient ownership and affiliation information to determine precisely the number of small entities in the IFQ Program, nor the number of directly regulated small entities that would be adversely impacted by the present actions. This analysis assumes that all operations are small for RFA purposes.

This analysis summary reviews the status quo and four alternatives to the existing halibut IFQ Program requirements. One alternative would increase block limits, two alternatives would ease restrictions on blocks yielding greater than 20,000 lb of halibut, based on the 2004 TACs, and a fourth would increase sweep-up limits for halibut in Areas 2C and 3A. The alternatives are summarized below.

Alternative 1 is the no action alternative and would not have any associated adverse economic impacts on directly regulated small entities.

Alternative 2 would increase the block limit to three or four blocks under four options in all regulatory areas. The Council selected Alternative 2 Option ''a'' as its preferred alternative. QS block holders that are currently constrained would benefit from increased operational flexibility under an increased block limit. This action may decrease the value of unblocked QS in relation to blocked QS, by relaxing the ownership constraint on blocked QS. Blocked QS would become relatively more marketable as a result. There are no data available to determine whether and how the alternative would change QS value. However, there would be no differential impacts on the basis of size of the regulated entity attributable to this proposed action, because all are assumed small under the RFA.

Alternative 3 would unblock all large QS blocks, which includes those yielding greater than 20,000 lb of halibut based on 2004 TACs in all regulatory areas. The Council modified Alternative 3 by limiting the preferred alternative to only Areas 3B and 4C because these areas contain the most large QS blocks. Additional flexibility in managing QS holdings would yield greater asset liquidity to holders of large QS blocks, allowing them to be more responsive to operational needs and economic opportunities. The preferred alternative may also impact the value of unblocked shares in Areas 3B, 4A, 4B, 4C, and 4D, by increasing the proportion of unblocked QS available in those IFQ areas. Benefits could accrue to holders of large QS blocks, as well as fishermen wishing to make adjustments to their QS asset holdings to reflect changes in their personal circumstances, or the broader economic environment. Currently, the capital demands associated with transferring very large restricted blocks is reportedly prohibitive. This alternative would contribute to alleviating this potential barrier to transfer the large restricted blocks. In any case, there would be no differential impacts on the basis of size of the regulated entity attributable to this preferred alternative because all are assumed small for these purposes.

Alternative 4 would allow large QS block holders to divide their holding into smaller blocks, potentially increasing efficient use of the QS holding. Data are unavailable to determine the extent to which QS holders would be likely to take advantage of this option. If all large holdings are divided, the alternative may impact the price of block holdings.

Alternative 5 would increase the sweep-up levels in Areas 2C and 3A from a 3,000 lb equivalent to a 5,000 lb equivalent in QS units based on the 1996 halibut TAC. This preferred alternative would allow small QS block holders to incrementally increase their holdings. There are no apparent adverse impacts on small entities.

No additional recordkeeping and reporting requirements are associated with this action.

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

The detailed analysis of attributable impacts of each alternative is contained in the RIR and IRFA for this action. Few, if any, actual adverse impacts are associated with these actions, and no additional alternatives could be identified which have the potential to further minimize existing or potential adverse impacts on small entities, while achieving the objectives of the proposed action.

Halibut QS Vessel Category Amendments

Halibut fishermen in western Alaska have identified safety concerns associated with fishing in those areas on small vessels, which could be alleviated, in large part, by relaxing the current restrictions on vessel length associated with category D QS.

The action could potentially directly regulate 243 category D halibut QS holders in Areas 3B, 4A, 4B, and 4C. Currently, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of entities in the IFQ Program that are ''small,'' based on the SBA guidelines, nor the number that would be adversely impacted by the present action. This analysis assumes that all directly regulated operations are small, for RFA purposes.

This analysis summary reviews the status quo and three alternatives to the existing requirements. Two alternatives would allow category D QS to be fished on vessels less than or equal to 60 ft (18.29 m) LOA, and one alternative allow category D QS to be fished on vessels of any size.

Alternative 1 is a no action alternative and would not have associated adverse economic impacts on directly regulated small entities.

Alternatives 2, 3, and 4 would allow category D QS to be fished on larger vessels, which includes vessels equal to or less than 60 feet LOA for Alternatives 2 and 4, and vessels of any size for Alternative 3. The proposed alternatives could address safety concerns for small vessel operators. Since the proposed alternatives are likely to increase the value of category D QS, there may be some corollary decrease in the value of category C QS, and also category B QS in the case of Alternative 3. However, category D QS constitutes such a small share to the aggregate halibut TAC in any of these areas, that such a change in relative value would not be expected to substantially influence the market for QS. Furthermore, there would be no differential impacts on the basis of size of the directly regulated entities attributable to these proposed actions, because all are considered small for the purposes of this analysis.

No additional recordkeeping and reporting requirements are associated with this action.

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

Each of the alternatives contributes to the objectives of this proposed action, comports with the Magnuson-Stevens Act and other applicable law, and minimizes the economic impacts on directly regulated small entities. NMFS is not aware of any additional alternatives to this action that would meet the RFA criteria.

Area 2C QS Restriction Amendment

In the original IFQ Program for halibut and sablefish, category B QS was permitted to be fished only on a vessel 60 feet or greater LOA. In 1996, the Council adopted a regulatory change that allowed category B QS to be fished on vessels under 60 feet LOA. At the time, certain category B QS holdings in the Southeast Outside District sablefish and Area 2C halibut fisheries were identified as ineligible for ''fish down,'' and IFQ derived from these QS must be fished on a vessel greater than 60 ft (18.29 m) LOA. This was intended to ensure category B quota share would be available to vessels 60 ft (18.29 m) LOA or greater. However, some fishermen have recently identified this prohibition as unnecessary, inefficient, and burdensome.

This proposed action could potentially affect 72 holders of category B halibut QS in Area 2C, and 87 persons who hold category B sablefish QS in the Southeast Outside District. Indirectly, the action may affect 22 owners of vessels greater than 60 ft (18.29 m) LOA who made landings in 2003 in the halibut fisheries in Area 2C, 40 large vessel owners who landed sablefish in the Southeast Outside District in 2003, 825 persons who are category B, C, or D halibut QS holders in Area 2C, and 436 persons who are category B or C sablefish QS holders in the Southeast Outside District. Currently, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of ''small entities,'' as the term is defined for RFA purposes, in the IFQ Program nor the number that would be adversely impacted by the preferred alternative. For the purposes of this RFA, this analysis assumes that all operations are small.

This analysis summary reviews the status quo and an alternative to allow category B QS to be fished on a vessel of any length in any area. Alternative 1 is the no action alternative and its adoption would have no associated adverse economic impacts on directly regulated small entities. The preferred alternative would allow all category B QS, in either Area 2C for halibut or the Southeast Outside District for sablefish to be fished on any size vessel. It may have the potential to disadvantage large vessel operations that can only harvest category B QS, as competition for access to these QS could be substantially broadened. The relative scarcity of category B QS in Southeast Alaska halibut and sablefish fisheries may mean that large vessel operations may experience difficulty in acquiring additional QS under the preferred alternative due to increased costs. However, there would be no differential impacts on the basis of size of the regulated entity attributable to this preferred alternative, because all are ''small'' on the basis of RFA criteria.

No additional recordkeeping and reporting requirements are associated with this action.

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

According to NOAA Administrative Order (NAO) 216–6, including the criteria used to determine significance, this rule would not have a significant effect, individually or cumulatively, on the human environment beyond those effects identified in the previous NEPA analysis. An environmental impact statement (EIS; dated December 1992) was prepared for the final rule implementing the original halibut and sablefish IFQ and CDQ programs (58 FR 59375; November 9, 1993). The scope of the EIS includes the potential environmental impacts of this proposed rule because the EIS analyzed the original IFQ Program, which included analysis of biological and socioeconomic impacts on the environment, affected fishermen, and affected communities. Based on the nature of the proposed rule and the previous environmental analysis, this proposed rule is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement, in accordance with Section 5.05b of NAO 216–6. Copies of the EIS for the original halibut and sablefish IFQ and CDQ programs and the categorical exclusion for this action are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 26, 2006.

Samuel D. Rauch III

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq;* 1851 note; 3631 *et seq.*

2. In § 679.1, paragraph (d)(1)(i)(B) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) Using fixed gear in waters of the State of Alaska adjacent to the BSAI and the GOA, provided that aboard such vessels are persons who currently hold sablefish quota shares, sablefish IFQ permits, or sablefish IFQ hired master permits.

* * * * *

3. In § 679.2 add definitions in alphabetical order for ''Advanced nurse practitioner'', ''Licensed medical doctor'', and ''Primary community health aide'' to read as follows:

§ 679.2 Definitions.

* * * * *

Advanced nurse practitioner means a registered nurse authorized to practice in any state who, because of specialized education and experience, is certified to perform acts of medical diagnosis and the prescription and dispensing of medical, therapeutic, or corrective measures under regulations adopted by the state Board of Nursing.

* * * * *

Licensed medical doctor means a person who is licensed, certified, and/or registered in accordance with applicable Federal, state, or local laws and regulations, and is authorized to conduct the practice of medicine as defined by the state in which the person resides.

* * * * *

Primary community health aide means a person who has completed the first of three levels of community health aide training offered by the Norton Sound Health Corporation at the Nome Hospital, the Kuskokwim Community College in Bethel, the Alaska Area Native Health Service in Anchorage, or another accredited training center.

* * * * *

4. In § 679.4, paragraphs (a) introductory text, (a)(1)(i), (d) introductory text, (d)(2), (d)(3)(i), (d)(4), (d)(5), (d)(6)(i) are revised to read as follows:

§ 679.4 Permits.

(a) *Requirements.* Only persons who are U.S. citizens are authorized to receive or hold permits under this section, with the exception that an IFQ hired master permit issued to an individual person designated by a QS or IFQ permit holder as a hired master employed to fish his/her IFQ need not be held by a U.S. citizen.

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see...
(i) IFQ:		
(A) Registered Buyer	Until next renewal cycle	Paragraph (d)(3) of this section
(B) Halibut & sablefish permits	Specified fishing year	Paragraph (d)(1) of this section
(C) Halibut & sablefish hired master permits	Specified fishing year	Paragraph (d)(2) of this section

* * * * *

(d) *IFQ permits, IFQ hired master permits, and Registered Buyer permits.* The permits described in this section are required in addition to the permit and licensing requirements prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title and in the permit requirements of this section.

* * * * *

(2) *IFQ hired master permit.* (i) An IFQ hired master permit authorizes the individual identified on the IFQ hired master permit to land IFQ halibut or IFQ sablefish for debit against the specified IFQ permit until the IFQ hired master permit expires, or is revoked, suspended, or modified under 15 CFR part 904, or cancelled on request of the IFQ permit holder.

(ii) An original IFQ hired master permit issued to eligible individuals in accordance with § 679.42(i) and (j) by the Regional Administrator must be on board the vessel that harvests IFQ halibut or IFQ sablefish at all times that such fish are retained on board by a hired master. Except as specified in § 679.42(d), an individual that is issued an IFQ hired master permit must remain aboard the vessel used to harvest IFQ halibut or IFQ sablefish with that IFQ hired master permit during the IFQ fishing trip and at the landing site during all IFQ landings.

(iii) Each IFQ hired master permit issued by the Regional Administrator will display an IFQ permit number and the name of the individual authorized by the IFQ permit holder to land IFQ halibut or IFQ sablefish for debit against the IFQ permit holder's IFQ. In addition, IFQ hired master permits will also display the ADF&G vessel identification number of the authorized vessel.

(3) * * *

(i) A Registered Buyer permit authorizes the person identified on the permit to receive and make an IFQ landing by an IFQ permit or IFQ hired master permit or to receive and make a CDQ halibut landing by a CDQ permit or cardholder at any time during the fishing year for which it is issued until the Registered Buyer permit expires, or is revoked, suspended, or modified under 15 CFR part 904.

* * * * *

(4) *Issuance.* The Regional Administrator will renew IFQ permits and IFQ hired master permits annually or at other times as needed to accommodate transfers, revocations, appeals resolution, and other changes in QS or IFQ holdings, and designation of masters under § 679.42.

(5) *Transfer.* The quota shares and IFQ issued under this section are not transferable, except as provided under § 679.41. IFQ hired master permits and Registered Buyer permits issued under this paragraph (d) are not transferable.

(6) * * *

(i) *IFQ permit and IFQ hired master permit.* (A) The IFQ permit holder must present a copy of the IFQ permit for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

(B) The IFQ hired master permit holder must present a copy of the IFQ permit and the original IFQ hired master permit for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

* * * * *

5. In § 679.5, paragraphs (a)(1)(i)(B); (g)(2)(iv)(A); (l)(2)(i)(D) and (E); (l)(2)(iii)(C), (l)(2)(iii)(H), (I) and (M); (l)(2)(iv)(B)(*2*); (l)(2)(iv)(D); (l)(4)(i)(E)(*1*); (l)(4)(ii)(D); and (l)(5)(ii) introductory text are revised to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(1) * * *

(i) * * *

(B) *IFQ halibut and sablefish.* The IFQ permit holder, IFQ hired master permit holder, or Registered Buyer must comply with the R&R requirements provided at paragraphs (g), (k), and (l) of this section.

* * * * *

(g) * * *

(2) * * *

(iv) * * *

(A) A person holding a valid IFQ permit, IFQ hired master permit, and Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish with a person who has not been issued a Registered Buyer permit after all IFQ halibut and IFQ sablefish have been landed and reported in accordance with paragraph (l) of this section.

* * * * *

(l) * * *

(2) * * *

(i) * * *

(D) *Remain at landing site.* Once the landing has commenced, the IFQ permit holder, IFQ hired master permit holder, or CDQ cardholder and the harvesting vessel may not leave the landing site until the IFQ halibut, IFQ sablefish or CDQ halibut account is properly debited (as defined in paragraph (l)(2)(iv)(D) of this section).

(E) *No movement of IFQ halibut, CDQ halibut, or IFQ sablefish.* The offloaded IFQ halibut, CDQ halibut, or IFQ sablefish may not be moved from the landing site until the IFQ Landing Report is received by OLE, Juneau, AK, and the IFQ permit holder's or CDQ cardholder's account is properly debited (as defined in paragraph (l)(2)(iv)(D) of this section).

* * * * *

(iii) * * *

(C) Name and permit number of the IFQ permit holder, IFQ hired master permit holder, or CDQ cardholder;

* * * * *

(H) ADF&G statistical area of harvest reported by the IFQ permit holder or IFQ hired master permit holder;

(I) If ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ permit holder or IFQ hired master permit holder;

* * * * *

(M) After the Registered Buyer enters the landing data in the Internet submission form(s) and receipts are printed, the Registered Buyer, or his/her representative, and the IFQ permit holder, IFQ hired master permit holder, or CDQ cardholder must sign the receipts to acknowledge the accuracy of the IFQ landing report.

(iv) * * *

(B) * * *

(*2*) The IFQ permit holder, IFQ hired master permit holder, or CDQ cardholder must initiate a Landing Report by logging into the IFQ landing report system using his or her own password and must provide identification information requested by the system.

* * * * *

(D) *Properly debited landing.* A properly concluded printed Internet submission receipt or a manual landing report receipt which is sent by facsimile from OLE to the Registered Buyer, and which is then signed by both the Registered Buyer and IFQ permit holder, IFQ hired master permit holder, or CDQ cardholder constitutes confirmation that OLE received the landing report and that the IFQ permit holder or CDQ cardholder's account is properly debited. A copy of each receipt must be maintained by the Registered Buyer as described in paragraph (l) of this section.

* * * * *

(4) * * *

(i) * * *

(E) * * *

(*1*) A vessel operator submitting an IFQ Departure Report to document IFQ halibut or IFQ sablefish must have one or more IFQ permit holders or IFQ hired master permit holders on board with a combined IFQ balance equal to or greater than all IFQ halibut and IFQ sablefish on board the vessel.

* * * * *

(ii) * * *

(D) Halibut IFQ, halibut CDQ, sablefish IFQ, and CR crab permit numbers of IFQ and CDQ permit holders on board;

* * * * *

(5) * * *

(ii) *Record retention.* The IFQ permit holder, IFQ hired master permit holder, or CDQ cardholder must retain a legible copy of all Landing Report receipts, and the Registered Buyer must retain a copy of all reports and receipts required by this section. All retained records must be available for inspection by an authorized officer:

* * * * *

6. In § 679.7, paragraphs (f)(3)(i), (f)(3)(ii), (f)(4), (f)(6)(i) and (ii), and (f)(11) introductory text are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(3) * * *

(i) *Halibut.* (A) Retain halibut caught with fixed gear without a valid IFQ permit, and if using a hired master, without an IFQ hired master permit in the name of an individual aboard.

(B) Retain halibut caught with fixed gear without a valid CDQ permit and without CDQ card in the name of an individual aboard.

(ii) *Sablefish.* Retain sablefish caught with fixed gear without a valid IFQ permit, and if using a hired master, without an IFQ hired master permit in the name of an individual aboard, unless fishing on behalf of a CDQ group and authorized under § 679.32(c).

(4) Except as provided in § 679.40(d), retain IFQ or CDQ halibut or IFQ or CDQ sablefish on a vessel in excess of the total amount of unharvested IFQ or CDQ, applicable to the vessel category and IFQ or CDQ regulatory area(s) in which the vessel is deploying fixed gear, and that is currently held by all IFQ or CDQ permit holders aboard the vessel, unless the vessel has an observer aboard under subpart E of this part and maintains the applicable daily fishing log prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title and § 679.5.

(5) * * *

(6) * * *

(i) *IFQ permit or CDQ permit.* Make an IFQ landing without an IFQ permit, IFQ hired master permit, or CDQ card, as appropriate, in the name of the individual making the landing.

(ii) *Hired master, IFQ.* Make an IFQ landing without an IFQ hired master permit listing the name of the hired master and the name of the vessel making the landing.

* * * * *

(11) Discard halibut or sablefish caught with fixed gear from any catcher vessel when any IFQ permit holder aboard holds unused halibut or sablefish IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating, unless:

* * * * *

7. In § 679.23, paragraph (g)(2) is revised to read as follows:

§ 679.23 Seasons.

* * * * *

(g) * * *

(2) Catches of sablefish by fixed gear during other periods may be retained up to the amounts provided for by the directed fishing standards specified at § 679.20 when made by an individual aboard the vessel who has a valid IFQ permit and unused IFQ in the account on which the permit was issued.

* * * * *

8. In § 679.40, paragraphs (a)(5)(ii)(A) through (D) are revised to read as follows:

§ 679.40 Sablefish and halibut QS.

* * * * *

(a) * * *

(5) * * *

(ii) * * *

(A) Category A QS and associated IFQ, which authorizes an IFQ permit holder to harvest and process IFQ species on a vessel of any length;

(B) Category B QS and associated IFQ, which authorizes an IFQ permit holder to harvest IFQ species on a vessel of any length;

(C) Category C QS and associated IFQ, which authorizes an IFQ permit holder to harvest IFQ species on a vessel less than or equal to 60 ft (18.3 m) LOA:

(D) Category D QS and associated IFQ, which authorizes an IFQ permit holder to harvest IFQ halibut on a vessel less than or equal to 35 ft (10.7 m) LOA, except as provided in § 679.42(a);

* * * * *

9. In § 679.41, paragraphs (a)(2), (e)(3) introductory text, (e)(3)(i), and (e)(3)(ii) are revised to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

(a) * * *

(2) Transactions requiring IFQ permits to be issued in the name of a hired master employed by an individual or a corporation are not transfers of QS or IFQ.

* * * * *

(e) * * *

(3) *Halibut.* QS blocks for the same IFQ regulatory area and vessel category that represent less than 3,000 lb (1.4 mt) of halibut IFQ, based on the 1996 catch limit for halibut in a specific IFQ regulatory area and the QS pool for that IFQ regulatory area on January 31, 1996, may be consolidated into larger QS blocks provided that the consolidated blocks do not represent greater than 3,000 lb (1.4 mt) of halibut IFQ based on the preceding criteria. In Areas 2C and 3A, QS blocks for the same IFQ regulatory area and vessel category that represent less than 5,000 lb (2.3 mt) of halibut IFQ, based on the 1996 catch limit for halibut in a specific IFQ regulatory area and the QS pool for that IFQ regulatory area on January 31, 1996, may be consolidated into larger QS blocks provided that the consolidated blocks do not represent greater than 5,000 lb (2.3 mt) of halibut IFQ based on the preceding criteria. A consolidated block cannot be divided and is considered a single block for purposes of use and transferability. The maximum number of QS units that may be consolidated into a single block in each IFQ regulatory area is as follows:

(i) Area 2C: 33,320 QS.

(ii) Area 3A: 46,520 QS.

* * * * *

10. In § 679.42, paragraph (a)(3) is removed; paragraphs (a)(2)(iv), (g)(3), and (l) are added; and paragraphs (a)(1) introductory text, (c)(1)(i), (d), (g)(1) introductory text, (i) and (j) are revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) * * *

(1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area, except all or part of the QS and IFQ specified for regulatory area 4C may be harvested in either Area 4C or Area 4D.

* * * * *

(2) * * *

(iv) In Areas 3B and 4C, category D QS and associated IFQ authorizes an IFQ permit holder to harvest IFQ halibut on a vessel less than or equal to 60 ft (18.3 m) LOA.

* * * * *

(c) * * *

(1) * * *

(i) Have a valid IFQ permit.

* * * * *

(d) *Medical transfers and emergency waivers.* The original recipient of an individual IFQ card must be aboard the vessel during fishing operations and must sign the IFQ landing report except as provided in § 679.41 and under the following circumstances:

(1) *Emergency waiver.* In the event of extreme personal emergency involving the IFQ user during a fishing trip, the requirements of paragraph (c) of this section may be waived. The waiving of these requirements under this provision shall apply to IFQ halibut or IFQ sablefish retained on the fishing trip during which the emergency occurred.

(2) *Medical transfers.* In the event of a medical condition affecting an IFQ holder or his or her immediate family member that prevents that IFQ holder from being able to participate in the halibut or sablefish IFQ fisheries, a medical transfer may be approved.

(i) *General.* A medical transfer will not be approved unless the applicant demonstrates that:

(A) He or she is unable to participate in the IFQ fishery for which he or she holds IFQ because of a medical condition that precludes participation; or

(B) He or she is unable to participate in the IFQ fishery for which he or she holds IFQ because of a medical condition involving an immediate family member that requires the IFQ holder's full time attendance.

(ii) *Eligibility.* To be eligible to receive a medical transfer, an individual halibut or sablefish QS holder must:

(A) Possess one or more catcher vessel IFQ permits; and

(B) Not qualify for a hired master exception under paragraph (i)(1) of this section.

(iii) *Application.* An individual may apply for a medical transfer by submitting a medical transfer application to the Alaska Region, NMFS. A QS or IFQ holder who has received an approved medical transfer from RAM may transfer his or her annual IFQ permit to an individual eligible to receive QS or IFQ. A medical transfer application is available at *http://www.fakr.noaa.gov* or by calling 1–800–304–4846. Completed applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668. A complete application must include:

(A) The applicant's (transferor's) identity including his or her full name, NMFS person ID, date of birth, Social Security Number or Tax ID, permanent business mailing address, business telephone and fax numbers, and e-mail address (if any). A temporary mailing address may be provided, if appropriate;

(B) The recipient's (transferee's) identity including his or her full name, NMFS person ID, date of birth, Social Security Number or Tax ID, permanent business mailing address, business telephone and fax numbers, and e-mail address (if any). A temporary mailing address may be provided, if appropriate;

(C) The identification characteristics of the IFQ including whether the transfer is for halibut or sablefish IFQ, IFQ regulatory area, number of units, range of serial numbers for IFQ to be transferred, actual number of IFQ pounds, transferor (seller) IFQ permit number, and fishing year;

(D) The price per pound (including leases) and total amount paid for the IFQ in the requested transaction, including all fees;

(E) The primary source of financing for the transfer, how the IFQ was

located, and the transferee's (buyer's) relationship to the transferor (seller);

(F) A written declaration from a licensed medical doctor, advanced nurse practitioner, or primary community health aide as those persons are defined in § 679.2. The declaration must include:

(*1*) The treating physician's identity including his or her full name, business telephone, permanent business mailing address (number and street, city and state, zip code), and the type of physician;

(*2*) A concise description of the medical condition affecting the applicant or applicant's family member including verification that the applicant is unable to participate in the IFQ fishery for which he or she holds IFQ permits during the IFQ season because of the medical condition and, for an affected family member, a description of the care required; and

(*3*) The dated signature of the licensed medical doctor, advanced nurse practitioner, or primary community health aide who conducted the medical examination;

(G) The signatures and printed names of the transferor and transferee, and date; and

(H) The signature, seal, and commission expiration of a notary public.

(iv) *Restrictions.* (A) A medical transfer shall be valid only during the calendar year for which the permit is issued.

(B) NMFS will not approve subsequent applications for medical transfers based on the same medical condition unless a licensed medical doctor, advanced nurse practitioner, or primary community health aide attests to a reasonable likelihood of recovery.

(C) NMFS will not approve a medical transfer if the applicant has received a medical transfer in any 2 of the previous 5 years for the same medical condition.

(v) *Medical transfer evaluations and appeals*—(A) *Initial evaluation.* The Regional Administrator will evaluate an application for a medical transfer submitted in accordance with paragraphs (d)(2)(iii) and (d)(2)(iv) of this section. An applicant who fails to submit the information specified in the application for a medical transfer will be provided a reasonable opportunity to submit the specified information or submit a revised application.

(B) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant if the Regional Administrator determines that the application provided by the applicant is deficient or if the applicant fails to submit the specified information or a revised application. The IAD will indicate the deficiencies in the application, including any deficiencies with the information or the revised application. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43.

* * * * *

(g) * * *

(1) *Number of blocks per species.* No person, individually or collectively, may hold more than two blocks of sablefish or three blocks of halibut in any IFQ regulatory area, except:

* * * * *

(3) *Transfer of QS blocks.* A person who holds two blocks of halibut QS and unblocked halibut QS as of [EFFECTIVE DATE OF FINAL RULE] may transfer unblocked QS until such time as that person sells a halibut QS block.

* * * * *

(i) *Use of IFQ resulting from QS assigned to vessel category B, C, or D by individuals.* In addition to the requirements of paragraph (c) of this section, IFQ permits issued for IFQ resulting from QS assigned to vessel category B, C, or D must be used only by the individual who holds the QS from which the associated IFQ is derived, except as provided in paragraph (i)(1) of this section.

(1) An individual who received an initial allocation of QS assigned to category B, C, or D does not have to be aboard the vessel on which his or her IFQ is being fished or to sign IFQ landing reports if that individual:

(i) For a documented vessel, continuously owned a minimum 20–percent interest in the vessel for the previous 12 months as supported by the U.S. Abstract of Title issued by the U.S. Coast Guard and any other documentation indicating percentage ownership;

(ii) For an undocumented vessel, continuously owned a minimum 20–percent interest in the vessel for the previous 12 months as supported by a State of Alaska vessel registration and any other documentation indicating percentage ownership; and

(iii) Is represented on the vessel by a hired master employed by that individual and permitted in accordance with § 679.4(d)(2).

(2) Paragraph (i)(1) of this section does not apply to any individual who received an initial allocation of QS assigned to category B, C, or D and who, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that individual, provided the individual continues to own the vessel from which the IFQ is being fished at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that this individual has not acquired additional QS through transfer after September 23, 1997.

(3) Paragraph (i)(1) of this section does not apply to individuals who received an initial allocation of QS assigned to vessel category B, C, or D for halibut in IFQ regulatory Area 2C or for sablefish QS in the IFQ regulatory area east of 140° W. long., and this exemption is not transferable.

(4) The exemption provided in paragraph (i)(1) of this section may be exercised by an individual on a vessel owned by a corporation, partnership, or other entity in which the individual is a shareholder, partner, or member, provided that the individual maintains a minimum 20–percent interest in the vessel owned by the corporation, partnership, or other entity. For purposes of this paragraph, interest in a vessel is determined as the percentage ownership of a corporation, partnership, or other entity by that individual multiplied by the percentage of ownership of the vessel by the corporation, partnership, or other entity.

(5) IFQ derived from QS held by a CQE must be used only by the individual whose IFQ permit account contains the resulting IFQ.

(6) In the event of the actual total loss or constructive total loss of vessel owned by an individual who qualifies for the exemption in paragraph (i)(1) of this section, the owner of such vessel may remain exempt under paragraph (i)(1) of this section until such time that the owner purchases a replacement vessel, provided that such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent.

(j) *Use of IFQ resulting from QS assigned to vessel category B, C, or D by corporations and partnerships.* (1) Except as provided in paragraph (j)(7) of this section, a corporation or partnership that received an initial allocation of QS assigned to category B, C, or D may fish the IFQ resulting from that QS and any additional QS acquired within the limitations of this section provided that the corporation or partnership:

(i) For a documented vessel, continuously owned a minimum 20–percent interest in the vessel for the previous 12 months as supported by the U.S. Abstract of Title issued by the U.S. Coast Guard and any other documentation indicating percentage ownership;

(ii) For an undocumented vessel, continuously owned a minimum 20–percent interest in the vessel for the previous 12 months as supported by a State of Alaska vessel registration and any other documentation indicating percentage ownership; and

(iii) Is represented on the vessel by a hired master permitted in accordance with § 679.4(d)(2) and employed by the corporation or partnership that received the initial allocation of QS.

(2) The provision of paragraph (j)(1) of this section is not transferable and does not apply to QS assigned to vessel category B, C, or D for halibut in IFQ regulatory Area 2C or for sablefish in the IFQ regulatory area east of 140° W. long. that is transferred to a corporation or partnership. Such transfers of additional QS within these areas must be to an individual pursuant to § 679.41(c) and be used pursuant to paragraphs (c) and (i) of this section.

(3) A corporation or partnership, except for a publicly held corporation, that receives an initial allocation of QS assigned to vessel category B, C, or D loses the exemption provided under this paragraph (j) on the effective date of a change in the corporation or partnership from that which existed at the time of initial allocation.

(4) For purposes of this paragraph (j), ''a change'' means:

(i) For corporations and partnerships, the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership; or

(ii) For estates, the final or summary distribution of the estate.

(5) The Regional Administrator must be notified of a change in the corporation, partnership, or other entity as defined in this paragraph (j) within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph (j), is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation or partnership or, for estates, the date of the determination of a legal heir to the estate, or the date of the order for distribution of the estate.

(6) QS assigned to vessel category B, C, or D and IFQ resulting from that QS held in the name of a corporation, partnership, or other entity that changes, as defined in this paragraph (j), must be transferred to an individual, as prescribed in § 679.41, before it may be used at any time after the effective date of the change.

(7) A corporation or a partnership that received an initial allocation of QS assigned to category B, C, or D and that, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that corporation or partnership may continue to employ a master to fish its IFQ on a vessel owned by the corporation or partnership provided that the corporation or partnership continues to own the vessel at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that corporation or partnership did not acquire additional QS through transfer after September 23, 1997.

(8) A corporation, partnership, or other entity, except for a publicly held corporation, that receives an initial allocation of QS assigned to category B, C, or D must provide annual updates to the Regional Administrator identifying all current shareholders or partners and affirming the entity's continuing existence as a corporation or partnership.

(9) The exemption provided in this paragraph (j) may be exercised by a corporation, partnership, or other entity on a vessel owned by a person who is a shareholder in the corporation, partnership, or other entity, provided that the corporation, partnership, or other entity maintains a minimum of 20–percent interest in the vessel. For purposes of this paragraph (j), interest in a vessel is determined as the percentage of ownership in the corporation, partnership, or other entity by that person who is a shareholder in the corporation, partnership, or other entity, multiplied by the percentage of ownership in the vessel by that person who is a shareholder in the corporation, partnership, or other entity.

* * * * *

(l) *Sablefish Vessel Clearance Requirements*—(1) *General.* Any vessel operator who fishes for sablefish in the Bering Sea or Aleutian Islands IFQ regulatory areas must possess a transmitting VMS transmitter while fishing for sablefish.

(2) *VMS Requirements.* (i) The operator of the vessel must comply with § 679.28(f)(3), (f)(4), and (f)(5); and

(ii) The operator of the vessel must contact NMFS at 800–304–4846 (option 1) between 0600 and 0000 A.l.t. and receive a VMS confirmation number at least 72 hours prior to fishing for sablefish in the Bering Sea or Aleutian Islands IFQ regulatory areas.

11. Revise Table 3 to Part 679 to read as follows:

BILLING CODE 3510–22–P

Table 3 to Part 679--Product Recovery Rates (PRR) for Groundfish Species and Conversion Rates for Pacific Halibut

FMP Species	Species Code	Product Code											
		1, 2, 41,86, 92, 93, 95 Whole Fish	3, 42 Bled	4 Gutted Head On	5 Gutted Head Off	6 H&G with Roe	7 H&G West Cut	8 H&G East Cut	10 H&G w/o Tail	11 Kirimi	12 Salted & Split	13 Wings	14 Roe
Pacific Cod	110	1.00	0.98	0.85	---	0.63	0.57	0.47	0.44	---	0.45	---	0.05
Arrowtooth Flounder	121	1.00	0.98	0.90	---	0.80	0.72	0.65	0.62	0.48	---	---	0.08
Flathead Sole	122	1.00	0.98	0.90	---	0.80	0.72	0.65	0.62	0.48	---	---	0.08
Rock Sole	123	1.00	0.98	0.90	---	0.80	0.72	0.65	0.62	0.48	---	---	0.08
Dover Sole	124	1.00	0.98	0.90	---	0.80	0.72	0.65	0.62	0.48	---	---	0.08
Rex Sole	125	1.00	0.98	0.90	---	0.80	0.72	0.65	0.62	0.48	---	---	0.08
Yellowfin Sole	127	1.00	0.98	0.90	---	0.80	0.72	0.65	0.62	0.48	---	---	0.08
Greenland Turbot	134	1.00	0.98	0.90	---	0.80	0.72	0.65	0.62	0.48	---	---	0.08
Thornyhead Rockfish	143	1.00	0.98	0.88	---	0.55	0.60	0.50	---	---	---	---	---
Sculpins	160	1.00	0.98	0.87	---	---	0.50	0.40	---	---	---	---	---
Atka Mackerel	193	1.00	0.98	0.87	---	0.67	0.64	0.61	---	---	---	---	---
Pollock	270	1.00	0.98	0.80	---	0.70	0.65	0.56	0.50	0.25	---	---	0.07
Smelts	510	1.00	0.98	0.82	---	---	0.71	---	---	---	---	---	---
Eulachon	511	1.00	0.98	0.82	---	---	0.71	---	---	---	---	---	---

Capelin	516	1.00	0.98	0.89	---	---	0.78	---	---	---	---	---	---
Sharks	689	1.00	0.98	0.83	---	---	0.72	---	---	---	---	---	---
Skates	700	1.00	0.98	0.90	---	---	---	0.32	---	---	---	0.32	---
Sablefish	710	1.00	1.00	0.89	---	---	0.68	0.63	0.50	---	---	---	---
Octopus	870	1.00	0.98	0.81	---	---	---	---	---	---	---	---	---
Squid	875	1.00	0.98	0.69	---	---	---	---	---	---	---	---	---
Rockfish	---	1.00	0.98	0.88	---	---	0.60	0.50	---	---	---	---	---
Conversion Rates to Net Weight for PACIFIC HALIBUT	200	---	---	0.90	1.0	---	---	---	---	---	---	---	---

FMP Species	Species Code	Product Code											
		15 Pectoral Girdle	16 Heads	17 Cheeks	18 Chins	19 Belly	20 Fillets w/ Skin & Ribs	21 Fillets w/ Skin No Ribs	22 Fillets w/ Ribs No Skin	23 Fillets Skinless Boneless	24 Fillets Deep Skin	30 Surimi	31 Mince
Pacific Cod	110	0.05	---	0.05	---	0.01	0.45	0.35	0.25	0.25	---	0.15	0.5
Arrowtooth Flounder	121	---	---	---	---	---	0.32	0.27	0.27	0.22	---	---	---
Flathead Sole	122	---	---	---	---	---	0.32	0.27	0.27	0.22	---	---	---
Rock Sole	123	---	---	---	---	---	0.32	0.27	0.27	0.22	---	---	---
Dover Sole	124	---	---	---	---	---	0.32	0.27	0.27	0.22	---	---	---
Rex Sole	125	---	---	---	---	---	0.32	0.27	0.27	0.22	---	---	---
Yellowfin Sole	127	---	---	---	---	---	0.32	0.27	0.27	0.22	---	0.18	---
Greenland Turbot	134	---	---	---	---	---	0.32	0.27	0.27	0.22	---	---	---
Thornyhead Rockfish	143	---	0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25	---	---	---
Sculpins	160	---	---	---	---	---	---	---	---	---	---	---	---
Atka Mackerel	193	---	---	---	---	---	---	---	---	---	---	0.15	---

Pollock	270	---	0.15	---	---	---	0.35	0.30	0.30	0.21	0.16	0.16[1] 0.17[2]	0.22
Smelts	510	---	---	---	---	---	---	0.38	---	---	---	---	---
Eulachon	511	---	---	---	---	---	---	0.38	---	---	---	---	---
Capelin	516	---	---	---	---	---	---	---	---	---	---	---	---
Sharks	689	---	---	---	---	---	---	0.30	0.30	0.25	---	---	---
Skates	700	---	---	---	---	---	---	---	---	---	---	---	---
Sablefish	710	---	---	0.05	---	---	0.35	0.30	0.30	0.25	---	---	---
Octopus	870	---	---	---	---	---	---	---	---	---	---	---	---
Squid	875	---	---	---	---	---	---	---	---	---	---	---	---
Rockfish	---	---	0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25	---	---	---
Conversion Rates to Net Weight for PACIFIC HALIBUT	200	---	—	—	---	---	---	---	---	---	---	---	---

FMP Species	Species Code	Product Code							
		32 Meal	33 Oil	34 Milt	35 Stomachs	36 Mantles	37 Butterfly Backbone Removed	88, 89 Infested or Decomposed Fish	98, 99 Discards
Pacific Cod	110	0.17	---	---	---	---	0.43	0.00	1.00
Arrowtooth Flounder	121	0.17	---	---	---	---	---	0.00	1.00
Flathead Sole	122	0.17	---	---	---	---	---	0.00	1.00
Rock Sole	123	0.17	---	---	---	---	---	0.00	1.00
Dover Sole	124	0.17	---	---	---	---	---	0.00	1.00
Rex Sole	125	0.17	---	---	---	---	---	0.00	1.00
Yellowfin Sole	127	0.17	---	---	---	---	---	0.00	1.00
Greenland Turbot	134	0.17	---	---	---	---	---	0.00	1.00
Thornyhead Rockfish	143	0.17	---	---	---	---	---	0.00	1.00
Sculpins	160	0.17	---	---	---	---	---	0.00	1.00
Atka Mackerel	193	0.17	---	---	---	---	---	0.00	1.00
Pollock	270	0.17	---	---	---	---	0.43	0.00	1.00
Smelts	510	0.17	---	---	---	---	---	0.00	1.00
Eulachon	511	0.17	---	---	---	---	---	0.00	1.00
Capelin	516	0.17	---	---	---	---	---	0.00	1.00
Sharks	689	0.17	---	---	---	---	---	0.00	1.00
Skates	700	0.17	---	---	---	---	---	0.00	1.00
Sablefish	710	0.17	---	---	---	---	---	0.00	1.00
Octopus	870	0.17	---	---	---	0.85	---	0.00	1.00
Squid	875	0.17	---	---	---	0.75	---	0.00	1.00
Rockfish	---	---	---	---	---	---	---	0.00	1.00
Conversion Rates to Net Weight for PACIFIC HALIBUT	200	---	---	---	---	---	---	0.00	0.75

[1]Standard pollock surimi rate during January through June
[2]Standard pollock surimi rate during July through December.

Notes: To obtain round weight of groundfish, divide the product weight of groundfish by the table PRR.
To obtain IFQ net weight of Pacific halibut, multiply the product weight of halibut by the table conversion rate.
To obtain round weight from net weight of Pacific halibut, divide net weight by 0.75 or multiply by 1.33333.

[FR Doc. 06–9009 Filed 10–31–06; 8:45 am]

Notices

Federal Register

Vol. 71, No. 211

Wednesday, November 1, 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

Farm Service Agency

Information Collection; Online Registration for FSA-Sponsored Events and Conferences

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency is seeking comments from all interested individuals and organizations on an extension without revision of the information collection associated with online registration for FSA-sponsored events and conferences. The information collection is needed for FSA to obtain information from the respondents who register on the Internet to make payment and reservations to attend any FSA-sponsored conferences and events.

DATES: Comments must be received in writing on or before January 2, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Farm Service Agency, USDA, Office of External Affairs, Jeff Kerby, 1400 Independence Avenue, SW., Washington, DC 20250. Comments also may be submitted via facsimile to (202) 720–2979 or by e-mail to: *jeff.kerby@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Kerby, Office of External Affairs, (202) 720–1593.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Online Registration for FSA-sponsored Events and Conferences.

OMB Number: 0560–0226.

Expiration Date of Approval: 04/30/07.

Type of Request: Extension with no revision.

Abstract: The collection of information is necessary for people to register online to make payment and reservations to attend conferences and events. They can register on FSA's Online Registration site on the Internet. Respondents who do not have access to the Internet can register by mail or fax. The information is collected by the FSA employees who sponsor the conferences and events. The FSA is collecting common elements from interested respondents such as name, organization, address, country, phone number, State, city or town, payment options (cash, credit card, check) and special accommodations requests. The respondents are mainly individuals who are interested in attending the FSA-sponsored conferences or events. The information is used to collect payment from the respondents and make hotel reservations and other special arrangements as necessary.

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 900.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 225.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval. Signed at Washington, DC, October 20, 2006.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E6–18370 Filed 10–31–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho Cobalt Project Plan of Operations, Salmon-Challis National Forest, Lemhi County, ID

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The Forest Service, as the lead Federal agency, previously published in the **Federal Register** (66 FR 46992–46994, September 10, 2001) a Notice of Intent to prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of the Idaho Cobalt Project. The Idaho Cobalt Project is a proposed plan of operations to develop an underground cobalt-copper-gold mine on the Salmon/Cobalt Ranger District of the Salmon-Challis National Forest in Lemhi County, Idaho. The Forest Service Handbook 1909.15, Chapter 21.2, requires this revised notice in the **Federal Register** to inform the public of a major change to the applicant's plan and provide revised dates of when the draft and final EIS will be completed. The major plan change is described in the following paragraph. The revised dates of when the draft and final EIS will be available can be found in the **DATES** section of this notice.

The project proponent, Formation Capital Corporation U.S. (Formation), submitted its proposed plan of operation (Plan) to the Forest Service in January 2001. That Plan described the major components of the project, including production adits and declines, waste rock disposal areas, processing plant, process water and tailings disposal methods, haul roads, and ancillary support facilities on National Forest System Lands. Since 2001, Formation has provided the Forest Service with a number of clarifications and minor revisions to their Plan, which, for the most part, did not alter the basic project description contained

in the initial **Federal Register** notice. However, one proposed revision to the Plan's handling of mine and process water constituted a major change, which necessitated publishing this revised notice. Instead of land-applying the water as originally proposed, Formation plans to install a water treatment system and discharge the mine/process water into Big Deer Creek under a National Pollutant Discharge Elimination System (NPDES) permit. This change would reduce the surface area affected by mining operations from 251 acres to 149 acres.

Formation submitted an NPDES permit application to the U.S. Environmental Protection Agency (EPA) on May 25, 2006 to discharge treated water into Big Deer Creek. The permit is a new source subject to the requirements of 40 CFR Part 440. As described in 40 CFR Part 122.29 and EPA's NEPA implementing regulations in 40 CFR Part 6, a new source is subject to compliance with NEPA prior to taking a final action on the NPDES permit.

EPA entered into a Memorandum of Understanding (MOU) with the Forest Service on August 8, 2006 as a cooperating agency in the EIS process. The MOU describes the roles, responsibilities, and NEPA coordination amongst the two agencies.

Given the public scoping that has already been conducted for this project, the extensive list of significant issues generated as a result of that scoping, and the impending completion of the Draft EIS, the Forest Service will not initiate additional public scoping for this notice. Public comments will be accepted and considered following publication of the Draft EIS.

DATES: The Draft EIS is expected to be available for a 45-day public review and comment period the first quarter of 2007. EPA will inform the public of the start of the review and comment period by publishing a Notice of Availability of the Draft EIS in the **Federal Register**. Completion of the Final EIS is anticipated by July 31, 2007.

FOR FURTHER INFORMATION CONTACT: Ray Henderson, Project Coordinator, Salmon-Challis National Forest, 1206 S. Challis Street, Salmon, Idaho 83467, Phone (208) 756–5100. Questions on the NPDES permit should be directed to Rob Rau, EPA Region 10, 1200 6th Ave., Seattle, Washington 98101, Phone (206) 553–6285.

If you wish to be placed on the project mailing list or receive additional information, contact the Salmon-Challis National Forest Project Coordinator identified above.

SUPPLEMENTARY INFORMATION:

Project Description: Formation Capital Corporation U.S. (Formation) submitted a Plan of Operations for the proposed Idaho Cobalt Project to the Salmon-Challis National Forest in January 2001. The Plan, which has subsequently been modified by Formation on a number of occasions, most recently in a June 2006 revision, is summarized as follows:

The proposed Idaho Cobalt Project would consist of developing an 800-ton per day mine and mill complex. The project would involve mining cobalt-copper-gold reserves with an annual production rate of 280,000 tons of ore at full production. Current reserves and resources would allow for a ten-year mine life. The ore would be mined from two deposits, the Ram and the Sunshine and conveyed to a mill situated on the nearby Big Flat plateau. Underground mining methods are proposed, and a flotation mill would be used to process ore from the mine. At full production, the mill would produce approximately 32 tons of concentrate and 768 tons of tailings per day. The concentrate would be shipped to an off-site hydrometallurgical facility for metal recovery.

Ram and Sunshine ore would be hauled to the mill with trucks, where the ore would be stockpiled. The approximate haul distance to the proposed site of the mill from the Ram portal is 2.8 miles and 1.5 miles from the Sunshine portal. In the latter years of the mine life an overhead tram from the Ram portal may be used to transport ore to the mill. The tram would consist of suspended car traveling on track cables, driven by a haul cable and suspended on towers. The tramcar would be loaded from a hopper at the Ram portal, and the car would discharge into a hopper at the mill crusher.

The proposed tailings disposal facility and the water management reservoir are also located on the Big Flat, east of the mill. Disposal of tailings in this area via a dry stacking method was proposed by Formation to take advantage of relatively flat topography, avoidance of wetlands, suitable foundation soils, elimination of the need for a tailings dam, and distance from active drainages and streams. Approximately 60 percent of the tailings produced would be required underground as backfill. The backfill tailings would be dewatered to produce a paste and have cement added for strength. The paste would be pumped from the mill site to the Ram in a pipeline.

Mine and mill process waters would be managed and recycled in the process circuit using a lined water management reservoir as storage. Excess precipitation and mine water would be treated and discharged in accordance with an NPDES permit. Treatment would consist of pH adjustment, precipitation and filtration for metals removal followed by reverse osmosis membrane separation as a polishing step and to remove nitrate, sulfate and other constituents. Treated water is projected to meet effluent limits at the end of the discharge pipe. The project as proposed by Formation would disturb 149 acres of National Forest Land.

Power for the project would be secured from an existing power line delivering power to the nearby Blackbird Mine. Emergency power would be supplied with diesel generating equipment located at the main portals and at the mill.

It is anticipated that most of the project employees would live in the Salmon area. Employees would be transported to the project site by buses or vans assigned to personnel. The proposed transportation route for the employees is via the Williams Creek Summit, along the Williams Creek road, the Deep Creek road, the Panther Creek road and the Blackbird Creek road. The transportation route for mine supplies and the concentrates would also be via Williams Creek Summit. The West Panther and South Panther Roadless Areas lie to the north, west and east of the ICP. Proposed activities in the company and agency alternatives would utilize upgraded existing and to a lesser degree new roads within the designated roadless area. Up to eight acres of disturbance within the designated roadless area would occur under the action alternatives.

There would be three main phases in the life of the Idaho Cobalt Project: the construction phase, the production phase, and the reclamation phase. There would also be concurrent reclamation in the construction and production phases as existing disturbed areas or new disturbance is reclaimed post-use. The construction phase would include upgrading 23.2 miles of existing roads, and construction of 2.7 miles of new roads, construction of the portals and waste rock dumps, the mill site, power line and substation and the tailings disposal site. Soil stockpile areas, stormwater diversion ditches and borrow areas would also be included in the surface disturbance.

The production phase would bring the mill on line at 400-tons per day increasing to 800-tons per day as the underground Ram mine expands. Each of the project components is integral to the whole operation and therefore there would be limited opportunities for concurrent reclamation. However, there

would be concurrent reclamation in some areas when active use stops. The reclamation phase would include final shaping of waste rock dumps, sealing mine portals, mill demolition, power line and substation dismantling, tailings disposal area shaping and revegetation, water management reservoir reclamation, and road reclamation.

Cobalt is a strategic and industrial metal with a diverse range of uses. The largest single use is in alloys for air and land-based gas turbine engines. The fastest growing usage is in the battery industry for cell phones, pagers, portable computers and gasoline-electric hybrid power automobiles. Cobalt is used in computer hard disk drives, semiconductors, magnetic data storage and solar collectors. It is also used as a component in the effort to reduce air pollution, as it is a catalyst for removing sulfur from oil to provide for clean burning fuels and has important medical uses as well.

Proposed Action and Regulatory Requirements: The Forest Service decision to be made in response to Formation's Plan is described by regulation at 36 CFR 228.5 and includes: (a) Approve the project as proposed, (b) Notify the operator of changes or additions to the plan of operations deemed necessary to meet the purpose of the regulations.

These regulations also direct the Forest Service to comply with the requirements of the National Environmental Policy Act (NEPA) in connection with each Plan of Operation. In this regard, the Salmon-Challis Forest Supervisor has determined that an EIS is required to support a decision on the Idaho Cobalt Project. The EIS will analyze the direct, indirect, and cumulative environmental effects of the proposed Plan of Operation and other reasonable alternatives including mitigation, monitoring and reclamation measures designed to minimize adverse effects.

In order to implement the project, the proponent, Formation, must obtain approval or conduct consultation with several other federal, state, and local regulatory agencies. These agencies include: U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Army Corps of Engineers, Idaho Department of Environmental Quality, Idaho Department of Water Resources, Idaho State Historic Preservation Officer and Lemhi County, Idaho.

The Salmon Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The proposal would occur within Management Area 5B. Management emphasis in this area is on producing long-term timber outputs through a moderate level of investment in regeneration and thinning. It recognizes the potential for high-value locatable mineral occurrence and probable development. The Forest Plan directs that exploration, location, leasing and development of energy and non-energy minerals resources be coordinated with other resources.

Under the United States Mining Laws of May 10, 1872, as amended (30 U.S.C. 22), United States citizens and corporations have the right to search for and develop minerals upon public lands, including National Forest Systems lands, open to mineral entry. Forest Service regulations (36 CFR 228, Subpart A) require that the agency work with mineral operators to minimize or eliminate adverse environmental impacts from mineral activities on National Forest System lands.

Public Participation: The Forest Service held an initial public meeting to provide information on the Idaho Cobalt Project on July 20, 2001, at the City Center in Salmon, Idaho. The Forest issued a Notice of Intent (NOI) to prepare an EIS for the proposed mining project in the **Federal Register** on September 10, 2001. The NOI invited comments on FCC's proposed Plan of Operations and the Forest's environmental analysis process for the proposed Project. The Forest held public scoping meetings on October 10, 2001, in Challis, Idaho and October 11, 2001 in Salmon, Idaho.

The scoping process and subsequent environmental analysis, to date, have identified the following significant issues:

1. *Blackbird Mine CERCLA Remediation & Restoration*—What is the relationship between the proposed Idaho Cobalt Project and the current program to remediate the environmental damage at the Blackbird Mine and to re-establish an anadromous fishery in Panther Creek?

2. *Surface Water Quality*—What is the potential for adverse impacts to water quality downstream of project facilities from the proposed mining activities, including development of acid mine drainage and mobilization of heavy metals from geologic materials exposed by the proposed mining activities, and how would water quality be maintained and beneficial uses protected?

3. *Groundwater Quality*—What is the relationship of the aquifer systems between the proposed project and surrounding areas, particularly the Blackbird Mine and receiving streams? What is the existing quality of groundwater in the project area and how would the project affect existing groundwater quality?

4. *Water Use, Management, Treatment and Disposal*—How would surface water and groundwater quality monitoring be conducted to detect and allow for the correction of any water quality problems resulting from the proposed mining activities? What water management and treatment systems would be in place to assure no adverse impacts to water quality or quantity?

5. *Sediment Delivery (Storm Water Management)*—What are the potential effects on water quality from accelerated erosion and sedimentation, in consideration of surface disturbance associated with the proposed mining operations and the existing effects of the Clear Creek wildfire of the summer of 2000?

6. *Roads and Access*—Opportunities exist to improve the transportation system on the project site and the access roads including reclamation of existing roads not meeting Forest standards.

7. *Transportation of Product, Chemicals, and Fuel*—What is the potential for adverse impacts to water quality from accidental spills of hazardous materials along the transportation route?

8. *Socio-Economics*—What are the potential impacts to local communities, tax base and infrastructure from the proposed project?

9. *Vegetation/Reclamation*—What effects would the Idaho Cobalt Project have on vegetation, particularly the natural recovery of the area following the 2000 Clear Creek fire?

10. *Wetlands and Other Waters of the U.S.*—What are the impacts to wetlands from the Idaho Cobalt Project?

11. *Fish Populations and Habitat of Concern*—Would special status fish species and their habitat (threatened, endangered, sensitive) or species whose populations or habitat are present be adversely affected by the proposed mining activities?

12. *Air Quality/Visual Resource/ Wilderness Resources*—Would there be impacts to air quality, visual resources or the nearby wilderness?

13. *Wildlife Populations and Habitat of Concern*—

14. *Cultural Resources and Tribal Trust Responsibilities*—Are there cultural, historical or heritage resources in project area and would they be affected by the proposed Plan.

15. *Planning and Land Use*—How would the proposed mining activities affect other Forest activities and would any changes be required to the Forest Plan.

The comment period on the draft environmental impact statement will be 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.* v. *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 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.

Alternatives: The Forest Service will consider a range of alternatives in the EIS including a no action alternative and modifications to the proponent's Plan that would minimize risk of impacts to the environment, improve public safety and mitigate potential effects to water quality, wetlands, wildlife and other resources. Analysis of alternatives will evaluate alternative facility locations, facility design components, operational procedures and technologies. For example alternatives to the location for the tailings disposal facility, to operational and post closure water management and to water treatment technologies will be evaluated. Mitigation measures that would improve access road safety, increase monitoring requirements and modify reclamation methods will also be considered. The range of alternatives would result in surface disturbance of up to approximately 328 acres.

Responsible Official: I am the responsible official for this Environmental Impact Statement. My address is Salmon-Challis National Forest, 1206 S. Challis Street, Salmon, Idaho 83467.

Dated: October 24, 2006.

William A. Wood,

Forest Supervisor, Salmon-Challis National.

[FR Doc. E6–18362 Filed 10–31–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of November 2006,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Periods
Antidumping Duty Proceedings	
Argentina: Barbed Wire & Barbless Fencing Wire, A–357–405	11/1/05–10/31/06
Brazil: Circular Welded Non-Alloy Steel Pipe, A–351–809	11/1/05–10/31/06
Hungary: Sulfanilic Acid, A–437–804	11/1/05–10/31/06
Kazakhstan: Certain Hot-Rolled Carbon Steel Flat Products, A–834–806	11/1/05–10/31/06
Mexico: Circular Welded Non-Alloy Steel Pipe, A–201–805	11/1/05–10/31/06
Netherlands: Certain Hot-Rolled Carbon Steel Flat Products, A–421–807	11/1/05–10/31/06
Portugal: Sulfanilic Acid, A–471–806	11/1/05–10/31/06
Republic of Korea: Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/05–10/31/06
Romania: Certain Hot-Rolled Carbon Steel Flat Products, A–485–806	11/1/05–10/31/06
Taiwan: Certain Hot-Rolled Carbon Steel Flat Products, A–583–835	11/1/05–10/31/06
Taiwan: Circular Welded Non-Alloy Steel Pipe, A–583–814	11/1/05–10/31/06
Thailand: Certain Hot-Rolled Carbon Steel Flat Products, A–549–817	11/1/05–10/31/06
The People's Republic of China:	

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Periods
Certain Hot-Rolled Carbon Steel Flat Products, A–570–865	11/1/05–10/31/06
Certain Cut-to-Length Carbon Steel, A–570–849	11/1/05–10/31/06
Fresh Garlic, A–570–831	11/1/05–10/31/06
Paper Clips, A–570–826	11/1/05–10/31/06
Pure Magnesium in Granular Form, A–570–864	11/1/05–10/31/06
Refined Brown Aluminum Oxide, A–570–882	11/1/05–10/31/06
Ukraine: Certain Hot-Rolled Carbon Steel Flat Products, A–823–811	11/1/05–10/31/06
Countervailing Duty Proccedings	
Hungary: Sulfanilic Acid, C–437–805	1/1/05–12/31/05
Suspension Agreements	
Ukraine: Certain Cut-to-Length Carbon Steel, A–823–808	11/1/05–10/31/06

In accordance with § 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://ia.ita.doc.gov.*

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of November 2006. If the Department does not receive, by the last day of November 2006, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 26, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. E6–18414 Filed 10–31–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of upcoming Sunset Reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for December 2006

The following Sunset Reviews are scheduled for initiation in December 2006 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

Antidumping Duty Proceedings

Department Contact

Folding Gift Boxes from the People's Republic of China (A–570–866).

Juanita Chen, (202) 482–1904.

Countervailing Duty Proceedings

No countervailing duty proceedings are scheduled for initiation in December 2006.

Suspended Investigations

No suspended investigations are scheduled for initiation in December 2006.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin''). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 15 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 25, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. E6–18440 Filed 10–31–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year (''Sunset Review'') of the antidumping and countervailing duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers these same order.

Effective Date: November 1, 2006.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review(s)* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (*''Sunset Policy Bulletin''*).

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC case No.	ITC case No.	Country	Product	Department contact
A–357–812	731–TA–892	Argentina	Honey	Dana Mermelstein, (202) 482–1391.
A–570–863	731–TA–893	PRC	Honey	Dana Mermelstein, (202) 482–1391.
A–588–857	731–TA–919	Japan	Welded Large Diameter Line Pipe	Dana Mermelstein, (202) 482–1391.
A–201–828	731–TA–920	Mexico	Welded Large Diameter Line Pipe	Dana Mermelstein, (202) 482–1391.
Countervailing Duty Proceedings				
C–357–813	701–TA–402	Argentina	Honey	Dana Mermelstein, (202) 482–1391.

Suspended Investigations

No suspended investigations are scheduled for initiation in November 2006.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the Department's regulations regarding Sunset Reviews (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of Sunset Reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/*.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G)

of the Act and 19 CFR 351.102(b)) wishing to participate in these Sunset Reviews must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review.

See 19 CFR 351.218(d)(1)(iii).

For sunset reviews of countervailing duty orders, parties wishing the Department to consider arguments that countervailable subsidy programs have been terminated must include with their substantive responses information and documentation addressing whether the changes to the program were (1) limited to an individual firm or firms and (2) effected by an official act of the government. Further, a party claiming program termination is expected to document that there are no residual benefits under the program and that substitute programs have not been introduced. *Cf.* 19 CFR 351.526(b) and (d). If a party maintains that any of the subsidies countervailed by the Department were not conferred pursuant to a subsidy program, that party should nevertheless address the applicability of the factors set forth in 19 CFR 351.526(b) and (d). Similarly, parties wishing the Department to consider whether a company's change in ownership has extinguished the benefit from prior non-recurring, allocable, subsidies must include with their substantive responses information and documentation supporting their claim that all or almost all of the company's shares or assets were sold in an arm's length transaction, at a price representing fair market value, as described in the *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125 (June 23, 2003) (*Modification Notice*). *See Modification Notice* for a discussion of the types of information and documentation the Department requires.

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: October 26, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. E6–18441 Filed 10–31–06; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–707]

Granular Polytetrafluoroethylene Resin From Japan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 11, 2006, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Japan. The review covers one manufacturer/exporter. The period of review is August 1, 2004, through July 31, 2005.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: November 1, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1757 or (202) 482–4477.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 2006, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on granular polytetrafluoroethylene resin (PTFE) from Japan. See *Granular Polytetrafluoroethylene Resin From Japan: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 27459 (May 11, 2006). The period of review is August 1, 2004, through July 31, 2005. The company for which we are conducting the administrative review is Asahi Glass Fluoropolymers, Ltd. (Asahi).

We invited interested parties to comment on the preliminary results. We received comments from Asahi. The petitioner in this case did not comment. Asahi also submitted an untimely request for a hearing which we denied. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Order

The merchandise covered by the antidumping duty order is PTFE, filled or unfilled. The order excludes PTFE dispersions in water, fine powders, and reprocessed PTFE powder. PTFE is currently classifiable under subheading 3904.61.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). This order covers all PTFE, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the order remains dispositive.

Analysis of the Comments Received

All issues raised in the case brief submitted by Asahi in the context of this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary, dated October 23,

2006, which is hereby adopted by this notice. A list of the issues which the respondent raised and to which we have responded is in the Decision Memo and attached to this notice as an Appendix. The Decision Memo, which is a public document, is on file in the Central Records Unit, main Commerce building, Room B–099, and is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes from the Preliminary Results

Based on our analysis of the comments we received from Asahi, we find that Asahi's two home–market channels of distribution constitute one level of trade. Our analysis on the level of trade is discussed in detail in the Decision Memo. We made no other changes to our analysis.

Final Results of the Review

As a result of our review, we determine that a margin of 0.00 percent exists for Asahi for the period August 1, 2004, through July 31, 2005.

Assessment Rate

The Department will determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. We intend to issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer–specific assessment rate of 0.00 percent. We will direct CBP to liquidate the appropriate entries at this rate. See 19 CFR 351.212(b)(1).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. See *Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (Assessment–Policy Notice). This clarification will apply to entries of subject merchandise during the period of review produced by Asahi for which Asahi did not know that the merchandise it sold to an intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the 91.74 percent all–others rate if there is no rate for the intermediary involved in the transaction. See the Assessment–Policy Notice for a full discussion of this clarification.

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, consistent with section 751(a)(1) of the Act: (1) the cash–deposit rate for Asahi will be 0.00 percent; (2) for previously reviewed or investigated companies not listed above, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the LTFV investigation, the cash–deposit rate shall be 91.74 percent, the all–others rate established in the LTFV investigation. See *Notice of Final Determination of Sales at Less Than Fair Value: Granular Polytetrafluoroethylene Resin From Japan*, 53 FR 25191 (July 5, 1988). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a 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(a)(3). Timely notification of the return or 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.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 23, 2006.

Stephen J. Claeys,

Acting Assistant Secretaryfor Import Administration.

Appendix

Comments and Responses

Level of Trade

[FR Doc. E6–18405 Filed 10–31–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Certain Individually Quick Frozen Red Raspberries from Chile: Extension of the Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 1, 2006.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3813 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days from the date of publication of the preliminary results.

Background

On August 29, 2005, the Department published a notice of initiation of administrative review of the antidumping duty order on certain individually quick frozen red raspberries from Chile, covering the period July 1, 2004, through June 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (August 29, 2005). On August 8, 2006, the Department published the preliminary results of the

antidumping duty administrative review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Individually Quick Frozen Red Raspberries from Chile*, 71 FR 45000 (August 8, 2006).

Extension of Time Limits for Final Results

The Department requires additional time to verify the cost information submitted by a respondent in this administrative review. Moreover, the Department requires additional time to analyze complex cost issues relating to direct material purchases. Thus, it is not practicable to complete this review within the original time limit (*i.e.*, December 6, 2006). Therefore, the Department is extending the time limit for completion of the final results of this administrative review until no later than February 4, 2007, which is 180 days from the date of publication of the preliminary results. However, February 4 falls on Sunday, and it is the Department's long–standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the final results is February 5, 2007.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 25, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–18406 Filed 10–31–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Flanges From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Dates:* November 1, 2006.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1994, the Department published the antidumping duty order on stainless steel flanges from India. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India,* 59 FR 5994 (February 9, 1994). On February 28, 2006, we received requests for an administrative review for the period February 1, 2005, through January 31, 2006, from Echjay Forgings Pvt. Ltd. (Echjay) and Shree Ganesh Forgings, Ltd. (Shree Ganesh). We also received requests for a new shipper review and, failing that, an administrative review, from Kunj Forgings Pvt. Ltd. (Kunj), Micro Forge (India) Ltd. (Micro), Pradeep Metals Limited (Pradeep), and Rollwell Forge, Ltd. (Rollwell). On April 5, 2006, we initiated administrative reviews of the six companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews,* 71 FR 17077 (April 5, 2006).[1] The preliminary results of the administrative review are currently due no later than October 31, 2006.

Extension of Time Limit for Preliminary Results

The Tariff Act of 1930, as amended (the Act), at section 351(a)(3)(A), provides that the Department will issue the preliminary results of an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act provides further that if the Department determines that it is not practicable to complete the review within this time period, the Department may extend the 245-day period to 365 days.

The Department has determined that it is not practicable to complete the preliminary results by the current 245-day deadline of October 31, 2006. Rollwell has reported several new model types of flanges that the Department has not analyzed in previous segments of this proceeding. We require additional time to make a thorough analysis of these model types and to determine appropriate model match weighting criteria. Therefore, in accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department is extending the time limit for the preliminary results by 120 days to February 28, 2007.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: October 25, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–18407 Filed 10–31–06; 8:45 am]

BILLING CODE 3510–DS–P

[1] On April 6, 2006, the Department published a notice initiating new shipper reviews of Kunj, Micro, Pradeep, and Rollwell. *See Stainless Steel Flanges from India: Notice of Initiation of Antidumping Duty New Shipper Reviews,* 71 FR 17439 (April 6, 2006). On September 29, 2006, we rescinded the new shipper reviews with respect to Micro, Pradeep, and Rollwell. *See Certain Forged Stainless Steel Flanges from India: Notice of Partial Rescission of New Shipper Reviews,* 71 FR 57468 (September 29, 2006).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Federal Advisory Committee

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Extension of deadline for nominations for the Marine Protected Areas Federal Advisory Committee.

SUMMARY: The Department of Commerce published a notice in the **Federal Register** on September 26, 2006 (71 FR 45107) seeking nominations for membership on the Marine Protected Areas Federal Advisory Committee (Committee). The deadline for nominations by qualified persons to the Committee is hereby extended.

DATES: The extended deadline for nominations to the Committee is November 30, 2006.

ADDRESSES: Nominations should be sent to Lauren Wenzel, National Oceanic and Atmospheric Administration, National marine Protected Areas Center, 1305 East West Highway, Station #12227, Silver Spring, MD 20910. E-mail: *Lauren.wenzel@noaa.gov.* E-mail nominations are acceptable.

FOR FURTHER INFORMATION CONTACT: Refer to the **Federal Register** notice of September 26, 2006, or contact Lauren Wenzel, (301) 713–3100 x136, *Lauren.wenzel@noaa.gov.*

Dated: October 26, 2006.

Elizabeth R. Scheffler,

Associate Assistant Administrator for Management, National Ocean Service.

[FR Doc. 06–9013 Filed 10–31–06; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0133]

Federal Acquisition Regulation; Information Collection;DefenseProduction Act Amendments

AGENCIES: Department of Defense (DOD), General ServicesAdministration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding anextension to an existing OMB clearance (9000–0133).

SUMMARY: Under the provisions of the Paperwork ReductionAct of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation(FAR) Secretariat will be submitting to the Office of Management and Budget(OMB) a request to review and approve an extension of a currently approvedinformation collection requirement concerning Defense Production ActAmendments. A request for public comments was published in the **Federal Register** at 71 FR 38866, July 10, 2006. No commentswere received. The clearancecurrently expires on October 31, 2006.

Public comments are particularly invited on: Whether this collection ofinformation is necessary for the proper performance of functions of theFAR, and whether it will have practical utility; whether our estimate ofthe public burden of this collection of information is accurate, and basedon valid assumptions and methodology; ways to enhance the quality, utility,and clarity of the information to be collected; and ways in which we canminimize the burden of the collection of information on those who are torespond, through the use of appropriate technological collection techniquesor other forms of information technology.

DATES: Comments may be submitted on or before December 1, 2006.

ADDRESSES: Submit comments regarding this burdenestimate or any other aspect of the collection of information, includingsuggestions for reducing this burden to the General ServicesAdministration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035,Washington, DC 20405. FOR FURTHER INFORMATION CONTACT: Ms. JerittaParnell, Contract Policy Division, GSA, (202)501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title III of the Defense Production Act (DPA) of 1950 authorizes variousforms of Government assistance to encourage expansion of productioncapacity and supply of industrial resources essential to national defense.The DPA Amendments of 1992 provide for the testing, qualification, and useof industrial resources manufactured or developed with assistance providedunder Title III of the DPA.

FAR 34.1 and 52.234–1 require contractors, upon the direction ofthe contracting officer, to test Title III industrial resources forqualification, and provide the test results to the Defense Production ActOffice. The FAR coverage also expresses Government policy to pay for suchtesting and provides definitions, procedures, and a contract clause toimplement the policy. This information is used by the Defense ProductionAct Office, Title III Program, to determine whether the Title IIIindustrial resource has been provided an impartial opportunity toqualify.

B. Annual Reporting Burden

Respondents: 6.

Responses Per Respondent: 3.

Total Annual Responses: 18.

Hours Per Response: 100.

Total Burden Hours: 1,800.

Obtaining Copies of Proposals: Requesters may obtain acopy of the information collection documents from the General ServicesAdministration, Regulatory Secretariat (VIR), Room 4035, Washington, DC20405, telephone (202) 501–4755. Please cite OMB Control Number9000–0133, Defense Production Act Amendments, in allcorrespondence.

Ralph De Stefano,

Director, Contract Policy Division

[FR Doc. 06–8993 Filed 10–31–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0096]

Federal Acquisition Regulation; Submission for OMB Review; Patents

AGENCIES: Department of Defense (DOD), General ServicesAdministration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding anextension to an existing OMB clearance (9000–0096).

SUMMARY: Under the provisions of the Paperwork ReductionAct of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation(FAR) Secretariat has submitted to the Office of Management and Budget(OMB) a request to review and approve an extension of a currently approvedinformation collection requirement concerning patents. A request forpublic comments was published in the **Federal Register** at 71FR 40998, on July 19, 2006. No public comments were received.

Public comments are particularly invited on: Whether this collection ofinformation is necessary for the proper performance of functions of theFAR, and whether it will have practical utility; whether our estimate ofthe public burden of this collection of information is accurate, and basedon valid assumptions and methodology; ways to enhance the quality, utility,and clarity of the information to be collected; and ways in which we canminimize the burden of the collection of information on those who are torespond, through the use of appropriate technological collection techniquesor other forms of information technology.

DATES: Submit comments on or before December 1, 2006.

ADDRESSES: Submit comments including suggestions forreducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB,Washington, DC 20503, and a copy to the General Services Administration,FAR Secretariat (VIR), Room 4035 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ernest Woodson,Contract Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The patent coverage in FAR subpart 27.2 requires the contractor toreport each notice of a claim of patent or copyright infringement that cameto the contractor's attention in connection with performing aGovernment contract above a dollar value of $25,000 (sections27.202–1 and 52.227–2). The contractor is also required toreport all royalties anticipated or paid in excess of $250 for the use ofpatented inventions by furnishing the name and address of licensor, date oflicense agreement, patent number, brief description of item or component,percentage or dollar rate of royalty per unit, unit price of contract item,and number of units (sections 27.204–1, 52.227–6, and52.227–9). The information collected is to protect the rights of thepatent holder and the interest of the Government.

B. Annual Reporting Burden

Number of Respondents: 30.
Responses Per Respondent: 1.
Total Responses: 30.
Average Burden Hours Per Response: .5.
Total Burden Hours: 15.
Obtaining Copies of Proposals: Requesters may obtain acopy of the information collection documents from the General ServicesAdministration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW,Washington, DC 20405, telephone (202) 501–4755. Please cite OMBControl No. 9000–0096, Patents, in all correspondence.

Ralph De Stefano,
Director, Contract Policy Division.

[FR Doc. 06–8994 Filed 10–31–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DOD–2006–OS–0208]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice To Alter a System of Records.

SUMMARY: The Office of the Secretary of Defense is altering a system of records to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on December 1, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 696–4940.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted October 17, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 26, 2006.

C.R. Choate,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

DODDS 26

SYSTEM NAME:

DoD Domestic and Elementary School Program Files (May 9 2003, 68 FR 24935).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with: ''DoDEA 26''

SYSTEM NAME:

Delete entry and replace with: ''Department of Defense Education Activity Dependent Children's School Program Files''

SYSTEM LOCATION:

Delete entry and replace with: ''DoDEA Headquarters Office; DoDEA Area (DoDDS-Europe, DoDDS-Pacific, and DDESS) offices and school districts. Specific addresses for each Area office and school district may be obtained from the DoDEA Web site at *www.dodea.edu.* or from the DoDEA, Headquarters office, 4040 North Fairfax Drive, Arlington, VA 22203–1634, telephone 703 588–3200.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: ''Current and former students in schools operated by DoDEA, world-wide.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: ''School Student Record Files.'' Information includes records of student (name, Social Security Number, date of birth, citizenship, etc.) and sponsor identifiers and sponsor's permanent address, student performance, achievements and recognition (academic, citizenship, and athletic), standardized achievement tests scores and grades; reading records, letters of recommendation, parental correspondence, related information, and similar records. In addition, records may include the following:

Health Record Files. Includes student health records, immunization records, parental permission forms, screening results, sports physicals, physician referrals, medication instructions, consent forms, copies of accident reports, and similar records.

School Special Education Files. Information pertaining to special education programs to include preferrals and referral forms and, when appropriate, samples of student's work; Individual Education Plans; Case Study Committee reports and minutes; test results and protocols; disciplinary records, behavior plans and related information; assessment and evaluation reports; correspondence between teachers, service providers and/or parents; file access records and cross-reference location information; results of special education administrative hearings and other informal and formal conflict resolution procedures, such as mediated agreements or settlement documents; related service-provider reports, and teacher notes relevant to the child's special education program or needs.

School Ancillary Service Files. Information on non-special education supplemental student services, such as: Gifted Program, English as a Second Language (ESL), Compensatory Education, Reading Improvement to include consultation and referrals, test protocols, assessments and evaluation plans and results, progress and evaluation reports and summaries, teachers' notes, general correspondence, and samples of student's work, and related information.

School Registration Card Files. Sponsor and/or pupil registration cards reflecting student and sponsor social security numbers, grade/rank enrollment verification, sponsoring agency, emergency locator information, and similar files.

Teacher Class Register Files. Grade books reflecting scholastic marks and averages, teacher comments and/or notes, student attendance and

withdrawal information, and similar files.

Transcript Files. Information consists solely of the student's permanent records (transcripts) reflecting student name and social security number, grades, course titles, credits, and similar related information.

Transcript Request Files and other Disclosure Files. Request forms and correspondence authorizing release of transcript and other school student record files.

Report Card Files. Report cards that reflect scholastic grades, promotion, retention.

Attendance and Discipline Files. Information reflecting attendance and disciplinary actions, to include teacher referrals, tardy and/or admission slips, correspondence to and from parents, student and/or witness statements, and school investigative files, and similar related information.

System Wide Assessment Files. System Wide Assessment results for individual students and aggregated results for classrooms, schools, districts and areas.

School Mediation Agreement and Hearing Results Files. Material on mediations and hearings other than that contained in the individual student record.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''10 U.S.C. 2164, DoD Domestic Dependent Elementary and Secondary Schools; 10 U.S.C. 113, Secretary of Defense; 20 U.S.C. 921–932, Overseas Defense Dependent's education; and E.O. 9397 (SSN).''

PURPOSE(S):

Delete entry and replace with: ''The purpose of this system is to determine enrollment eligibility and tuition status in DoDEA and DoDEA funded non-DoD schools; schedule children for classes and transportation; record attendance, absence and withdrawal; record and monitor student progress, grades, course and grade credits, services, school activities, student awards, special interests, hobbies and accomplishments; develop an appropriate educational program, services and placement; provide information for enrollment and student financial aid for post-DoDEA education and employment; obtain and preserve school academic and athletic accreditation; to provide directory information to military recruiters; to perform other related authorized educational duties required.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with: ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a non-DoD school, upon request, in which the child is enrolled when the child is enrolled in the school at DoD expense.

To Federal and State educational agencies and public and private entities as needed to complete a student's application for or receipt of financial aid.

To Federal, State, and/local governmental officials to protect health and safety in the event of emergencies.

To public and private organizations conducting studies on or on behalf of DoDEA.

To State and local social service offices relative to law enforcement inquiries and investigations and child placement/support proceedings.

To private individuals, who have been appointed to DoDEA school Boards, advisory committees, student disciplinary committees, school improvement teams, and similar committees established by DoDEA, to perform authorized DoDEA activities or functions.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices also apply to this system.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with: ''Records are maintained in file folders, microfilm, disks, magnetic tape, and other electronic storage media.''

RETRIEVABILITY:

Add the following to the entry ''Social Security Number (SSN), date of birth, and student number.''

SAFEGUARDS:

Delete entry and replace with: ''Access is provided on a 'need-to-know' basis and to authorized authenticated personnel only. Records are maintained in controlled access rooms or areas. Computer terminal access is controlled by terminal identification and the password or similar system. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment and monitoring are the responsibility of the functional managers.''

RETENTION AND DISPOSAL:

Delete entry and replace with: ''School Student Record Files. 'Destroy/delete files other than secondary transcripts of all information except, report cards or other records of academic promotion or retention data after 1 year. Destroy or delete all non secondary transcript files 3–5 years after graduation, transfer, withdrawal, or death of student. Secondary School Transcripts will be cut off upon transfer, withdrawal, or death of student. Secondary Transcript files are destroyed when 50 years old. DoDDS student records are retained at the school for four years following the graduation, transfer, withdrawal, or death of student or until school closure whichever occurs first, and are then transferred to the Area for one year, and then are transferred to the DoDEA Records Center at Fort Benning, Georgia, until destroyed. DDESS student records are stored at the school until destroyed. Panama student records are stored at the DoDEA Records Center at Fort Benning, Georgia, until destroyed.' All other records included in this data base follow the disposition schedules of the following files:

Health Record Files. Place in student record file upon transfer, withdrawal, or death of student.

School Special Education Files. Destroy/Delete when 5 years old. Cut off on graduation, transfer, withdrawal or death of student.

Ancillary Service Files. Transfer to student record file upon transfer, withdrawal, or death of student.

Registration Card Files. Transfer current card to student record file upon graduation, transfer, withdrawal, or death of student. (Supporting documents used to determine eligibility, such as sponsor's orders, birth certificates, custody documents, housing documents (CONUS), and similar documents may be destroyed). A copy of current card is maintained in the student record file to authorize release of records. Destroy when superseded.

Teacher Class Register Files. Destroy/Delete when 1 year old. Cut off at end of school year.

Master Student List Files. Destroy/Delete when 25 years. Cut off at end of school year and retain in the CFA.

Transcript Files. Maintain transcripts IAW School Student Record Files.

Transcript Request Files. Destroy/Delete when 2 years old. Cut off at end of school year.

Secondary Report Card Files. Transfer to student record file upon TWD of student.

Attendance and Discipline Files. Destroy/delete when one year old. Cut off at end of school year.

System Wide Assessment Files. Destroy after 6 years. Individual reports maintained with the student records shall be retained in accordance with the disposition instructions in FN 1005–06 (School Student Record Files).

School Mediation Agreement and Hearing Results Files. Destroy/Delete when 20 years old. Cut off after final decision. Retire OSD-related records to the FRC when 5 years old.

Panama Student Records File. Destroy when 50 years old.

Records stored at the schools; DoDEA Records Center, 7441 Custer Road, Building 2670, Fort Benning, GA 31905; and Thompson Learning, Inc. (contractor) 2000 Lenox Drive, Lawrenceville, NJ 08648. Destroy when 50 years old.''

SYSTEM MANAGER(S) AND ADDRESS:

Add the following to the entry: ''Area school district system manager addresses may be obtained from the Office of the Director, DoDEA, 4040 North Fairfax Drive, Arlington, VA 22203–1634 or by visiting the Web site *www.dodea.edu.*''

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether this system contains information about themselves should address written inquiries to Area or District Systems Managers or the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Written requests for information should contain the full name, name used at time of school attendance, date of birth, identity and location of school attended, dates of attendance, and signature.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to Area or District Systems Managers or the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Written requests for access should contain the full name, name used at time of school attendance, date of birth, identity and location of school attended, dates of attendance, and signature.

Parents or legal guardians of a student may be given access to the Children's School Program Files records without regard to who has custody of the child, unless the child is age 18 or over, or a court has directed otherwise.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with: ''Individuals, school teachers, principals and administrators; counselors, medical personnel, parents/guardians, occupational and physical therapists, testing materials and activities, other educational facilities, medical facilities, (examinations and assessments), military commanders and installation activities.''

* * * * *

DoDEA 26

SYSTEM NAME:

Department of Defense Education Activity Dependent Children's School Program Files.

SYSTEM LOCATION:

DoDEA Headquarters Office DoDEA Area (DoDDS-Europe, DoDDS-Pacific, and DDESS) offices and school districts. Specific addresses for each Area office and school districts may be obtained from the DoDEA Web site at *www.dodea.edu.* or from the DoDEA, Headquarters office, 4040 North Fairfax Drive, Arlington, VA 22203–1634, telephone 703 588–3200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former students in schools operated by DoDEA, world-wide.

CATEGORIES OF RECORDS IN THE SYSTEM:

School Student Record Files. Information includes records of student (name, Social Security Number, date of birth, citizenship, etc.) and sponsor identifiers and sponsor's permanent address, student performance, achievements and recognition (academic, citizenship, and athletic), standardized achievement tests scores and grades; reading records, letters of recommendation, parental correspondence, related information, and similar records. In addition, records may include the following:

Health Record Files. Includes student health records, immunization records, parental permission forms, screening results, sports physicals, physician referrals, medication instructions, consent forms, copies of accident reports, and similar records.

School Special Education Files. Information pertaining to special education programs to include preferrals and referral forms and, when appropriate, samples of student's work; Individual Education Plans; Case Study Committee reports and minutes; test results and protocols; disciplinary records, behavior plans and related information; assessment and evaluation reports; correspondence between teachers, service providers and/or parents; file access records and cross-reference location information; results of special education administrative hearings and other informal and formal conflict resolution procedures, such as mediated agreements or settlement documents; related service-provider reports, and teacher notes relevant to the child's special education program or needs.

School Ancillary Service Files. Information on non-special education supplemental student services, such as: Gifted Program, English as a Second Language (ESL), Compensatory Education, Reading Improvement to include consultation and referrals, test protocols, assessments and evaluation plans and results, progress and evaluation reports and summaries, teachers' notes, general correspondence, and samples of student's work, and related information.

School Registration Card Files. Sponsor and/or pupil registration cards reflecting student and sponsor social security numbers, grade/rank enrollment verification, sponsoring agency, emergency locator information, and similar files.

Teacher Class Register Files. Grade books reflecting scholastic marks and averages, teacher comments and/or notes, student attendance and withdrawal information, and similar files.

Transcript Files. Information consists solely of the student's permanent records (transcripts) reflecting student name and social security number, grades, course titles, credits, and similar related information.

Transcript Request Files and other Disclosure Files. Request forms and correspondence authorizing release of transcript and other school student record files.

Report Card Files. Report cards that reflect scholastic grades, promotion, retention.

Attendance and Discipline Files. Information reflecting attendance and disciplinary actions, to include teacher referrals, tardy and/or admission slips, correspondence to and from parents, student and/or witness statements, and

school investigative files, and similar related information.

System Wide Assessment Files. System Wide Assessment results for individual students and aggregated results for classrooms, schools, districts and areas.

School Mediation Agreement and Hearing Results Files. Material on mediations and hearings other than that contained in the individual student record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2164, DoD Domestic Dependent Elementary and Secondary Schools; 10 U.S.C. 113, Secretary of Defense; 20 U.S.C. 921–932, Overseas Defense Dependent's education; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of this system is to determine enrollment eligibility and tuition status in DoDEA and DoDEA funded non-DoD schools; schedule children for classes and transportation; record attendance, absence and withdrawal; record and monitor student progress, grades, course and grade credits, services, school activities, student awards, special interests, hobbies and accomplishments; develop an appropriate educational program, services and placement; provide information for enrollment and student financial aid for post-DoDEA education and employment; obtain and preserve school academic and athletic accreditation; to provide directory information to military recruiters; to perform other related authorized educational duties required.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a non-DoD school, upon request, in which the child is enrolled when the child is enrolled in the school at DoD expense.

To Federal and State educational agencies and public and private entities as needed to complete a student's application for or receipt of financial aid.

To Federal, State, and/local governmental officials to protect health and safety in the event of emergencies.

To public and private organizations conducting studies on or on behalf of DoDEA.

To State and local social service offices relative to law enforcement inquiries and investigations and child placement/support proceedings.

To private individuals, who have been appointed to DoDEA school Boards, advisory committees, student disciplinary committees, school improvement teams, and similar committees established by DoDEA, to perform authorized DoDEA activities or functions.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, microfilm, disks, magnetic tape, and other electronic storage media.

RETRIEVABILITY:

By student surname, Social Security Number (SSN), date of birth, and student number.

SAFEGUARDS:

Access is provided on a 'need-to-know' basis and to authorized authenticated personnel only. Records are maintained in controlled access rooms or areas. Computer terminal access is controlled by terminal identification and the password or similar system. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment and monitoring are the responsibility of the functional managers.

RETENTION AND DISPOSAL:

School Student Record Files. 'Destroy/delete files other than secondary transcripts of all information except, report cards or other records of academic promotion or retention data after 1 year. Destroy or delete all non secondary transcript files 3–5 years after graduation, transfer, withdrawal, or death of student. Secondary School Transcripts will be cut off upon transfer, withdrawal, or death of student. Secondary Transcript files are destroyed when 50 years old. DoDDS student records are retained at the school for four years following the graduation, transfer, withdrawal, or death of student or until school closure whichever occurs first, and are then transferred to the Area for one year, and then are transferred to the DoDEA Records Center at Fort Benning, Georgia, until destroyed. DDESS student records are stored at the school until destroyed. Panama student records are stored at the DoDEA Records Center at Fort Benning, Georgia, until destroyed.' All other records included in this database follow the disposition schedules of the following files:

Health Record Files. Place in student record file upon transfer, withdrawal, or death of student.

School Special Education Files. Destroy/Delete when 5 years old. Cut off on graduation, transfer, withdrawal or death of student.

Ancillary Service Files. Transfer to student record file upon transfer, withdrawal, or death of student.

Registration Card Files. Transfer current card to student record file upon graduation, transfer, withdrawal, or death of student. Supporting documents used to determine eligibility, such as sponsor's orders, birth certificates, custody documents, housing documents (CONUS), and similar documents may be destroyed). A copy of current card is maintained in the student record file to authorize release of records. Destroy when superseded.

Teacher Class Register Files. Destroy/Delete when 1 year old. Cut off at end of school year.

Master Student List Files. Destroy/Delete when 25 years. Cut off at end of school year and retain in the CFA.

Transcript Files. Maintain transcripts IAW School Student Record Files.

Transcript Request Files. Destroy/Delete when 2 years old. Cut off at end of school year.

Secondary Report Card Files. Transfer to student record file upon TWD of student.

Attendance and Discipline Files. Destroy/Delete when one year old. Cut off at end of school year.

System Wide Assessment Files. Destroy after 6 years. Individual reports maintained with the student records shall be retained in accordance with the disposition instructions in FN 1005–06 (School Student Record Files).

School Mediation Agreement and Hearing Results Files. Destroy/Delete when 20 years old. Cut off after final decision. Retire OSD-related records to the FRC when 5 years old.

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SYSTEM MANAGER(S) AND ADDRESS:

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to Area or District Systems Managers or the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Written requests for information should contain the full name, name used at time of school attendance, date of birth, identity and location of school attended, dates of attendance, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Area or District Systems Managers or the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Written requests for access should contain the full name, name used at time of school attendance, date of birth, identity and location of school attended, dates of attendance, and signature.

Parents or legal guardians of a student may be given access to the Children's School Program Files records without regard to who has custody of the child, unless the child is age 18 or over, or a court has directed otherwise.

CONTESTING RECORDS PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, school teachers, principals and administrators; counselors, medical personnel, parents/guardians, occupational and physical therapists, testing materials and activities, other educational facilities, medical facilities, (examinations and assessments), military commanders and installation activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E6–18360 Filed 10–31–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0135]

U.S. Court of Appeals for the Armed Forces Proposed Rules Changes

ACTION: Notice of proposed changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 9(e), 14, 19(a)(5), 19(b)(3), 19(g), 22(b)(3), 26(b), 37(c)(1), and 41(a) of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment. New language is in bold print. Language to be deleted is marked by a strikethrough.

DATES: Comments on the proposed changes must be received by December 1, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of the Court, telephone (202) 761–1448, ext. 600.

Dated: October 25, 2006.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, DoD.

BILLING CODE 5001–06–M

PROPOSED REVISION TO RULE 9(e):

(e) Hours. The Clerk's office shall be open for the filing of pleadings and other papers from ~~9:00 a.m.~~ 8:00 a.m. to 5:00 p.m. every day except Saturdays, Sundays, and legal holidays, or as otherwise ordered by the Court. See Rule 36(a). The Court is always open for the filing of pleadings and other papers. A pleading or other paper may be filed outside of normal operating hours of the Clerk's office by delivery to the U.S. Marshal on duty in the front lobby of the courthouse. Pleadings will be deemed filed on the date and time delivered to the U.S. Marshal. The U.S. Marshal will notify the Clerk of the filing in accordance with procedures provided by the Clerk.

Comment: The amendment to Rule 9(e) is proposed to expand the hours in which parties may file pleadings with the Court. It establishes that documents may be filed when the Clerk's Office is closed by delivery to the U.S. Marshal on duty.

PROPOSED CHANGE TO RULE 14:

~~RULE 14. HONORARY MEMBERSHIP~~

~~Honorary membership in the Bar of the Court may be granted from time to time to distinguished members of the legal profession of other nations who are knowledgeable in the fields of military justice or the law of war. A candidate for honorary membership will be presented at the Bar in person~~

~~after the nomination has previously been approved by the Court. A certificate of honorary membership in the Bar will be presented to the person so honored.~~

Comment: This rule should be rescinded because honorary bar memberships are rarely, if ever, awarded, and there is no reason to have such a rule in place at this time.

New Rule 19(a)(5)(C):

(C) Grostefon Issues. Issues raised pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982), if not raised earlier, may be presented to the Court by motion filed pursuant to Rule 30(a) no later than 30 days following the filing of the supplement to the petition.

Comment: There is no time limit for when Grostefon issues may be raised before the Court. This lack of a deadline can create procedural problems when they are raised well after the supplement to the petition is filed. This rule would set a limit requiring such issues to be presented no later than thirty days after the supplement to the petition is filed. In light of this deadline, appellate defense counsel should advise their clients of this rule, and the need to raise Grostefon issues in a timely fashion. The new rule will integrate the litigation of Grostefon issues into the normal decisional process. In appropriate situations, such as where the appellant claims that counsel did not advise of the obligation to raise these issues as provided herein, the appellant may move to suspend the operation of this rule pursuant to Rule 33 for good cause shown.

PROPOSED REVISION TO RULE 19(B)(3):

(3) Other cases. In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review filed by the Judge Advocate General shall be filed either (a) no later than 30 days after the date of the decision of the Court of Criminal Appeals (see Rules 22 and 34(a)), or (b) no later than 30 days after a petition for grant of review is granted. In cases that involve both granted and certified issues, the Clerk may establish a consolidated briefing schedule for all issues. In cases that involve only certified issue(s), an appellant's brief shall be filed in accordance with Rule 24 no later than 30 days after the issuance by the Clerk of a notice of docketing of the certificate for review. An appellee's answer shall be filed no later than 30 days after the filing of an appellant's brief. A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

Comment: This amendment allows the Judge Advocate General to certify issues within 30 days of the granting of a petition for grant of review. This opportunity to certify issues is

believed to be appropriate because in some cases, the Judge Advocate General may be reluctant to certify issues and require review by this Court unless the Court will otherwise be reviewing the case at the appellant's request. Once review is granted, the Judge Advocate General should be able to certify additional issues and thereby maximize the Court's opportunity to provide complete review. It is not anticipated that this rule will produce a significant increase in the number of certified issues presented. Also, the rule provides a mechanism whereby cases involving certified and granted issues will be consolidated for purposes of briefing. This eliminates the need for separate briefing cycles for both sets of issues.

PROPOSED NEW RULE 19(g):

(g) Timely Motion for Reconsideration Before the Court of Criminal Appeals. If an appeal is filed in this Court before the expiration of time to file a motion for reconsideration in a Court of Criminal Appeals, this Court, upon the prompt filing of a motion to dismiss by a party stating that a timely motion for reconsideration is pending in a Court of Criminal Appeals, may dismiss the appeal without prejudice and remand the case to the Court of Criminal Appeals for resolution of the motion for reconsideration. Following a decision by the Court of Criminal Appeals on the motion for reconsideration, review may be sought in this Court under Article 67, Uniform Code of Military Justice.

Comment: The rules of the Courts of Criminal Appeals allow a party thirty days to seek reconsideration. That time may be cut short if the other party files a petition in this Court which cuts off jurisdiction to entertain a petition for reconsideration in the lower court. Rule 19(b), CCA Rules of Practice and Procedure, 44 M.J. LXXI. If that party wishes to resurrect the right to file, it would necessitate filing a motion with this Court seeking a remand to allow the lower court to consider the motion for reconsideration. This mechanism is cumbersome and rarely if ever used. Petitions for reconsideration give the deciding court the ability to correct errors without the need for review by a higher court. They are a desirable correcting mechanism that should not be foreclosed by the filing of an appeal in a higher court while the time for a petition for reconsideration is running. This amendment will provide an expeditious means of restoring the right to seek reconsideration in this situation.

PROPOSED REVISION TO RULE 22(b)(3):

(3) Other cases. In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review shall be filed either (a) no later than 30 days after the date of the decision of the Court of Criminal Appeals (see Rule 34(a)) or (b) no later than 30 days after a petition for grant of review is granted. In cases that involve both granted and certified issues, the Clerk may establish a consolidated briefing schedule for all issues. In cases that involve only certified issue(s), a brief in support of the certified issues shall be filed by the appellant in accordance with Rule 24 no later than 30 days after the issuance by the Clerk of a notice of docketing of the certificate for review. An appellee's answer shall be filed no later than 30 days after the filing of an appellant's brief. A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

Comment: See comment to Rule 19(b)(3) above.

PROPOSED REVISION TO RULE 26(b):

(b) Unless otherwise ordered by the Court, a brief of an amicus curiae in support of a party may ~~under subsection (a)(1) of this rule shall~~ be filed no later than 10 days after that party has filed its brief. If neither party is supported, the brief of an amicus curiae shall be filed no later than 10 days after the first brief is filed. ~~the filing of the answer by the appellee or respondent.~~

Comment: This rule would establish a filing deadline for all amicus briefs. As currently written, an appellate division of the armed services may file an amicus brief within ten days after the filing of the answer by the appellee or respondent. This structure does not give the appellee/respondent any opportunity to respond to the arguments raised by the amicus in the normal briefing cycle. Moreover, it sets no deadlines for amicus briefs filed by entities other than the appellate divisions. This amendment integrates amicus briefs in the general briefing scheme and eliminates the need for supplemental briefs and motions for leave to file them. Absent leave of the Court, the amicus must file within ten days of the filing of the brief by the party that the amicus supports and, if the amicus does not wholly support either side, (an occasion the current rule does not contemplate) it must file within ten days of the filing of the

first brief filed in the normal cycle. The rule applies to all amicus briefs, regardless of who is filing. This rule is consistent with the approach taken in other courts of appeals. The rule puts the burden on the amicus to seek special leave to file outside this cycle.

PROPOSED REVISION TO RULE 37(c)(1):

(1) All pleadings, that consist of ten or more pages, ~~presented to the Court shall, unless they are less than 5 pages in length,~~ shall be preceded by a subject index of the matter contained therein, with page references, and a table of cases (alphabetically arranged with citations), textbooks, and statutes cited, with references to the pages where cited.

Comment: The rule as currently written requires a paginated subject index and a table of citations for all pleadings of five pages in length or longer. It is believed that the rule as written is too broad, and that tables should not be a requirement for pleadings of less than ten pages, and that the Court does not gain significant benefit from these tables with documents of less than ten pages.

PROPOSED REVISION TO RULE 41(a)

The photographing, televising, recording, or broadcasting of any session of the Court or other activity relating thereto is prohibited ~~within the confines of the courthouse~~ unless authorized by the Court.

Comment: As currently written, the Rule prohibits the photographing, televising, recording or broadcasting of any session of the Court or other related activity "within the confines of the courthouse" unless authorized by the Court. There is no prohibition in the Rule for such actions occurring outside the courthouse, such as on Project Outreach hearings. The rule should apply wherever the Court may be sitting because, in effect, that is the courthouse at that point in time. Deletion of the quoted language will eliminate any ambiguity and make it clear that when the Court sits at law schools, these activities may only take place with the permission of the Court.

[FR Doc. 06–8998 Filed 10–31–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The CNO Executive Panel will form consensus advice for the final report on the findings and recommendations of the Global Governance Subcommittee to the CNO. The meeting will consist of discussions of the U.S. Navy's emerging missions and relationships with non-military organizations.

DATES: The meeting will be held on November 28, 2006, from 3 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held in the Center for Naval Analysis Corporation Boardroom at 4825 Mark Center Drive, Alexandria, VA 22311–1846.

FOR FURTHER INFORMATION CONTACT: LCDR Chris Stopyra, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703–681–6207.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: October 26, 2006.

Lynette M. Breutzman,

Paralegal Specialist, Office of The Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. E6–18367 Filed 10–31–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–28–000]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Penalty Revenue Credit Report

October 25, 2006.

Take notice that on October 19, 2006, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing a refund report showing penalty revenues that will be refunded, with interest, to the affected shippers upon approval from the Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18341 Filed 10–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–29–000]

Cheyenne Plains Gas Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 25, 2006.

Take notice that on October 20, 2006, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 309 to become effective November 20, 2006.

Cheyenne Plains states that the tariff sheet specifies that electric driven compressors will be included in Cheyenne Plains' existing fuel gas recovery mechanism.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18342 Filed 10–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–026]

East Tennessee Natural Gas, LLC; Notice of Negotiated Rate Filing

October 25, 2006.

Take notice that, on October 20, 2006, East Tennessee Natural Gas, LLC (East Tennessee) submitted a negotiated rate filing pursuant to the order of the Federal Energy Regulatory Commission issued October 4, 2006 in Docket No. RP97–13–025.

East Tennessee states that the revised tariff sheets remove all references to turnback of capacity and modify the maximum daily transportation quantity specified in the negotiated rate agreement with CNX Gas Company LLC.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18344 Filed 10–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–534–005]

Guardian Pipeline, L.L.C.; Notice of Negotiated Rates

October 25, 2006.

Take notice that on October 20, 2006, Guardian Pipeline, L.L.C. (Guardian) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Seventh Revised Sheet No. 6, to become effective November 1, 2006.

Guardian states that the primary purpose of this filing is to add four agreements to its Statement of Negotiated Rates.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18339 Filed 10–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–393–003]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

October 25, 2006.

Take notice that on October 20, 2006, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Twelfth Revised Sheet No. 478, with an effective date of October 1, 2006.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18340 Filed 10–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–1–000]

Peoples Gas Light and Coke Company; Notice of Petition for Rate Approval

October 25, 2006.

Take notice that on October 18, 2006, Peoples Gas Light and Coke Company (Peoples Gas) filed a petition for rate approval pursuant to section 284.123 and 284.224 of the Commission's regulations. Peoples Gas is requesting that the Commission approve as fair and equitable rates for new firm one-cycle exchange service to be provided pursuant to Peoples Gas' blanket authority, and revised rates for its firm and interruptible transportation and storage service and its interruptible parking and loaning service, all as more fully set forth in the application.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time November 16, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18338 Filed 10–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

October 25, 2006.

Regional Transmission Organizations	RT01–99–000, RT01–99–001, RT01–99–002 and RT01–99–003.
Bangor Hydro-Electric Company, *et al*	RT01–86–000, RT01–86–001 and RT01–86–002.
New York Independent System Operator, Inc., *et al*	RT01–95–000, RT01–95–001 and RT01–95–002.
PJM Interconnection, L.L.C., *et al*	RT01–2–000, RT01–2–001, RT01–2–002 and RT01–2–003.
PJM Interconnection, L.L.C	RT01–98–000.
ISO New England, Inc., New York Independent System Operator, Inc.	RT02–3–000.

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their Internet Web sites charts and information updating their progress on the resolution of ISO seams.

Any person desiring to file comments on this information should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. Eastern Time on November 16, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18337 Filed 10–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP88–67–082; RP98–198–009]

Texas Eastern Transmission, LP; Notice of Compliance Filing

October 25, 2006.

Take notice that on October 16, 2006, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, the tariff sheets listed on

Appendix A to the filing to become effective December 1, 2006.

Texas Eastern asserts that the purpose of this filing is to comply with the Stipulation and Agreement filed by Texas Eastern on December 17, 1991 in Docket Nos. RP88–67, *et al.* (Phase II/PCBs) and approved by the Commission on March 18, 1992 (Settlement), and with Section 26 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

Texas Eastern states that such tariff sheets reflect a small increase in the PCB-Related Cost component of certain of Texas Eastern's currently effective rates. For the other rates the cost increase is so small that the calculated rate is not changed from the currently effective rate and no revised tariff sheet is filed.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions. Copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88–67, *et al.*

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18343 Filed 10–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–34–001]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

October 25, 2006.

Take notice that on October 20, 2006, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an abbreviated application, pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations to amend its Leidy to Long Island certificate issued on May 18, 2006. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Transco requests authorization to include in the scope of the Leidy to Long Island Expansion Project three new gas heaters and appurtenant facilities at its existing Long Beach meter and regulator station, and to adjust the cost of facilities and rates. The total cost adjustment, including $4.2 million for the heaters and appurtenant facilities, is an increase of $5.3 million.

Any questions regarding the application are to be directed to Scott Turkington, Director, Rates and Regulatory, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251–1396; phone number (713) 215–3391.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. Eastern Time at November 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18345 Filed 10–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings # 1

October 25, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER05–1179–005.

Applicants: Berkshire Power Company, LLC.

Description: Berkshire Power Co LLC submits Amended and Restated RMR Agreement (FERC Rate Schedule 2) and Refund Report in compliance with Paragraph 31.

Filed Date: 10/20/2006.

Accession Number: 20061024–0077.

Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ER06r–191–004.

Applicants: ISO New England Inc.; New England Participating Transmission Owners; Maine Electric Power Company.

Description: ISO New England Inc *et al.* submit Supplemental Modifications to Schedules 22 & 23 of the ISO OATT in compliance with the 4/14/06 Commission's Order.

Filed Date: 10/23/2006.

Accession Number: 20061024–0180.

Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ER06–819–003.
Applicants: Consolidated Edison Energy Massachusetts. Inc.
Description: Consolidated Edison Energy Massachusetts, Inc submits a revised Reliability Agreement with ISO New England, Inc pursuant to FERC's 8/25/06 Order.
Filed Date: 10/23/2006.
Accession Number: 20061025–0070.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ER06–1377–001.
Applicants: Rochester Gas and Electric Corporation.
Description: Rochester Gas and Electric Corp submits an amendment to its Interconnection Agreement for Robert E. Ginna Nuclear Station/responses pursuant to the Commission's 9/27/06 letter.
Filed Date: 10/23/2006.
Accession Number: 20061024–0170.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ER07–51–000.
Applicants: Entergy Power, Inc.
Description: Entergy Power, Inc submits a long-term, cost-based capacity sale agreement with Merrill Lynch Commodities, Inc under Rate Schedule 8.
Filed Date: 10/20/2006.
Accession Number: 20061024–0072.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ER07–52–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits an Amended and Restated Electric Interconnection Agreement with the City of Ames, Iowa.
Filed Date: 10/19/2006.
Accession Number: 20061024–0073.
Comment Date: 5 p.m. Eastern Time on Thursday, November 09, 2006.

Docket Numbers: ER07–53–000.
Applicants: American Transmission Company LLC.
Description: American Transmission Co LLC submits an Amendment 1 to the Generation-Transmission Interconnection Agreement with Wisconsin Electric Power Company.
Filed Date: 10/20/2006.
Accession Number: 20061024–0075.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ER07–54–000.
Applicants: Berkshire Power Company, LLC.
Description: Berkshire Power Company, LLC submits its limited revisions to the provisions of Rate Schedule 2 which was previously approved by FERC's 9/29/06 Order.
Filed Date: 10/20/2006.
Accession Number: 20061024–0074.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ER07–55–000.
Applicants: Quark Power LLC.
Description: Quark Power LLC submits Notice of Cancellation of Market-Based Rate Tariff, Second Revised Rate Schedule FERC 1.
Filed Date: 10/20/2006.
Accession Number: 20061024–0070.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ER07–56–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits revised rate sheets to Service Agreement 2, Eucalyptus Avenue Wholesale Distribution Load Interconnection Facilities Agreement with the City of Moreno Valley.
Filed Date: 10/23/2006.
Accession Number: 20061024–0172.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ER07–57–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits revised rate sheets to Service Agreements 137 and 138, Cottonwood Avenue Wholesale Distribution Load Interconnection Facilities Agreement and the Service Agreement.
Filed Date: 10/23/2006.
Accession Number: 20061024–0174.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ER07–58–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits revised rate sheets to Service Agreement 8, Mountain View II Project Interconnection Facilities Agreement with Mountain View Power Partners II, LLC.
Filed Date: 10/23/2006.
Accession Number: 20061024–0175.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ER07–59–000.
Applicants: Fortis Energy Marketing & Trading GP.
Description: Fortis Energy Marketing & Trading GP submits a notice of succession and a revised Electric Tariff, Original Volume No. 1.
Filed Date: 10/23/2006.
Accession Number: 20061024–0176.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ER07–60–000.
Applicants: Western Massachusetts Electric Company.
Description: Western Massachusetts Electric Company submits Original Service Agreement IA–NU–06 under Schedule 22 of ISO New England Inc's Transmission, Markets and Services Tariff, FERC Electric Tariff 3.
Filed Date: 10/23/2006.
Accession Number: 20061024–0177.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–2r–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Company submits an application for authority to issue short-term debt securities in amounts not exceeding the aggregate $800,000,000 outstanding at any one time.
Filed Date: 10/13/2006.
Accession Number: 20061016–0114.
Comment Date: 5 p.m. Eastern Time on Friday, November 3, 2006.

Docket Numbers: ES07–4–000.
Applicants: Plains End II, LLC.
Description: Plains End II, LLC submits Application for authorization to Issue Debt Securities up to $220 million.
Filed Date: 10/20/2006.
Accession Number: 20061024–0171.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Docket Numbers: ES07–5–000.
Applicants: Baltimore Gas & Electric Company.
Description: Baltimore Gas and Electric Co submits its 2005 Biennial Short-Term Borrowing Application.
Filed Date: 10/23/2006.
Accession Number: 20061024–0178.
Comment Date: 5 p.m. Eastern Time on Monday, November 13, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18378 Filed 10–31–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0693; FRL–8102–4]

FIFRA Scientific Advisory Panel; Notice of Change of Public Meeting Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is issuing this notice to reschedule a meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel. The meeting, originally scheduled for November 14-16, 2006, was announced in the **Federal Register** of September 1, 2006 (71 FR 52068; FRL–8090–3). This meeting will now be held November 15-17, 2006.

FOR FURTHER INFORMATION CONTACT: Joseph E. Bailey, Designated Federal Official, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-2045; fax number: (202) 564-8382; e-mail address: *bailey.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION: The FIFRA SAP meeting originally scheduled for November 14-16, 2006, to consider and review issues related to Studies Evaluating the Impact of Surface Coatings on the Level of Dislodgeable Arsenic, Chromium and Copper from Chromated Copper Arsenate (CCA)-treated Wood now will be held November 15-17, 2006 from 8:30 am to approximately 5:00 pm, eastern time. This meeting was originally announced in the **Federal Register** of September 1, 2006 (71 FR 52068; FRL–8090–3). All other information provided in the September 1, 2006 Notice remains unchanged. For further information, please notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 25, 2006.

Clifford J. Gabriel,

Director, Office of Science Coordination and Policy.

[FR Doc. E6–18395 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0874; FRL–8101–5]

Chlorflurenol Risk Assessment; Notice of Availability, and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment(s), and related documents for the herbicidal pesticide chlorflurenol, and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for chlorflurenol through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. This is Phase 3 of the 4-Phase process. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before January 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0874, 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 Building), 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 0874. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal 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, 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 Building), 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:

Tracy L. Perry, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0128; fax number: (703) 308-8005; e-mail address:*perry.tracy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and ecological risk assessments and related documents for chlorflurenol and soliciting public comment on risk management ideas or proposals. EPA developed the risk assessments and risk characterization for chlorflurenol through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Chlorflurenol is a nonfood use herbicide, plant growth retardant, and plant growth regulator used in agricultural, commercial, and residential settings. As an herbicide or plant growth retardant, it is used for the postemergent control of annual grasses, broadleaf weeds, trees, shrubs and vines for nonagricultural rights-of-way (e.g., utility lines), lawns, ornamental turf (including golf courses and parks), and high density forestry management areas. As a plant growth regulator, chlorflurenol is used in the production of pineapple planting material (sliplets); this use is considered to be nonfood as no finite residues are expected. Chlorflurenol is registered in emulsifiable concentrate and granular formulations.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for chlorflurenol. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as worker, residential, and drinking water exposure data and ecological effects data, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for chlorflurenol. Risks of concern associated with the use of chlorflurenol are: dermal occupational risks from applying liquid sprays with rights-of-way equipment at 3 to 5 lbs active ingredient/acre (a.i./A); post-application dermal risks for adults at 3 lbs a.i./A; post-application dermal risks to toddlers from high contact activity on lawns at 1 to 3 lbs a.i./A; and risks to infants from chronic exposure to drinking water using modeled ground water estimated concentrations. Risk could not be precluded for terrestrial and aquatic organisms and plants due to a lack of data; limited data suggest potential chronic risk to mammals. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to chlorflurenol, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation

Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819)(FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For chlorflurenol, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its limited use. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for chlorflurenol. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. 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,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 24, 2006.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–18398 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0296; FRL–8098–4]

Pesticide Product Registration Approval; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces approval and requests comments on an application to register the pesticide product Racer(™) Concentrate containing the active ingredient ammonium nonanoate not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before December 1, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0296, 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 Building), 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–2006–0296 EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal 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, 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 Building), 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.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Raderrio Wilkins, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–1259; e-mail address: *wilkins.raderrio@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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of ammonium nonanoate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of ammonium nonanoate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

The company submitted an application to EPA to register the pesticide product Racer(TM) Concentrate (EPA Registration Number 79766–1) containing the chemical ammonium nonanoate at 40%. This product is used in nurseries, greenhouses, landscapes, and interior scapes for the suppression and control of weeds including: Grasses, vines, underbrush, annual/perennial plants, including moss, sapling, and tree suckers. However, since the notice of receipt of the application to register the product as required by section 3(c)(4) of FIFRA, as amended, did not publish in the **Federal Register**, interested parties may submit comments on or before December 1, 2006 for this product.

The application was approved as Racer™ Concentrate on September 21, 2006 for this end-use product.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: October 17, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–18429 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0799; FRL–8095–3]

Pesticide Products; Indole-3-Acetic Acid Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register Technical Indole-3-acetic Acid containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before January 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0799, 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–2006–0799. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal 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, 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: Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8810; e-mail address: *frazer.carol@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:

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.

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v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Application

EPA received an application to register a pesticide product containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

File Symbol: 57538–EI. *Applicant*: Stoller Enterprises, Inc., 4001 W. Sam Houston PkWy N. Suite 100, Houston, TX 77043. *Product name*: Technical Indole-3-acetic Acid. Biochemical plant growth regulator *Active ingredient*: Indole-3-acetic acid at 99 percent. *Proposed classification/Use*: Biochemical manufacturing-use product. C. Frazer.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: September 26, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–18261 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0811; FRL–8097–1]

Pesticide Products; Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before December 1, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0811, 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 Building), 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–2006–0811. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal 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, 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 Building), 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: Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticides, Environmental Protection Agency, 1200 Pennsylvania, Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address:*greenway.denise@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:

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.

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vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Application

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient not Included in any Previously Registered Product

File Symbol: 75771–R. *Applicant*: Ticks or Mosquitoes, LLC, 905 S. Kingshighway, Sikeston, MO 63801. *Product name*: Biter Fighter ™. *Type of product*: Biochemical insect attractant. *Active ingredient*: Calcium lactate at 25.19%. *Proposed classification/Use*: None. An attractant used in insect traps.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 25, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–18380 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0783; FRL–8095–4]

Bacillus thuringiensis Vip3A Protein and the Genetic Material Necessary for its Production in Corn; Notice of Filing of a Pesticide Petition to Establish a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before December 1, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0783 and pesticide petition number (PP) 6G7091, 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 Building), 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–2006–0783. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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 Building), 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: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0515; fax number: (703) 308–7026; e-mail address: *reynolds.alan@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:

i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

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.

III. New Exemption from Tolerance

1. *PP 6G7091*. Syngenta Seeds, Inc., P.O. Box 12257, Research Triangle Park, NC 27709, proposes to establish a temporary exemption from the requirement of a tolerance for residues of the plant-incorporated protectant, *Bacillus thuringiensis* Vip3A protein and the genetic material necessary for its production in corn, in or on all corn commodities. The petition includes a reference to a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 3, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division.

[FR Doc. E6–18425 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[Docket # EPA–RO4–SFUND–2006–0865; FRL–8237–1]

Constitution Road Drum Site, Atlanta, Dekalb County, Georgia; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under section 122 (h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Constitution Road Drum Superfund Site located in Atlanta, Dekalb County, Georgia.

DATES: The Agency will consider public comments on the past cost portion of the settlement until December 1, 2006. 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.

ADDRESSES: Copies of the amended portion of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2006–0865 or Site name Constitution Road Drum Superfund Site by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: Batchelor.Paula@epa.gov*.
- *Fax*: 404/562–8842/Attn: Paula V. Batchelor.

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–RO4–SFUND–2006–0865. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: October 16, 2006.

Greg Armstrong,

Acting Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E6–18374 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket # EPA–RO4–SFUND–2006–0865; FRL–8237–5]

Constitution Road Drum Site, Atlanta, Dekalb County, GA; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Constitution Road Drum Superfund Site located in Atlanta, Dekalb County, Georgia.

DATES: The Agency will consider public comments on the past cost portion of the settlement until December 1, 2006. 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.

ADDRESSES: Copies of the amended portion of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2006–0865 or Site name Constitution Road Drum Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Batchelor.Paula@epa.gov.*
- Fax: 404/562–8842/Attn: Paula V. Batchelor

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–R04–SFUND–2006–0865. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays. Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: October 16, 2006.

Greg Armstrong,

Acting Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E6–18382 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket # EPA–RO4–SFUND–2006–0819; FRL–8237–6]

DSI Facility Superfund Site, Biloxi, Harrison County, Mississippi; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under section 122 (h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the DSI Facility Superfund Site located in Biloxi, Harrison County, Mississippi.

DATES: The Agency will consider public comments on the settlement until December 1, 2006. The Agency will consider all comments received and may modify or withdraw its consent to the amended portion of the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the amended portion of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2006–0819 or Site name DSI Facility Superfund Site by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: *Batchelor.Paula@epa.gov.*
- *Fax*: 404/562–8842/Attn: Paula V. Batchelor.

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–R04–SFUND–2006–0819. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m.. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: September 22, 2006.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. E6–18381 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8236–7]

Notice of Agreement for Recovery of Response Costs Pursuant to Section 122(H) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (''CERCLA''), notice is hereby given that a proposed agreement for recovery of response costs (''Proposed Agreement'') associated with the Modena Yard Superfund Site, Modena Borough and East Fallowfield Township, Chester County, Pennsylvania was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve certain potential EPA claims under section 107 of CERCLA, against Connell Limited Partnership (''Settling Party''). The Proposed Agreement would require the Settling Party to, among other things, reimburse EPA $150,000 for response costs, including, but not limited to, removal oversight costs, incurred and to be incurred at the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the Proposed Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before December 1, 2006.

ADDRESSES: The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Proposed Agreement may be obtained from Robert S. Hasson (3RC41), Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''Modena Yard Superfund Site, Proposed Agreement for Recovery of Response Costs'' and ''EPA Docket No. CERCLA–03–2006–0082,'' and should be forwarded to Robert S. Hasson at the above address.

FOR FURTHER INFORMATION CONTACT: Robert S. Hasson (3RC41), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2672.

Dated: October 23, 2006.

William T. Wisniewski,

Deputy Regional Administrator, Region III.

[FR Doc. E6–18408 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket # EPA–RO4–SFUND–2006–0864; FRL–8237–4]

Rosso Property Scrapyard Site, Dover, Craven County, NC; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Constitution Road Drum Superfund Site located in Atlanta, De Kalb County, Georgia.

DATES: The Agency will consider public comments on the settlement until December 1, 2006. 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.

ADDRESSES: Copies of the amended portion of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2006–0864 or Site name Rosso Property Scrapyard Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Batchelor.Paula@epa.gov.*
- Fax: 404/562–8842/Attn: Paula V. Batchelor.

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In

addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–R04–SFUND–2006–0864. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: October 16, 2006.

Greg Armstrong,

Acting Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E6–18383 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket # EPA–RO4–SFUND–2006–0818; FRL–8237–3]

Second Melts Acid Spill Superfund Site, Lithonia, Dekalb County, GA; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Second Melts Acid Spill Superfund Site located in Lithonia, Dekalb County, Georgia.

DATES: The Agency will consider public comments on the settlement until December 1, 2006. The Agency will consider all comments received and may modify or withdraw its consent to the amended portion of the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the amended portion of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2006–0818 or Site name Second Melts Acid Spill Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Batchelor.Paula@epa.gov.*
- *Fax:* 404/562–8842/Attn: Paula V. Batchelor.

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–R04–SFUND–2006–0818. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: September 22, 2006.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. E6–18397 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket # EPA–RO4–SFUND–2006–0866; FRL–8237–2]

Tindall Property Superfund Site, Lawrenceburg, Anderson County, KY; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Tindall Property Superfund Site located in Lawrenceburg, Anderson County, Kentucky.

DATES: The Agency will consider public comments on the settlement until December 1, 2006. 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.

ADDRESSES: Copies of the amended portion of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2006–0866 or Site name Tindall Property Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Batchelor.Paula@epa.gov.*
- *Fax:* 404/562–8842/Attn: Paula V. Batchelor.

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–R04–SFUND–2006–0866. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: October 16, 2006.

Greg Armstrong,

Acting Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E6–18400 Filed 10–31–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 20, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 2, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission,

Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1038.

Title: Digital Television Transition Information Questionnaires.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 844.

Estimated Time per Response: 4 to 24 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 4,823 hours.

Total Annual Cost: $251,400.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In the Telecommunications Act of 1996, Congress directed that every broadcaster be given a second channel for digital operations. Subsequently, the Digital Television Transition and Public Safety Act of 2005 established February 17, 2009 as the date certain for the end of analog broadcasts by television licensees. At the end of the transition, broadcasters' analog channels will be returned to the government and the broadcast spectrum will contract from channels 2–69 to channels 2–51. This 108 MHz of spectrum (channels 52–69) can then be used by advanced wireless services and public safety authorities. There are several key building blocks to a successful transition. First, content—consumers must perceive something significantly different than what they have in analog. Second, distribution—the content must be delivered to consumers in a simple and convenient way. Third, equipment—equipment must be capable, affordable and consumer-friendly. And fourth, education—consumers must be educated about what digital television is, and what it can do for them. These information requests are designed to gather data in these key areas.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18047 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 20, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 2, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0414.

Title: Terrain Shielding Policy.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 50.

Estimated Time per Response: 10 hours.

Frequency of Response: One occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 500 hours.

Total Annual Cost: $7,500.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The terrain shielding policy requires respondents to submit either a detailed terrain study, or to submit letters of assent from all potentially affected parties and graphic depiction of the terrain when intervening terrain prevents a low power television applicant from interfering with other low power television or full-power television stations. FCC staff use the data to determine if terrain shielding can provide adequate interference protection and if a waiver of 47 CFR 74.705 and 47 CFR 74.707 of the rules is warranted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18072 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 24, 2006.

SUMMARY: The Federal Communications Commission (Commission) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0681.

OMB Approval Date: 10/13/2006.

Expiration Date: 10/31/2009.

Title: Sections 52.103, Lag Times and 52.105, Warehousing (Toll-Free Service Access Codes, CC Docket No. 95–155, 47 CFR Part 52, Subpart D).

Form No.: N/A.

Estimated Annual Burden: 300 responses; 4,500 total annual burden hours.

Needs and Uses: Responsible organizations (RespOrgs) who wish to make a specific toll free number unavailable, must submit written requests to DSMI, the toll free data administrator. The request shall include documentation outlining the reason for the request. The information is necessary to hold RespOrgs more accountable and decreases abuses of lag time process. It prevents numbers from being held in unavailable status without demonstrated reasons and makes more numbers available for subscribers who need and want them.

OMB Control No.: 3060–0723.

OMB Approval date: 10/05/2006.

Expiration Date: 10/31/2009.

Title: Public Disclosure of Network Information by Bell Operating Companies.

Form No.: N/A.

Estimated Annual Burden: 3 responses; 360 total annual burden hours.

Needs and Uses: Bell Operating Companies must make public disclosure of network information. This prevents them from designing new network services or changing network technical specifications to the advantage of their own payphones.

OMB Control No.: 3060–0790.

OMB Approval date: 10/05/2006.

Expiration Date: 10/31/2009.

Title: Section 68.110(c)—Availability of Inside Wiring Information.

Form No.: N/A.

Estimated Annual Burden: 1,200 responses; 1,200 total annual burden hours.

Needs and Uses: 47 CFR 68.110(c) requires telephone companies to provide building owners with all available information regarding carrier installed wiring on the customer's side of the demarcation point, including copies of existing schematic diagrams and service records. The information must be provided by the telephone company upon request of the building owner or agent thereof. The information is needed so that building owners may choose to contract with an installer of their choice for inside wiring maintenance and installation service, or elect to contract with the telephone company to modify existing wiring or assist with the installation of additional inside wiring.

OMB Control No.: 3060–0943.

OMB Approval Date: 10/16/2006.

Expiration Date: 10/31/2009.

Title: Section 54.809, Carrier Certification.

Form No.: N/A.

Estimated Annual Burden: 572 responses; 858 total annual burden hours.

Needs and Uses: Section 54.809 of the Commission's rules requires each price cap or competitive LEC that wishes to receive universal support to file an annual certification with the Universal Service Administrative Company and the Commission. The certification must state that the carrier will use its interstate access universal service support only for the provision, maintenance, and upgrading of facilities and service for which the support is intended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18170 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 25, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 2, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0346.

Title: Section 78.27, License Conditions.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 50.

Estimated Time per Response: 10 minutes (0.1666 hrs.).

Frequency of Response: Annual reporting requirement; On occasion reporting requirement.

Total Annual Burden: 8 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 78.27(b)(1) requires the licensee of a Cable Television Relay Service (CARS) station to notify the Commission in writing when the station commences operation. Such notification shall be submitted on or before the last day of the authorized one year construction period; otherwise, the station license shall be automatically forfeited. 47 CFR 78.27(b)(2) requires CARS licensees needing additional time to complete construction of the station and commence operation shall request an extension of time 30 days before the expiration of the one year construction period. Exceptions to the 30-day advance filing requirement may be granted where unanticipated delays occur.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E6–18290 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 24, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments January 2, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167, or via the Internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC), Room 1–B441, 445 12th Street, SW., Washington, DC 20554. To submit your comments by e-mail send them to: *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0955.

Title: 2 GHz Mobile Satellite Service Reports.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 9.

Estimated Time Per Response: 3 hours.

Frequency of Response: On occasion and annual reporting requirements and recordkeeping requirement.

Total Annual Burden: 27 hours.

Annual Cost Burden: $18,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. There is no change in respondents or burden hours/costs.

The 2 GHz mobile satellite service (MSS) rules are contained in 47 CFR part 25 of the Federal Communications Commission's (''Commission'') rules. If planned post-mission disposal involves atmospheric re-entry of spacecraft, 2 GHz MSS licensees are required to disclose such information in the form of a narrative statement, through amendments to applications or letters of intent, or orbital debris mitigation design and operational strategies. Additionally, the rules require that 2 GHz MSS licensees submit a casualty risk assessment to the Commission. This requirement permits the Commission and the public to comment on each system's design. Two GHz mobile satellite systems receiving expansion spectrum as part of the rural and unserved areas spectrum incentive must provide a report on the actual number of subscriber minutes originating or terminating in unserved areas as a percentage of the actual U.S. system use. This rule permits the Commission to verify that service is being provided in rural unserved areas. In addition, system proponents will have to complete critical design review (CDR) within two years of authorization. CDR is a milestone for satellite services and permits the Commission to more closely monitor system construction. Without such information, the Commission could not determine whether satellite licensees are operating in conformance with the Commission's rules.

OMB Control No.: 3060–0994.

Title: Flexibility for Delivery of Communications by Mobile Satellite Service (MSS) Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 161.

Estimated Time Per Response: .50—50 hours.

Frequency of Response: On occasion, annual, and one-time reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 1,326 hours.

Annual Cost Burden: $158,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. There is no change in respondents or burden hours/costs.

On February 5, 2003, the Federal Communications Commission (''Commission'') released a *Report and Order (R&O) and Notice of Proposed Rulemaking (NPRM)*, in IB Docket Nos. 01–185 and 02–364, FCC 03–15. The *R&O* permitted Mobile Satellite Service (MSS) providers to integrate ancillary terrestrial components (ATCs) into their MSS networks. The benefits of MSS providers integrating ATCs into their MSS networks are to: (1) Increase the efficiency of spectrum use through MSS network integration and terrestrial reuse and permit better coverage in areas that MSS providers could not otherwise serve; (2) reduce costs, eliminate efficiencies and enhance operational ability in MSS systems; (3) provide additional communications that may enhance public protection; and (4) strengthen competition in the markets served by MSS.

The decisions adopted in the *R&O* resulted in the implementation of information collection requirements that are necessary to facilitate the Commission's rules addressed in Parts 2 and 25. The purposes of the information collection are for the Commission to

license commercial satellite services in the United States; obtain the legal and technical information required to facilitate the integration of ATCs into MSS networks in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands; and to ensure that the licensees meet the Commission's legal and technical requirements to develop and maintain MSS networks while conserving limited spectrum for other telecommunications services. Without this collection of information, the Commission would not have the necessary information to grant entities the authority to operate or provide their services to consumers.

OMB Control No.: 3060–1054.

Title: Application for Renewal of an International Broadcast Station License.

Form No.: FCC Form 422–IB.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 60 responses.

Estimated Time Per Response: 6 hours.

Frequency of Response: On occasion, annual, and other reporting requirements.

Total Annual Burden: 60 hours.

Annual Cost Burden: $32,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. There is no change in respondents or burden hours/costs.

The Commission's proposed the development of FCC Form 422–IB to facilitate the Commission's goal to implement electronic filing of the form and to accommodate any changes to the form in the future. International broadcasters will file the FCC Form 422–IB in lieu of FCC Form 311. The implementation of this proposal is contingent upon the receipt of budget funds and the availability of technical staff.

OMB Control No.: 3060–1055.

Title: Application for Permit to Deliver Programs to Foreign Broadcast Stations.

Form No.: FCC Form 423–IB.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 30 respondents; 240 responses.

Estimated Time Per Response: 8 hours (average).

Frequency of Response: On occasion, annual, and other reporting requirements.

Total Annual Burden: 240 hours.

Annual Cost Burden: $62,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. There is no change in respondents or burden hours/costs.

The Commission's proposed the development of FCC Form 423–IB to facilitate the Commission's goal to implement electronic filing of the form and to accommodate any changes to the form in the future. International broadcasters will file the FCC Form 423–IB in lieu of FCC Form 308. The implementation of this proposal is contingent upon the receipt of budget funds and the availability of technical staff.

OMB Control No.: 3060–1056.

Title: Application for an International Broadcast Station License.

Form No.: FCC Form 421–IB.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 120 responses.

Estimated Time Per Response: 12 hours.

Frequency of Response: On occasion, annual, and other reporting requirements.

Total Annual Burden: 120 hours.

Annual Cost Burden: $36,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. There is no change in respondents or burden hours/costs.

The Commission's proposed the development of FCC Form 421–IB to facilitate the Commission's goal to implement electronic filing of the form and to accommodate any changes to the form in the future. International broadcasters will file the FCC Form 421–IB in lieu of FCC Form 310. The implementation of this proposal is contingent upon the receipt of budget funds and the availability of technical staff.

OMB Control No.: 3060–1057.

Title: Application for Authority to Construct or Make Changes in an International Broadcast Station.

Form No.: FCC Form 420–IB.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 160 responses.

Estimated Time Per Response: 16 hours.

Frequency of Response: On occasion, annual, and other reporting requirements.

Total Annual Burden: 160 hours.

Annual Cost Burden: $44,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance. There is no change in respondents or burden hours/costs.

The Commission's proposed the development of FCC Form 420–IB to facilitate the Commission's goal to implement electronic filing of the form and to accommodate any changes to the form in the future. International broadcasters will file the FCC Form 420–IB in lieu of FCC Form 309. The implementation of this proposal is contingent upon the receipt of budget funds and the availability of technical staff. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18297 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 24, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13.

An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 2, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167 or via internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B. Herman@fcc.gov,* Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; not-for-profit institutions; business or other for-profit; and State, local or tribal governments.

Number of Respondents: 215,920.

Estimated Time per Response: 1.25 hours.

Frequency of Response: On occasion and other (every ten year) reporting requirements, third party disclosure requirements and recordkeeping requirement.

Total Annual Burden: 219,505 hours.

Total Annual Cost: $50,144,000.

Privacy Act Impact Assessment: Yes.

Needs and Uses: The Commission will submit this information collection to OMB as an extension (no change in reporting, recordkeeping or third party requirements) after this 60 day comment period to obtain the full three-year clearance from them. There is no change to the estimated average burden or the number of respondents.

FCC Form 601 is a consolidated, multi-part application or ''long form'' application for market-based licensing and site-by-site licensing in the Wireless Telecommunications Bureau's (WTB's) Radio Services' Universal Licensing System (ULS). The information is used by the Commission to determine whether the applicant is legally, technically and financially qualified to be licensed.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E6–18301 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 06–2094]

Eleventh Meeting of the Advisory Committee for the 2007 World Radiocommunication Conference (WRC–07 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the eleventh meeting of the WRC–07 Advisory Committee will be held on December 13, 2006, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2007 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and draft proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: December 13, 2006; 11 a.m.–12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–07 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2007 World Radiocommunication Conference (WRC–07).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the eleventh meeting of the WRC–07 Advisory Committee. The WRC–07 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the eleventh meeting is as follows:

Agenda

Eleventh Meeting of the WRC–07 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554

December 13, 2006; 11 a.m.–12 noon

1. Opening Remarks.
2. Approval of Agenda.
3. Approval of the Minutes of the Tenth Meeting.
4. Status of Preliminary Views and Draft Proposals.
5. Reports on Recent WRC–07 Preparatory Meetings.
6. NTIA Draft Preliminary Views and Proposals.
7. Informal Working Group Reports and Documents relating to:
   a. Consensus Views and Issues Papers.
   b. Draft Proposals.
8. Future Meetings.
9. Other Business.

Federal Communications Commission.

Roderick K. Porter,

Deputy Bureau Chief, International Bureau.

[FR Doc. E6–18284 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 06–2059]

Announcement of Change of Venue for November 3rd Consumer Advisory Committee Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces a change in venue for the November 3, 2006 meeting of the Consumer Advisory Committee (''Committee''). The purpose of the Committee is to make recommendations to the Federal Communications Commission (''Commission'') regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: The meeting of the Consumer Advisory Committee will take place on Friday, November 3, 2006 from 9 a.m to 4 p.m.

ADDRESSES: Verizon Communications, Inc., 1320 North Courthouse Rd., Arlington, VA, rooms Forum I and II.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, (202) 418–2809 (voice), (202) 418–0179 (TTY) or e-mail: *scott.marshall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, DA 06–2059, released on October 25, 2006, announcing a change in venue for the meeting of its Consumer Advisory Committee. The original date, time and agenda of the Committee's meeting was announced via Public Notice released on October 12, 2006 (DA 06–1998), as published in the **Federal Register** at 71 FR 61470 (October 18, 2006). This change of venue was necessary because of unforeseen circumstances which made adequate meeting facilities at the Commission's headquarters building unavailable.

A transcript of the meeting and minutes of the meeting will be available for public inspection at the Commission's headquarters building located at Portals II, 445 12th Street, SW., Washington, DC 20554. The Committee meeting will be open to the public and interested persons may attend the meeting and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to both them and the Committee. The meeting site is fully accessible to people using wheelchairs or other mobility aids. Meeting agendas and handouts will be provided in accessible formats; sign language interpreters, open captioning, and assistive listening devices will be provided on site.

A copy of the October 19, 2006 *Public Notice* is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's Web site at *www.fcc.gov/cgb/cac.* If the public has any written comments for the Committee, please submit them to the Committee's Designated Federal Officer, Scott Marshall, Federal Communications Commission, Room 5–A824, 445 12th Street, SW., Washington, DC 20554.

Contact the Commission to request other reasonable accommodations for people with disabilities as early as possible. Please include a detailed description of any accommodations you seek and a way in which you can be contacted in case further information is needed by sending an e-mail to: *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), or (202) 418–0432 (TTY).

Federal Communications Commission.

Monica S. Desai,

Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. E6–18287 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSIONS

Technological Advisory Council Meeting Postponed

AGENCY: Federal Communications Commission.

ACTION: Notice of postponement of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, Public Law 92–463, as amended, this notice advises interested persons that the meeting of the Technological Advisory Council scheduled for October 25, 2006 has been postponed. A new date will be announced.

FOR FURTHER INFORMATION CONTACT: Julius Knapp at 202–418–2468, TTY 202–418–2989, or e-mail *Julius.Knapp@fcc.gov.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18065 Filed 10–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting Friday, November 3, 2006

October 27, 2006.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, November 3, 2006, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Media	*Title:* Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services (MB Docket No. 05–210). *Summary:* The Commission will consider a Report and Order regarding changes to the process for community of license changes and the process for amendments to the FM Table of Allotments.
2	Wireless Telecommunications	*Title:* In the Matter of the Effects of Communications Towers on Migratory Birds (WT Docket No. 03–187). *Summary:* The Commission will consider a Notice of Proposed Rulemaking on whether it should adopt certain measures to mitigate migratory bird collisions with communications towers.
3	Wireline Competition	*Title:* United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service (WC Docket No. 06–10). *Summary:* The Commission will consider a Memorandum Opinion and Order concerning the classification of broadband over power line Internet access service.
4	Wireline Competition	*Title:* AT&T Inc. and BellSouth Corporation Application for Transfer of Control (WC Docket No. 06–74).

Item No.	Bureau	Subject
		Summary: The Commission will consider a Memorandum Opinion and Order regarding the transfer of control application of AT&T and BellSouth.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Make your request as early as possible; please allow at least 5 days advance notice. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–9023 Filed 10–30–06; 11:57 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011284–060.

Title: Ocean Carrier Equipment Management Association Agreement.

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; A.P. Moller-Maersk A/S; CMA CGM, S.A.; Companhia Libra de Navegacao; Compania Sudamericana de Vapores, S.A.; COSCO Containerlines Company Limited; Crowley Maritime Corporation; Evergreen Marine Corp. (Taiwan) Ltd.; Hamburg-Süd; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines Ltd.; Montemar Maritima S.A.; Nippon Yusen Kaisha Line; Norasia Container Lines Limited; Orient Overseas Container Line Limited; and Yang Ming Marine Transport Corp.

Filing Party: Jeffrey F. Lawrence, Esq.; and Donald J. Kassilke, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment removes Australia-New Zealand Direct Line, Contship Containerlines, and CP Ships (USA) LLC as parties to the agreement; adds Companhia Libra de Navegacao, Montemar Maritima S.A., and Norasia Container Lines Limited as parties; reflects Hapag-Lloyd's new corporate names; and updates addresses for Hamburg-Süd and Yang Ming.

Agreement No.: 011922–001.

Title: TNWA/GA Cooperative Working Agreement.

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Hapag-Lloyd AG; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; Orient Overseas Container Line Inc.; and Orient Overseas Container Line (Europe) Limited.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment updates Hapag-Lloyd's corporate name.

Agreement No.: 011959–002.

Title: Zim/ESL Agreement.

Parties: Zim Integrated Shipping Services, Ltd. and Emirates Shipping Line FZE.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment expands the scope of the agreement to the East Coast of the United States, reduces ESL's allocation of space on the service presently operated under the agreement, and provides ESL with space on Zim's U.S. East Coast service in the agreement trade.

Agreement No.: 011976.

Title: CSAV/NYK Chile Space Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A. and Nippon Yusen Kaisha.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement would authorize CSAV to charter space to NYK for the carriage of motor vehicles from Baltimore to ports in Chile.

Agreement No.: 011977.

Title: COSCON/WHL Space Charter Agreement.

Parties: COSCO Container Lines Company, Limited and Wan Hai Lines Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 2040 Main Street, Suite 850; Irvine, CA 92614.

Synopsis: The agreement authorizes COSCO to charter space to Wan Hai in the trade between the U.S. West Coast, on the one hand, and China and Japan, on the other.

Dated: October 27, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–18386 Filed 10–31–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 016835F.

Name: DCM Logistics, Inc.
Address: 3710 Atlanta Industrial Parkway, NW., Atlanta, GA 30331.
Date Revoked: October 15, 2006.
Reason: Failed to maintain a valid bond.

License Number: 017926F.
Name: GQ Logistics, Inc.
Address: 11222 La Cienega Blvd., Ste. 510, Inglewood, CA 90304.
Date Revoked: October 20, 2006.
Reason: Failed to maintain a valid bond.

License Number: 019790N.
Name: K.C. Consulting, Inc.
Address: 36565 Nathan Hale Drive, Lake Villa, IL 60046.
Date Revoked: October 20, 2006.
Reason: Failed to maintain a valid bond.

License Number: 001229F.
Name: M&H Brokerage, Inc.
Address: 3399 NW. 72nd Avenue, Suite 218, Miami, FL 33152.
Date Revoked: October 15, 2006.
Reason: Failed to maintain a valid bond.

License Number : 018977F.
Name: Alas Cargo LLC.
Address: 548 E. Sepulveda Blvd., Suite D, Carson, CA 90745.
Date Revoked: October 20, 2006.
Reason: Failed to maintain a valid bond.

License Number: 015708N.
Name: Blue Moon Express Limited.
Address: Rm. 1901, 19/F, C C Wu Bldg., 302–308, Hennessy Road, Wanchai, Hong Kong.
Date Revoked: October 18, 2006.
Reason: Failed to maintain a valid bond.

License Number: 015457N.
Name: Direct Forwarding Co., Inc.
Address: 16905 Keegan Avenue, Carson, CA 90746.
Date Revoked: October 8, 2006.
Reason: Failed to maintain a valid bond.

License Number: 003961F.
Name: Ford Freight Forwarders, Inc.
Address: 8081 NW. 67th Street, Miami, FL 33166.
Date Revoked: October 15, 2006.
Reason: Failed to maintain a valid bond.

License Number: 014455N.
Name: New World Sea & Air Co., Inc.
Address: 615 East Alondra Blvd., Compton, CA 90220.
Date Revoked: October 8, 2006.
Reason: Failed to maintain a valid bond.

License Number: 016562F.
Name: U.S. Brokers (BOS) Inc.
Address: 840 Summer Street, 2nd Floor, Boston, MA 02127.
Date Revoked: October 19, 2006.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. E6–18385 Filed 10–31–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Zenus (USA) Logistics LLC., 231 Blossom Lane, West Palm Beach, FL 33404. *Officer:* Warren Jeffery, Managing Member (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Gamma International Logistics, Inc., dba Liberty LCL Line, 9700 NW 17th Street, Miami, FL 33126. *Officers:* Daniel Brian Savage, President (Qualifying Individual). Darryl Von Geusau, Director.

Fast Logistics, Inc., 3350 SW 3rd Avenue, Suite 207, Fort Lauderdale, FL 33315. *Officers:* Luis Ceballos, President. Jose L. Ceballos, Manager (Qualifying Individuals).

Talus Logistics LLC., 13101 North Enon Church Road, Chester, VA 23836. *Officers:* Glenn R. Clark, V. P. Sales & Operations (Qualifying Individual). David J. Adams, Chairman.

Ocean Freight Forwarder-Ocean Transportation Intermediary Applicants

Far International Corp., 10450 NW 41 Street, Miami, FL 33178. *Officers:* Maria Estela Roa, President (Qualifying Individual). Joaquin Roa, Vice President.

Grove Shipping, 2102 Harrison Avenue, Bronx, NY 10453. Whitfield Nicholas, Sole Proprietor.

Nick's International Shipping, Inc., 1841 Carter Avenue, Bronx, NY 10457. *Officer:* Olimpia Sandoval, President (Qualifying Individual).

Worldwide Freight Logistics, Inc., 8562 NW. 70th Street, Miami, FL 33166. *Officers:* Heriberto Sanchez, President (Qualifying Individual). Roxana Sanchez, Secretary.

Dated: October 27, 2006.

Bryant L. VanBrakle,
Secretary.

[FR Doc. E6–18388 Filed 10–31–06; 8:45 am]

BILLING CODE 6730–01–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 16, 2006.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. John H. Fowler and The Fowler Control Group, which consists of John H. Fowler, Topeka, Kansas; F. David Fowler and Bette J. Fowler, both of Burlingame, Kansas; F. David Fowler, Jr., Tyler, Texas; and Jean A. Watson, McPherson, Kansas, to retain voting shares of Burlingame Bankshares, Inc., and thereby indirectly retain voting shares of The First State Bank of Burlingame, both of Burlingame, Kansas.

Board of Governors of the Federal Reserve System, October 27, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–18346 Filed 10–31–06; 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 27, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp Ltd., Lansing, Michigan; to indirectly acquire 51 percent of the voting shares of Bank of Tacoma (in organization), Tacoma, Washington.

In connection with this Application, Capitol Development Bancorp Limited VI, Lansing, Michigan, has applied to become a bank holding company by acquiring 51 percent of the voting shares of Bank of Tacoma (in organization), Tacoma, Washington.

2. Bank of Montreal, Montreal, Canada, Harris Financial Corp., Chicago, Illinois, and Harris Bankcorp, Inc., Chicago, Illinois; to acquire 100 percent of the voting shares of First National Bank & Trust, Kokomo, Indiana.

3. QCR Holdings, Inc., Moline, Illinois; to acquire 100 percent of the voting shares of Ridgeland Bancorp, Inc., Tony, Wisconsin, and thereby indirectly acquire voting shares of Farmers State Bank, Ridgeland, Wisconsin.

Board of Governors of the Federal Reserve System, October 27, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–18347 Filed 10–31–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information (RFI): Improving Health and Accelerating Personalized Health Care Through Health Information Technology and Genomic Information in Population- and Community-Based Health Care Delivery Systems

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Advances in medicine, biomedical science, and technology present opportunities for enabling health care practices to be increasingly patient-specific by taking into account individual differences in health states, disease processes, and outcomes from interventions. Often referred to as personalized health care, the desired impact of these types of health practices is improved effectiveness and safety of medical practices. These health benefits may be manifested through new approaches for predicting disease risk at an early time point, enabling preemption of disease processes prior to full manifestation of symptoms, analyzing the effectiveness of different interventions in specific populations based on their genetic makeup, and preventing the progression of disease and the related complications.

For the purpose of achieving a broader understanding of rapid changes occurring in the health care setting that may have an impact on the future of personalized health care, the Department of Health and Human Services (HHS) requests input from the public and private sectors on plans for developing and using resources involving health information technology (IT) and genetic and molecular medicine, with specific reference to incorporating these capacities in evidence-based clinical practice, health outcomes evaluations, and research.

DATES: Responses should be submitted to the Department of Health and Human Services on or before 5 p.m., EDT, January 2, 2007.

ADDRESSES: Electronic responses are preferred and may be addressed to *PHCRFI@hhs.gov.* Written responses should be addressed to Department of Health and Human Services, 200 Independence Avenue, SW., Room 434E, Washington, DC 20201, Attention: Personalized Health Care RFI.

A copy of this RFI is also available on the HHS Web site at *http://www.aspe.hhs.gov/PHC/rfi.* Please follow the instructions for submitting responses.

The submission of written materials in response to the RFI should not exceed 75 pages, not including appendices and supplemental documents. Responders may submit other forms of electronic materials to demonstrate or exhibit key concepts of their written responses.

Public Access: Responses to this RFI will be available to the public in the HHS Public Reading Room, 200 Independence Avenue, SW., Washington, DC 20201. Please call (202) 690–7453 between 9 a.m. and 5 p.m. to arrange access. The RFI and all responses will also be made available on the HHS Web site at *http://www.aspe.hhs.gov/PHC/rfi.* Any information you submit will be made public.

Do not send proprietary, commercial, financial, business confidential, trade secret, or personal information that should not be made public.

FOR FURTHER INFORMATION CONTACT: Dr. Gregory Downing, Personalized Health Care Initiative, (202) 260–1911.

SUPPLEMENTARY INFORMATION: Advances in medicine, biomedical science, and technology present opportunities for enabling health care practices to be increasingly patient-specific by taking into account individual differences in health states, disease processes, and outcomes from interventions. Often referred to as personalized health care, the desired impact of these types of health practices is improved effectiveness and safety of medical practices. These health benefits may be manifested through new approaches for predicting disease risk at an early time point, enabling preemption of disease processes prior to full manifestation of

symptoms, analyzing the effectiveness of different interventions in specific populations, and preventing the progression of disease and the related complications.

The application of interoperable electronic information technologies (IT) in the health care setting provides new opportunities to collect and analyze information about diagnostic and therapeutic interventions, as well as health care outcomes. With many potential applications, integrated data analysis of multiple parameters of health care practices has the potential to support new approaches to evaluating health outcomes, developing the evidence base for best practices, identifying individual differences in response to therapies, supporting research on new interventions, automating the process of detecting and reporting notifiable disease conditions and health care-associated infections to public health surveillance systems, and enhancing safety.

In the past year, the American Health Information Community (AHIC), a chartered Federal advisory committee, has made recommendations to the Secretary to advance the development of electronic health records (EHR). AHIC's activities and recommendations support a nationwide approach to developing digital and interoperable health IT systems that ensure the privacy and security of patient information. Already underway are efforts to support consumer empowerment, health safety and improvement, and public health protection through broadly deployed, harmonized information systems. As a result of the deployment of these capabilities throughout the health care system, new avenues are emerging to apply information about individual health experiences toward improved transparency about the quality and cost of health care and transformation of health care delivery, as well as decision support for health practitioners.

Occurring in parallel with the advances in health IT are advances in molecular and genetic medicine. This science-based approach to medicine is now in the early stages of entry in health care through the introduction of diagnostics and treatments that target specific genetic and molecular features of disease processes. Applications of this science and technology provide useful information to aid in patient care through more accurate diagnosis and treatment at an individual level. The availability of genetic information (especially the availability of this information as part of the EHR), and the ability to aggregate these data and correlate them with outcomes or other relevant findings from multiple sources, could greatly expand our capacity for personalized health care, providing more specific individual information for prevention, diagnosis, and treatment; pointing toward clinically useful markers; enabling safer and more effective use of existing therapies; and identifying potential fruitful areas for development of new or refined therapies.

New pathways are emerging for affordable and more effective health care practices through personalized health care. The ability to integrate new scientific knowledge, especially our growing understanding of the human genome, into the health care setting in an efficient and timely fashion will rely on robust, reliable and secure information sources in electronically interoperable systems. Many public and private organizations are engaged in the planning for future collections and integration of health data for this purpose. This request seeks information that will facilitate a broader understanding of directions being taken and the productive role that Federal health agencies might play in facilitating progress, avoiding unnecessary barriers, and achieving optimal benefit from the opportunities now before us.

Information Requested

For the purpose of achieving a broader understanding of rapid and emerging changes occurring in the health care setting that may have an impact on the future of personalized health care, HHS requests input from interested parties on plans for developing and using resources involving health IT and genetic and molecular medicine, with specific reference to incorporating these capacities in evidence-based clinical practice, health outcomes evaluations, research, and transformation of health care delivery.

Input is sought on the interest and current planning activities of health care systems and related organizations on the needs and applications of these transformative aspects of personalized health care. Specific areas for comment include:

• Concepts on anticipated approaches for the use of EHR and population- and community-based health care system databases for longitudinal data collection in addressing:

—Disease susceptibility.
—Clinical course and outcomes.
—Treatment response.
—Evidenced-based clinical decision support.
—Optimal healthcare delivery systems.

• Anticipated applications of genomic-based clinical testing in medical decision-making, safety assessment, and risk management.

• Establishment of biospecimen resources obtained from clinical medical services for application in research, clinical trials, health services planning, clinical effectiveness, and health outcomes evaluations.

• Organizational or institutional practices to address ethical, legal, and social implications regarding the use of patient information, including genetic data, to support personalized health care.

• Examples of utilizing large clinical data repositories for practical clinical research to discover effective technologies, therapeutics, diagnostics, and prevention strategies for different populations.

• Issues and challenges associated with incorporating genomic information as a part of a broad longitudinal data collection.

• Needs for community-wide standards or best practices that will facilitate large-scale data integration and exchange to benefit personalized health care.

• Feasibility and potential benefits for establishing linkages of institutional or organizational data resources with private and publicly available health databases.

• Development of ontologies across different clinical data repositories that will facilitate the utility of the data for answering clinical research questions.

• Models for linking clinical data repositories across disparate care providers.

• Examples of the use of disease registries to track specific diseases and response to drug therapies across different subpopulations.

• Models for prioritizing analyses to fill gaps in evidence of effectiveness of therapeutic interventions for different populations.

• Strategies for accumulating patient data necessary for research that may not be available through EHRs.

• Concepts or models on the potential use of clinical data and related resources for research applications.

• Models of cost-benefit analysis for integrated data systems, EHR, and clinical resources to inform medical decision-making.

• Opportunities and challenges for the development of electronic tools to aid in the integration and analysis of large datasets of clinical parameters to assist in outcomes evaluations.

Potential Responders

HHS anticipates responses from a broad range of individual organizations

that have interests in health systems change and personalized health care. Some examples of these organizations include:

- Community health delivery systems.
- Health maintenance organizations.
- University-based health systems.
- State and local public health departments.
- Other Federal agencies.
- Advocacy groups and public interest organizations.
- Consumer and patient interests groups.
- Health care professional societies.
- Trade industry organizations.
- Purchasers of health care.
- Health information technology industry vendors.

Dated: October 26, 2006.

John O. Agwunobi,

Assistant Secretary for Health, Office of Public Health and Science.

[FR Doc. E6–18371 Filed 10–31–06; 8:45 am]

BILLING CODE 4150–26–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0478]

Marketed Unapproved Drugs; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop on issues related to the application process for seeking approval for marketed unapproved drugs. This will be a 1-day workshop involving FDA staff and representatives from businesses currently marketing unapproved drugs. The purpose of the workshop is to provide clarification and direction to businesses on how to seek approval to legally market drugs through the new drug application (NDA) and abbreviated new drug application (ANDA) processes and how to legally market drugs through compliance with the over-the-counter (OTC) monographs.

DATES: The public workshop will be held on January 9, 2007, from 9 a.m. to 4 p.m. Registration is open until November 15, 2006. Submit requests for specific discussion topics by November 15, 2006.

ADDRESSES: The public workshop will be held in the Center for Drug Evaluation and Research Advisory Committee conference room, 5630 Fishers Lane, rm. 1066, Rockville, MD. The agenda for the meeting will be posted at *http://www.fda.gov/cder/drug/unapproved_drugs*.

Submit topics by mail to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit topics electronically to *http://www.fda.gov/dockets/ecomments*. Submit two paper copies of any mailed topics, except that individuals may submit one paper copy. All requests for discussion topics should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Kirchberg, Center for Drug Evaluation and Research (HFD–330), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–8916, e-mail: *karen.kirchberg@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 9, 2006 (71 FR 33466), FDA announced the availability of a guidance entitled ''Marketed Unapproved Drugs—Compliance Policy Guide'' (the Marketed Unapproved Drugs CPG). The guidance describes how FDA intends to exercise its enforcement discretion with regard to drugs marketed in the United States that do not have required FDA approval for marketing. The guidance explains that FDA intends to continue to give priority to enforcement actions involving unapproved drugs that have potential safety risks, lack evidence of effectiveness, and constitute health fraud, among other categories. The Marketed Unapproved Drugs CPG also explains how the agency intends to address those situations in which a company obtains approval to sell a drug that other companies have sold without FDA approval for some time. In the Marketed Unapproved Drugs CPG, FDA encourages companies to comply with the drug approval requirements of the Federal Food, Drug, and Cosmetic Act.

Following the publication of the Marketed Unapproved Drugs CPG, a number of drug companies have contacted FDA seeking clarification about how to obtain approval to legally market their unapproved drug products and whether applications for marketing are subject to user fees, among other issues. The agency is committed to working with companies to facilitate the process of ensuring that products are safe and effective and meet appropriate standards for manufacturing and labeling.

II. Scope of the Public Workshop

As part of FDA's goal to ensure that all marketed drugs comply with appropriate FDA requirements to ensure their safety and efficacy, FDA is holding a public workshop to educate businesses on the drug application and OTC monograph processes and to discuss issues of interest to participants.

Topics for discussion include the following: (1) The various routes for legal marketing—NDAs, ANDAs, and OTC monographs; (2) application processes; (3) user fee applicability and waivers; and (4) market exclusivity for newly-approved drugs. The information provided during registration will help us determine additional topics for discussion and how to further focus the workshop.

III. Participation in the Public Workshop

A. Registration

Register via e-mail to *CDER_330CATS@cder.fda.gov* by providing complete contact information for each attendee (including name, title, affiliation, e-mail address, and phone number(s)) by November 15, 2006. Please indicate ''Workshop—Unapproved Products'' in the ''subject'' line of the e-mail. FDA intends to respond to registration requests by e-mail after November 15, 2006. There is no registration fee to attend. Space is limited; therefore, interested parties are encouraged to register early and FDA may need to limit the number of attendees from each firm or organization. If you need special accommodations due to a disability, please e-mail your request at least 7 days before the meeting.

B. Suggested Topics

If you would like to request discussion of a specific topic for the workshop, submit it to the Division of Dockets Management (see **ADDRESSES**) using the docket number, found in brackets in the heading of this document, by November 15, 2006. We may not be able to include all submitted topics in the workshop agenda.

C. Parking, Transportation, and Security

Limited visitor parking is available for a fee, and the Twinbrook Metro station is within walking distance. Early arrival is encouraged, as there will be security screening. Workshop participants will be asked for government-issued picture identification by the security officers.

IV. Transcripts

Following the workshop, transcripts will be available for review at the

Division of Dockets Management (see **ADDRESSES**), Monday through Friday between 9 a.m. and 4 p.m. You may also request a copy of the transcript from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

Dated: October 20, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–17959 Filed 10–31–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 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 on Drug Abuse Special Emphasis Panel, NIDA–K conflicts SEP A.

Date: November 14, 2006.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@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 on Drug Abuse Special Emphasis Panel, NIDA–K conflicts SEP B.

Date: November 14, 2006.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8984 Filed 10–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Neuro AIDS Imaging II.

Date: November 3, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8985 Filed 10–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, Mental Health Services in Non-Specialty Settings.

Date: November 7, 2006.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, 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 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8986 Filed 10–31–06; 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 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 General Medical Sciences Special Emphasis Panel, Pharmacology.

Date: November 7, 2006.

Time: 9:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 45 Center Drive, Room 3AN–18, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carole H. Latker, 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) 594–2848, *latkerc@nigms.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, 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 23, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8988 Filed 10–31–06; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, GI Training Program.

Date: November 17, 2006.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–8886; *edwardsm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, High-Dose Urso in Primary Sclerosing Cholangitis.

Date: November 17, 2006.

Time: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Wellner, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Digestive and Liver Diseases Mentoring Program.

Date: November 20, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Wellner, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Membrane Topography of Cell Signaling Complexes.

Date: November 21, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Wellner, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Program to Reduce Incontinence by Diet and Exercise Ancillary Study.

Date: November 28, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Wellner, PhD, Scientist Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Small Clinical Grants in Biliary Disorders.

Date: November 30, 2006.

Time: 4 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientist Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452 (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Eliminating Mechanical Bowel Preparation in Colorectal Surgery.

Date: December 4, 2006.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD, Scientist Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894. *matsumotod@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 23, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8989 Filed 10–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Studies Review.

Date: November 13, 2006.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 23, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8990 Filed 10–31–06; 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, Microscopy Probes.

Date: November 6, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ross D. Shonat, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022A, MSC 7849, Bethesda, MD 20892, (301) 435–2786, *shonatr@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, Immunity and Pathogenesis in AIDS.

Date: November 17, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiac Repair.

Date: November 20–21, 2006.

Time: 9 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maqsood A. Wani, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892 (301) 435–2770, *wanimaqs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vascular Bioengineering Partnership.

Date: November 30, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892 (301) 435–1777, *zouai@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 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8987 Filed 10–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Translational Research Working Group Public Comment Period; Correction Notice

The National Cancer Institute (NCI) of the National Institutes of Health published a notice soliciting public comment on the draft initiatives and implementation concepts proposed by the Translational Research Working Group (TRWG) in the **Federal Register** on October 23, 2006, 71 FR 62114–62115. The **DATES** caption errantly indicated that comments could be submitted through November 22, 2006. That date was incorrect. The **DATES** caption found on page 62115 of the notice should have read: ''**DATES:** Parties interested in submitting comments on the draft initiatives should submit them to *http://www.cancer.gov/trwg* by November 3, 2006.''

Dated: October 26, 2006.

Ernest Hawk,

Director, Office of Centers, Training and Resources, National Cancer Institute, National Institutes of Health.

[FR Doc. E6–18351 Filed 10–31–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1664–DR]

Hawaii; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Hawaii (FEMA–1664–DR), dated October 17, 2006, and related determinations.

DATES: *Effective Date:* October 23, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Hawaii is hereby amended to include the Individual Assistance program for the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 17, 2006:

Hawaii County for Individual Assistance and Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–18320 Filed 10–31–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1665–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1665–DR), dated October 24, 2006, and related determinations.

DATES: *Effective Date:* October 24, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 24, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York resulting from severe storms and flooding during the period of October 12–13, 2006, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, as well as Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, Peter J. Martinasco, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Erie, Genesee, Niagara, and Orleans Counties for Individual Assistance and Public Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–18312 Filed 10–31–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Emergency Agency Information Collection Activity Under OMB Review: Sensitive Security Information Threat Assessments

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of emergency clearance request.

SUMMARY: This Notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for emergency processing and approval under the Paperwork Reduction Act. The ICR describes the nature of information collection and its expected burden.

DATES: Send your comments by December 1, 2006. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Katrina Kletzly, Attorney-Advisor, Office of the Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1995; facsimile (571) 227–1381.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Sensitive Security Information Threat Assessments.

Type of Request: Emergency processing request of new collection.

OMB Control Number: Not yet assigned.

Forms(s): Security Threat Assessment Application.

Affected Public: Individuals seeking access to Sensitive Security Information (SSI) for use in civil proceedings in Federal court.

Abstract: Section 114(s) of title 49 of the U.S.C. requires the Transportation Security Administration (TSA) to promulgate regulations governing the protection of Sensitive Security Information (SSI). SSI includes information that would be detrimental to transportation security if publicly disclosed. TSA's SSI regulation, 49 CFR part 1520, establishes certain requirements for the recognition, identification, handling, and dissemination of SSI, including restrictions on disclosure and civil penalties for violations of those restrictions. Individuals may only access SSI if they are a covered person with a need to know as defined by the regulation. Section 525 of the Department of Homeland Security Appropriations Act of 2007 (DHS Appropriations Act) provides that in civil proceedings in the U.S. District Courts, where a party seeking access to SSI demonstrates a substantial need for relevant SSI in the preparation of the party's case and an undue hardship to obtain equivalent information by other means, the party or party's counsel shall be designated as a covered person under 49 CFR part 1520.7, provided that the overseeing judge enters an order protecting the SSI from unauthorized disclosure; the individual undergoes a criminal history records check (CHRC) and threat assessment; and the provision of access to the specific SSI in question in a particular proceeding does not present a risk of harm to the nation.

TSA is implementing sec. 525 of the DHS Appropriations Act by establishing a process whereby a party seeking access to SSI in a civil proceeding in Federal court that demonstrates a substantial need for relevant SSI in preparation of the party's case may request that the party, or if represented, an attorney, be granted access to the SSI. In order to determine if the individual may be granted access to SSI for this purpose, TSA will conduct a criminal history records check (CHRC) and security threat assessment. TSA is seeking emergency processing of this information collection request to implement sec. 525 of the DHS Appropriations Act and meet ongoing litigation deadlines in pending litigation, including those in *In Re: September 11 Litigation,* 21 MC 97 &101 (S.D.N.Y.).

The Aviation and Transportation Security Act (ATSA), Pub. L. 107–71, sec. 114 (f), authorizes TSA to perform threat assessments. To accomplish this, individuals will be required to submit identifying information, information regarding the litigation, an explanation supporting the party's need for the information, information concerning the individual's bar membership, if applicable, and information concerning sanctions, if any, issued by a court or other judicial body to the individual or any of the individual's clients to TSA via secure electronic mail or regular or express mail. These individuals must also submit fingerprints for purposes of conducting the CHRC.

TSA will use the information to conduct name-based security threat assessments and CHRCs for the purpose of identifying actual or potential threats to transportation security and the nation. The results of the CHRC and threat assessment will be used to make a final determination on whether the individual may be granted access to SSI.

Number of Respondents: 80.

Estimated Annual Burden Hours: An estimated 80 hours annually.

Issued in Arlington, Virginia, on October 27, 2006.

Peter Pietra,

Director of Privacy Policy and Compliance.

[FR Doc. 06–9011 Filed 10–30–06; 10:48 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by December 1, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Ralph S. Cunningham, Jr., League City, TX, PRT–134857

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: William Toriello, Midlothian, VA, PRT–135611

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John J. Wolfe, Savannah, TN, PRT–135139

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Harry J. Daily, Jr., Natchitoches, LA, PRT–134247

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: October 13, 2006.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–18366 Filed 10–31–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.,*) the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

Marine Mammals

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
127272	Kerry Clary	71 FR 48938; August 22, 2006	October 12, 2006.
127336	Paul Hostetler	71 FR 48938; August 22, 2006	October 12, 2006.
127255	John H. Babin	71 FR 48938; August 22, 2006	October 12, 2006.

Dated: October 13, 2006.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–18365 Filed 10–31–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Annual National Earthquake Hazards Reduction Program Announcement

AGENCY: U.S. Geological Survey, Interior.

ACTION: Request for public comments on proposed information collection submitted to the Office of Management and Budget for review under the Paperwork Reduction Act.

SUMMARY: The proposal to extend the collection of information described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance office at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore public comments should be submitted to OMB within 30 days in order to assure maximum consideration. Comments and suggestions on the proposal should be made directly to the Desk Office for the Interior Department, OMB–OIRA, via e-mail to *OIRA_DOCKET@omb.eop.gov* or via facsimile to (202) 395–6566, and to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How 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 forms of information technology.

Title: Annual National Earthquake Hazards Reduction Program Announcement.

OMB approval number: 1028–0051.

Abstract: Respondents submit proposals to support research in earthquake hazard assessments and earthquake occurrence. This information will be used as the basis for selection and award of projects meeting the program objectives. Final reports of research findings are required on each selected performances.

Bureau form number: None.

Frequency: Annual proposals, final reports.

Description of respondents: Educational institutions, profit and non-profit organizations, individuals, and agencies of local or State governments.

Annual responses: 300.

Annual burden hours: 12,000 hours.

Bureau clearance officer: Fred Travnicek, 703–648–7231.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lemersal, U.S. Geological Survey, MS905 National Center, Reston, Virginia 20192, (703) 648–6717.

Dated: October 26, 2006.

John Haines,

Acting, Associate Director for Geology, U.S. Geological Survey.

[FR Doc. 06–8996 Filed 10–31–06; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Information Collection Under the Paperwork Reduction Act; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed collection.

SUMMARY: As required by the Paperwork Reduction Act of 1995, we are renewing the information collection found in the general Probate of Indian Decedents' Estates, Except for Members of the Five Civilized Tribes regulations. The purpose of this data collection is to ensure that Probate regulations are administered for the benefit of individual Indians and any persons having claims against an Indian decedent's estate.

DATES: Comments on this proposed information collection must be received by January 2, 2007.

ADDRESSES: Send comments to William Titchywy, Bureau of Indian Affairs, Office of Trust Services, Special Projects Office, 10th Floor, P.O. Box 10, Phoenix, AZ 85001–0010. Comments may also be telefaxed to (602) 379–4005. We cannot accept E-mail comments at this time.

FOR FURTHER INFORMATION CONTACT: William Titchywy, 602–379–4002.

SUPPLEMENTARY INFORMATION: The information provided through collection requirements is used by the Department of the Interior, Bureau of Indian Affairs (BIA), to determine heirs and divide any funds held by the BIA for an Indian decedent and to divide the decedent's trust and restricted real property. The information is specifically used by the BIA in:

(a) Instructing an individual in starting the probate process;

(b) Preparing a probate package for review;

(c) Filing claims;

(d) Disbursing assets; and

(e) Filing appeals for adverse decisions.

Request for Comments

The BIA requests your comments on this collection concerning:

(a) The necessity of this information collection 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 the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as facilitating use of automation for collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, 10th Floor, during the hours of 8:30 a.m. to 5 p.m. MST, Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB Control Number: 1076–0156.

Type of Review: Renewal.

Title: Probate of Indian Estates, Except for Members of the Five Civilized Tribes, 25 CFR 15.

Brief Description of collection: Information is collected through the probate process when the BIA learns of a decedent's death from a family member, neighbor, friend or any other person or agency. The information, together with specific documents, is used to determine if the decedent owned a trust estate, to prepare a probate package and to distribute estate assets. Respondents must inform the BIA if any of the required information or documents are not available.

Respondents: Possible respondents include: Individual tribal members, individual non-Indians, individual tribal member-owned businesses, non-Indian owned businesses, tribal governments, and land owners who are seeking a benefit.

Number of Respondents: 37,477 annually.

Annual hours: 179,868.

Estimated Time per Response: 5 hours.

Frequency of Response: As required.

Dated: October 27, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–18399 Filed 10–31–06; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Record of Decision for the Fort King Special Resource Study

SUMMARY: Congress, in the Interior Appropriations Act of 2000, authorized the *Fort King Special Resource Study and Final Environmental Impact Statement* (''Study''). The legislation directed the National Park Service (NPS) to determine whether Fort King is nationally significant and, if so, whether it is suitable and feasible as a new unit of the National Park System. Acknowledging the site's National Historic Landmark (NHL) status, the Study determined that Fort King is nationally significant. In addition, the Study determined that Fort King is suitable and feasible for inclusion in the National Park System because its interpretive themes are underrepresented in the current system and the property is of sufficient size and shape to protect resources and accommodate public use. The study does not, however, propose an active NPS management role at the site. Rather, existing programs such as Save America's Treasures and Preserve America are used to exemplify the types of NPS assistance available to future non-Federal managers of the Fort King property.

The Final Study was distributed for public review in August 2006. The NPS has prepared a Record of Decision (ROD) on the Study to document the decision made, the background of the project, other alternatives considered, the basis for the decision, the environmentally preferable alternative, and the public involvement in the decision-making process.

The 1998 Omnibus Parks Management Act (Pub. L. 105–391

§ 303) mandates that each Special Resources Study (SRS) identify the alternative or combination of alternatives which would, in the professional judgment of the Director of the NPS, be ''most effective and efficient in protecting significant resources and providing for public enjoyment.'' The Study identifies Alternative B in the Study as the environmentally preferred alternative and most effective and efficient alternative because it preserves more of the site's archeological resources in an undisturbed condition and minimizes capital expenditures and long-term operating costs.

Under Alternative B, the historic significance of Fort King would be communicated to visitors primarily through self-guided interpretive trails, wayside exhibits, and brochures. The park would not have a permanent on-site staff. Guided tours and live interpretation programs for school groups and special events would be provided by volunteers on a case by case basis. The site's existing wooded landscape would remain predominantly unchanged. Pedestrian trails would be cleared by vegetation and lightly graded. Trees and other woody vegetation immediately surrounding the fort location would be thinned or removed for interpretive purposes.

The Federal government would not assume ownership of land, impose zoning or land use controls, or take responsibility for permanent funding. Likewise, there would be no direct NPS ownership or management of resources. As with other National Historic Landmarks, the NPS could provide technical assistance for general planning, resource management, and interpretation. However, overall management of the Fort King site would be administered by one or more local entities.

The Study also presented in detail a No Action and two Action Alternatives that describe different ways of commemorating, interpreting, and preserving resources associated with Fort King. All alternatives are described in detail in the Study.

Alternative B provides a broad range of public benefits such as improved public access, long-term preservation of archeological resources, and increased visitor awareness of the site's national significance while minimizing capital expenditures and long-term operating costs.

DATES: On September 14, 2006, the Regional Director, Southeast Region, NPS signed the ROD for the SRS and Environmental Impact Statement (EIS) for Fort King.

ADDRESSES: Tim Bemisderfer, Planning and Compliance Division, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303. An electronic copy of the Final EIS and ROD are available on the internet at *http://parkplanning.nps.gov.*

FOR FURTHER INFORMATION CONTACT: Tim Bemisderfer, 404–562–3124, extension 693.

SUPPLEMENTARY INFORMATION: A copy of the ROD can be obtained via the Internet by visiting the NPS Planning Environmental and Public Comment System Web site at *http://parkplanning.nps.gov* or by calling 404–562–3124, extension 693.

The responsible official for the FEIS is Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: September 29, 2006.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 06–9002 Filed 10–31–06; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–402 and 731–TA–892 and 893 (Review)]

Honey From Argentina and China

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty order on honey from Argentina and the antidumping duty orders on honey from Argentina and China.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on honey from Argentina and the antidumping duty orders on honey from Argentina and China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is December 21, 2006. Comments on the adequacy of responses may be filed with the Commission by January 16, 2007. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: November 1, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On December 10, 2001, the Department of Commerce issued a countervailing duty order on imports of honey from Argentina (66 FR 63673) and antidumping duty orders on imports of honey from Argentina and China (66 FR 63672, 63670). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

[1] 1 No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 07–5–162, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

(2) The *Subject Countries* in these reviews are Argentina and China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission found that there was one *Domestic Like Product* consisting of all honey, consistent with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found a single *Domestic Industry* consisting of the U.S. producers of honey, both raw and processed. The Commission found that packers, who produce processed honey, as well as beekeepers, who produce raw honey, should be treated as U.S. producers. However, the Commission excluded two packers and one beekeeper/packer from the *Domestic Industry* pursuant to the related parties provision.

(5) The *Order Date* is the date that the countervailing duty and antidumping duty orders under review became effective. In these reviews, the *Order Date* is December 10, 2001.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix

3. *Written submissions.* Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 21, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is January 16, 2007. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of

the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each Subject Country that currently export or have exported *Subject Merchandise* to the United States or other countries since the Order Date.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Number of domestic honey-producing colonies, production and/or packing (quantity) and, if known, an estimate of the percentage of total U.S. production and/or packing of the *Domestic Like Product* accounted for by your firm's(s') production and/or packing;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country(ies)*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country(ies).*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 25, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–18309 Filed 10–31–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–919 and 920 (Review)]

Welded Large Diameter Line Pipe From Japan and Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on welded large diameter line pipe from Japan and Mexico.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on welded large diameter line pipe from Japan and Mexico would be likely to lead to continuation or recurrence of material

injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is December 21, 2006. Comments on the adequacy of responses may be filed with the Commission by January 16, 2007. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* November 1, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: *Background.* On December 6, 2001, the Department of Commerce issued an antidumping duty order on imports of welded large diameter line pipe from Japan (66 FR 63368). On February 27, 2002, the Department of Commerce issued an antidumping duty order on imports of welded large diameter line pipe from Mexico (67 FR 8937). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Japan and Mexico.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission found a single *Domestic Like Product* consisting of certain welded large diameter line pipe, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found a single *Domestic Industry* consisting of all domestic producers of certain welded large diameter line pipe.

(5) The *Order Dates* are the dates that the antidumping duty orders under review became effective. In these reviews, the *Order Dates* are December 6, 2001 (Japan) and February 27, 2002 (Mexico).

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 07–5–163, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

specified below. The deadline for filing such responses is December 21, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is January 16, 2007. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Dates.*

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the

market for the *Subject Merchandise* in each *Subject Country* since the *Order Dates*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 25, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–18311 Filed 10–31–06; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Invitation for Membership on Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Withdrawal of notice inviting membership on advisory committee; notice inviting membership on advisory committee.

SUMMARY: The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employee Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The Joint Board published a **Federal Register** notice at 71 FR 30649, May 30, 2006, inviting membership on the Advisory Committee. That notice did not reflect the Joint Board's decision to extend the appointment term of current Advisory Committee members. Therefore, this document withdraws the previous notice and gives new notice inviting membership. In accordance with the Joint Board's decision, the appointment term of current Advisory Committee members will expire on February 28, 2007. This notice describes the Advisory Committee and invites applications from those interested in serving on it.

1. General

To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries, and the American Society of Pension Professionals & Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to those actuarial organizations as part of their respective examination programs.

2. Programs

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations that will enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of such examinations, will review topics appropriately covered in them, and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views on examination content are understood.

3. Function

The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly administered examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of the draft questions, the Advisory Committee selects appropriate questions, modifies them as it deems desirable, and then prepares one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions and include them in what is recommended.)

4. Membership

The Joint Board will take steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examination extant in the community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations comprise a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. All members of the Advisory Committee will be expected to act in the public interest, that is, to produce examinations that will help ensure a level of competence among those who will be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. Membership terms are at the sole discretion of the inviting authority and are not necessarily concurrent with the duration of the Advisory Committee charter. The Advisory Committee will meet about four times a year. Advisory Committee members should be prepared to devote from 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for travel expenses incurred, in accordance with applicable government regulations.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director SE: OPR, Room 7238, 1111 Constitution Avenue, NW., Washington, DC 20224.

Any questions may be directed to the Joint Board's Executive Director at 202–622–8229.

The deadline for accepting applications is December 15, 2006.

Dated: October 11, 2006.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 06–8992 Filed 10–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Prior to issuing a registration under 21 U.S.C. 952(a)(2)(B), and in accordance with 21 CFR 1301.34(a), this is notice that on July 25, 2006, Alcan Packaging-Bethlehem, 2400 Baglyos Circle, Bethlehem, Pennsylvania, 18020, has made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Nabilone (7379), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for packaging and for distribution.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than December 1, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: October 25, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–18431 Filed 10–31–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated July 25, 2006, and published in the **Federal Register** on July 31, 2006, (71 FR 43210), Aptuit, 10245 Hickman Mills Drive, Kansas City, Missouri 64137, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in schedule I.

The company plans to import a finished pharmaceutical product containing cannabis extracts in dosage form for packaging for a clinical trial study.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Aptuit to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Aptuit to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed

Dated: October 25, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–18376 Filed 10–31–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 28, 2006, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Sufentanil (9740), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than January 2, 2007.

Dated: October 25, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–18375 Filed 10–31–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated July 26, 2006, and published in the **Federal Register** on August 1, 2006, (71 FR 43526), Kenco VPI, Division of Kenco Group Inc., 350

Corporate Place, Chattanooga, Tennessee 37419, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Nabilone (7379), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Kenco VPI to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Kenco VPI to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: October 25, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–18430 Filed 10–31–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated July 20, 2006, and published in the **Federal Register** on July 28, 2006, (71 FR 42878), Tocris Cookson, Inc., 16144 Westwoods Business Park, Ellisville, Missouri 63021–4500, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in schedule I.

The company plans to import small quantities of the listed controlled substance for sale to research facilities.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Tocris Cookson, Inc. to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Tocris Cookson, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: October 25, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–18428 Filed 10–31–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,966]

ABB, Inc., Lewisburg, WV; Notice of Revised Determination of Alternative Trade Adjustment Assistance on Reconsideration

By letter dated October 10, 2006, a representative of the Maintenance Workers Local Union, No. 1182, Laborers International Union of North America (Union), requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The certification for Trade Adjustment Assistance was signed on September 28, 2006. The Notice of determination was published in the **Federal Register** on October 16, 2006 (71 FR 60762).

The determination stated that a significant number of workers in the workers' firm are not 50 years of age or older.

The Union asserts that a significant number of workers in the workers' firm are 50 years of age or older and provided a list of workers and their birthdates as support documentation.

A careful review of the Union's submissions and previously submitted documents reveal that at least five percent of the workforce at the subject from is at least fifty years of age. The workers in the workers' firm possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of ABB, Inc., Lewisburg, West Virginia, who became totally or partially separated from employment on or after August 28, 2005 through September 28, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 25th day of October 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–18357 Filed 10–31–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,167]

Andrew Corporation AFMA; Andrew Facility Massachusetts Division Including On-Site Leased Workers of Andover Personnel, John Galt Services, MMD Temps, Footbridge Engineering, Sperion, TEK Systems and National Engineering Service Corp, Amesbury, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 6, 2006, applicable to workers of Andrew Corporation AFMA, Andrew Facility Massachusetts Division, including on-site leased workers of Andover Personnel, John Galt Services, MMD Temps, Footbridge Engineering, Amesbury, Massachusetts. The notice

will be published soon in the **Federal Register**.

At the request of the State agency and the company, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Tek Systems and National Engineering Service Corp. were employed on-site at the Amesbury, Massachusetts location of Andrew Corporation FMA, Andrew Facility Massachusetts Division.

Based on these findings, the Department is amending this certification to include leased workers of Tek Systems and National Engineering Service Corp. working on-site at Andrew Corporation AFMA, Andrew Facility Massachusetts Division, Amesbury, Massachusetts.

The intent of the Department's certification is to include all workers employed at Andrew Corporation AFMA, Andrew Facility Massachusetts Division, who were adversely affected by a shift in production to Mexico and China.

The amended notice applicable to TA–W–60,167 is hereby issued as follows:

All workers of Andrew Corporation, AFMA, Andrew Facility Massachusetts Division, including on-site leased workers of Andover Personnel, John Galt Services, MMD Temps, Footbridge Engineering, Spherion, Tek Systems and National Engineering Service Corp. who became totally or partially separated from employment on or after September 26, 2005, through October 6, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of October 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–18359 Filed 10–31–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,150]

Celestica Corporation, Including On-Site Workers of Securitas Security, Including On-Site Leased Workers of Adecco Westminster, Colorado; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 13, 2006, applicable to workers of Celestica, Westminster, Colorado. The notice was published in the **Federal Register** on October 25, 2006 (71 FR 62489).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in warehousing and distribution operations.

New information shows that workers of Securitas Security were employed on-site at the Westminster, Colorado location of Celestica.

Based on these findings, the Department is amending this certification to include workers of Securitas Security working on-site at Celestica, Westminster, Colorado.

The intent of the Department's certification is to include all workers employed at Celestica, Westminster, Colorado who were adversely affected by a shift in production to Mexico, Canada and Israel.

The amended notice applicable to TA–W–60,150 is hereby issued as follows:

All workers of Celestica Corporation, including on-site workers of Securitas Security and on-site leased workers of Adecco, Westminster, Colorado, who became totally or partially separated from employment on or after September 25, 2005, through October 13, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of October 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–18358 Filed 10–31–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,500]

Connecticut General Life Insurance Company (CGLIC), Cigna Healthcare Service Operations, Philadelphia, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated August 17, 2006 a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Connecticut General Life Insurance Company (CGLIC), Cigna Healthcare Service Operations, Philadelphia, Pennsylvania was signed on July 24, 2006 and published in the **Federal Register** on August 14, 2006 (71 FR 46519).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition filed on behalf of workers at Connecticut General Life Insurance Company (CGLIC), Cigna Healthcare Service Operations, Philadelphia, Pennsylvania engaged in computer support for CIGNA's Disability Management IT (support, basic Application development support, coding and systems testing, and customer help desk support) was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as providing a service and further conveys that workers of the subject firm created various software for sale or lease to customers. The petitioner included the name of a customer who purchased/leased Disability Management software from the subject firm, thus concluding that workers of the subject firm were supporting this customer.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated that workers of the subject firm were employed by Connecticut General Life Insurance Company (CGLIC) that supports CIGNA's Disability Management Business at Intracorp, CIGNA disability management company. The official clarified that Intracorp is not in the business of manufacturing Disability Management software for sale to third parties. Workers of the subject firm provided system support for Intracorp, which sells case management services to workers' compensation insurers, employers who self fund workers' compensation and disability benefits, and third party administrator. All software developed by workers of the subject firm is used to support this service business. In addition to case management, Intracorp developed its own automated medical bill review service and this software program is also used externally by the subject firm for its business. The official further clarified that there is only one instance when a customer temporarily leases software developed by Intracorp to perform its own bill review services. This customer did not purchase this software. When the software was leased to this customer, some modifications were done to existing Audit Plus software, however these enhancements are not a new ''product'' but rather are enhancements to an existing system.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but whether they produce an article within the meaning of section 222 of the Trade Act of 1974.

Research, development and technical support of the existing software is not considered production of an article within the meaning of Section 222 of the Trade Act. Further, while the provision of services may result in creation of software, as outlined by the petitioner, it is incidental to the provision of services. The Department has consistently determined that those items which are created incidental to the provision of services are not considered articles for purposes of the Trade Act.

The investigation on reconsideration supported the findings of the primary investigation that the petitioning group of workers does not produce an article.

Service workers can be certified only if worker separations are caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article domestically who meet the eligibility requirements, or if the group of workers are leased workers who perform their duties at a facility that meet the eligibility requirements.

The petitioner's alleges that the work performed by the workers of the subject firm has been shifted to India.

The company official stated that developments for the Audit Plus bill review system enhancements or fixes are currently performed on-site and have not been moved abroad. The official also stated that there are currently no firm target dates to move this work offshore.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of October, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–18353 Filed 10–31–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,520]

LeeMAH Electronics, Inc., San Francisco, CA; Notice of Revised Determination on Reconsideration

By letter dated August 23, 2006, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination signed on July 20, 2006 was based on the finding that there were no increased imports of printed circuit boards and cable assemblies and there was no shift of production to a foreign source during the relevant period. The workers were separately identifiable by product. The denial notice was published in the **Federal Register** on August 4, 2006 (71 FR 44320).

To support the request for reconsideration, the petitioner supplied additional information regarding company imports of like or directly competitive products with those produced at the subject firm.

The review of the case revealed that workers of the subject firm produce printed circuit boards at a plant on Folsom Street and cable assemblies at a plant on Pacific Avenue and that workers are separately identifiable by product line and location.

Upon further contact with the subject firm's company official, it was revealed that the subject firm decreased domestic production of printed circuit boards, while increasing its reliance on imports of printed circuit boards from 2004 to 2005 and from January through May of 2006 when compared with the same period in 2005.

The investigation also revealed that workers of LeeMAH Electronics, Inc., San Francisco, California, may be eligible for TAA on the basis of a secondary upstream supplier impact. The Department conducted an investigation of subject firm workers on the basis of secondary impact. It was revealed that LeeMAH Electronics, Inc., San Francisco, California supplied cable assemblies for production of test, measurement and radio equipment, and at least 20 percent of its production or sales is supplied to a manufacturer whose workers were certified eligible to apply for adjustment assistance.

In accordance with Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with circuit boards produced at LeeMAH Electronics, Inc., San Francisco, California, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. Also, after careful review of the facts obtained in the investigation, I determine that

workers of Electronics, Inc., San Francisco, California engaged the production of cable assemblies qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of LeeMAH Electronics, Inc., San Francisco, California, who became totally or partially separated from employment on or after June 2, 2005 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 25th day of October 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–18354 Filed 10–31–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance And Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 13, 2006. Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 13, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of October 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX—30 TAA

[Petitions Instituted Between 10/16/06 and 10/20/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60245	R.L. Stowe Mills, Inc. (Comp).	Belmont, NC	10/16/06	10/12/06
60246	Weyerhaeuser Cosmopolis Pulp Mill (Union).	Cosmopolis, WA	10/16/06	10/12/06
60247	Advanced Technology Services (Wkrs).	Vinita, OK	10/16/06	10/13/06
60248	Werner Co. (Comp).	Franklin Park, IL	10/16/06	10/13/06
60249	ADVO (Comp).	Pittsburgh, PA	10/16/06	10/16/06
60250	Senco Products (Wkrs).	Cincinnati, OH	10/17/06	09/21/06
60251	Canvas Products (Union).	Detroit, MI	10/17/06	10/16/06
60252	Shogren Hosiery Mfg. Co., Inc. (Comp).	Concord, NC	10/17/06	10/17/06
60253	Metaldyne (Comp).	St. Marys, PA	10/18/06	10/12/06
60254	Consolidated Metco, Inc. (IAM).	Clackamas, OR	10/18/06	10/17/06
60255	Textron Fastening Systems (Wkrs).	Wytheville, VA	10/18/06	10/16/06
60256	Eaton Corporation (Wkrs).	Auburn, IN	10/18/06	10/16/06
60257	Benchmark Electronics (Wkrs).	Hudson, NH	10/18/06	10/16/06
60258	Woodbridge Corporation (Wkrs).	Lithonia, GA	10/18/06	10/18/06
60259	Burris Manufacturing, Inc. (Comp).	Albemarle, NC	10/18/06	10/18/06
60260	Georgia Pacific Corp. (State).	Crossett, AR	10/18/06	10/17/06
60261	Clout Financial Services, Inc. (Wkrs).	Bloomington, IN	10/18/06	10/18/06
60262	Paramount Cards, Inc. (State).	Pawtucket, RI	10/19/06	10/18/06
60263	Freedom Industries (Comp).	Liberty, MS	10/19/06	10/18/06
60264	Ibase (Comp).	Austin, TX	10/19/06	10/10/06
60265	Physical Rehab Works (State).	Herrin, IL	10/19/06	10/18/06
60266	Hanesbrands, Inc. (Comp).	Winston-Salem, NC	10/19/06	10/13/06
60267	Guide Corp. (State).	Monroe, LA	10/20/06	10/19/06
60268	Harte Hanks Marketing Intelligence (Wkrs).	Troy, MI	10/20/06	09/22/06
60269	AAR Cargo Systems (Comp).	Livonia, MI	10/20/06	10/17/06
60270	Beard Hosiery Co., Inc. (Comp).	Lenoir, NC	10/20/06	10/19/06
60271	Town of Hartland (Comp).	Hartland, ME	10/20/06	10/18/06
60272	Elder Manufacturing, Inc. (Wkrs).	St. Louis, MO	10/20/06	10/19/06
60273	Micro Motion, Inc. (State).	Boulder, CO	10/20/06	10/19/06
60274	Southern Glove Manufacturing Co., Inc. (Comp).	Conover, NC	10/20/06	10/20/06

[FR Doc. E6–18352 Filed 10–31–06; 8:45 am]
BILLING CODE 4510–30–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RF 2006–1]

Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Final Order.

SUMMARY: The Copyright Royalty Board, acting pursuant to statute, referred two novel questions of law to the Register of Copyrights. Specifically, the Copyright Royalty Board requested a decision by the Register of Copyrights regarding whether ringtones are subject to the statutory license for making and distributing phonorecords under the Copyright Act, and if so, what legal conditions and/or limitations would apply. The Register of Copyrights, in a timely fashion, transmitted a Memorandum Opinion to the Copyright Royalty Board stating, with certain caveats, that the statutory license applies to ringtones.

DATES: Effective Date: October 16, 2006.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Senior Attorney, and Tanya M. Sandros, Associate General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: In the *Copyright Royalty and Distribution Reform Act of 2004*, Congress amended Title 17 to replace the copyright arbitration royalty panel with the Copyright Royalty Board (''Board''). One of the functions of the new Board is to make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 119 and 1004 of the Copyright Act. In any case in which a novel question of law concerning an interpretation of a provision of the Copyright Act is presented in a ratesetting proceeding, the Board has the authority to request a decision of the Register of Copyrights (''Register''), in writing, to resolve such questions. *See* 17 U.S.C. 802(f)(1)(B)(i). For this purpose, a ''novel question of law'' is a question of law that has not been determined in prior decisions, determinations, and rulings described in Section 803(a) of the Copyright Act.

On August 1, 2006, the Recording Industry Association of America (''RIAA'') requested that the Board refer a question to the Register of Copyrights regarding the eligibility of ringtones (*i.e.*, short digital sound recording file distributed for use in a cellular telephone or similar device) for statutory licensing under Section115 of the Copyright Act. An opposition to the RIAA's referral motion was submitted, collectively, by the National Music Publishers Association, Inc., the Songwriters Guild of America, and the Nashville Songwriters Association International (''Copyright Owners''). After considering the arguments of the parties, the Board agreed that the matters raised by the RIAA motion did present novel questions of law and agreed to submit the questions to the Register. Accordingly, on September 14, 2006, the Board transmitted to the Register: (1) an Order, dated August 18, 2006, referring two novel questions of law; and (2) the Initial and Reply Briefs filed with the Board by RIAA and the Copyright Owners. The Board's transmittal triggered the 30–day decision period prescribed in Section 802 of the Copyright Act. This statutory provision states that the Register ''shall transmit his or her decision to the Copyright Royalty Judges within 30 days after the Register of Copyrights receives all of the briefs or comments of the participants.'' *See*17 U.S.C. 802(f)(1)(B)(i). On October 16, 2006, the Register transmitted a Memorandum Opinion to the Board that answered the novel questions of law. To provide the public with notice of the decision rendered by the Register, the Memorandum Opinion is reproduced in its entirety, below.

Dated: October 26, 2006

Marybeth Peters,

Register of Copyrights.

Before the
U.S. Copyright Office
Library of Congress
Washington, D.C. 20559

Docket No. RF 2006–1
In the Matter of
Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding

MEMORANDUM OPINION

I. Introduction

On September 14, 2006, the Copyright Royalty Board (''Board''), acting on a request by the Recording Industry Association of America, Inc. (''RIAA''), and pursuant to 17 U.S.C. § 802(f)(1)(B), referred two novel questions of law[1] to the Register of Copyrights (''Register''). Specifically, the Board requested a decision by the Register as to the following:

> 1. Does a ringtone, made available for use on a cellular telephone or similar device, constitute delivery of a digital phonorecord that is subject to statutory licensing under 17 U.S.C. § 115, irrespective of whether the ringtone is monophonic (having only a single melodic line), polyphonic (having both melody and harmony), or a mastertone (a digital sound recording or excerpt thereof)?
>
> 2. If so, what are the legal conditions and/or limitations on such statutory licensing?[2]

In sum, and as stated more fully below, we believe that ringtones (including monophonic and polyphonic ringtones, as well as mastertones) qualify as digital phonorecord deliveries (''DPDs'') as defined in 17 U.S.C. § 15. Apart from meeting the formal requirements of Section 115 (*e.g.*, service of a notice of intention to obtain a compulsory license under Section 115(b)(1), submission of statements of account and royalty payments, etc.), whether a particular ringtone falls within the scope of the statutory license will depend primarily upon whether what is performed is simply the original musical work (or a portion thereof), or a derivative work (i.e., a musical work based on the original musical work but which is recast, transformed, or adapted in such a way that it becomes an original work of authorship and would be entitled to copyright protection as a derivative work).

Procedural Background. On August 1, 2006, the RIAA requested that the Copyright Royalty Board refer a question to the Register of Copyrights regarding the eligibility of a mastertone, a short digital sound recording file distributed for use in a cellular telephone or similar device, for statutory licensing under 17 U.S.C. § 115.[3] An opposition to the RIAA's

[1] A ''novel question of law'' is a question of law that has not been determined in prior decisions, determinations, and rulings described in Section 803(a) of the Copyright Act. *See* 17 U.S.C. § 802(f)(1)(B)(ii).

[2] *See Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding,* Order Granting in Part the Request for Referral of a Novel Question of Law, Docket No. 2006–3 CRB DPRA (Aug. 18, 2006) (''Order'').

[3] The Copyright Royalty Board is currently conducting a proceeding to determine the reasonable rates and terms for the making and distribution of phonorecords under the Section 115 license. *See Adjustments or Determination of Compulsory License Rates for Making and Distributing Phonorecords*, 71 Fed Reg 1454 (Jan. 9, 2006). The answers to the two questions referred to

Continued

referral motion was submitted, collectively, by the National Music Publishers Association, Inc., the Songwriters Guild of America, and the Nashville Songwriters Association International (''Copyright Owners''). After considering the arguments of the parties, the Board agreed that the matters raised by the RIAA motion did present novel questions of law and agreed to submit the questions to the Register.

Accordingly, on September 14, 2006, the Board transmitted to the Register of Copyrights the following: (1) the Order, dated August 18, 2006, referring two novel questions of law; and (2) the Initial and Reply Briefs filed with the Board by RIAA and the Copyright Owners. The Board's transmittal triggered the 30–day decision period prescribed in Section 802(f)(1)(B) of the Copyright Act. This statutory provision states that the Register of Copyrights ''shall transmit his or her decision to the Copyright Royalty Judges within 30 days after the Register of Copyrights receives all of the briefs or comments of the participants.''[4]

In addition to reviewing the Initial Briefs and Reply Briefs filed in this proceeding, the Office concluded that it would be helpful to conduct oral argument relating to the novel questions of law.[5] On October 4, 2006, the Copyright Office convened a hearing and questioned counsel on matters raised in the briefs filed by RIAA and Copyright Owners.[6]

Summary of Arguments. RIAA argues that ringtones are digital phonorecord deliveries as that term is defined in the Copyright Act and are subject to statutory licensing under the plain language of Section 115, without limitation. It argues that ringtones in general and mastertones,[7] in particular, contain no new original material, are not protectable as derivative works, and therefore cannot infringe on the derivative work rights of the Copyright Owners. Moreover, even if they were derivative works, RIAA argues that Section 115(a)(2), the arrangement privilege, expressly authorizes their creation. In any event, RIAA argues that once the copyright owner of a musical work distributes a new ringtone to the public, anyone can obtain a statutory license to use the musical work in that ringtone. RIAA concludes that the Register should find that ringtones are subject to statutory licensing under Section 115 of the Copyright Act, and all of the conditions under the provision should apply.

Copyright Owners assert that all ringtones are excluded from the Section 115 statutory license. They argue that the statutory license for making and distributing phonorecords of musical works is narrow in scope and does not encompass ringtones. They argue that ringtones are not covered by Section 115 because they involve only a portion of the underlying composition, not the entire musical work. Copyright Owners argue that ringtones are derivative works and thus fall outside the express language of the statute. As for Section 115(a)(2), they argue that ringtones cannot be considered ''arrangements'' as that term is understood in the music industry, and in any event, ringtones change the basic melody and fundamental character of the musical work. Copyright Owners also argue that ringtones fail to satisfy Section 115's requirement that the phonorecords be distributed for private use. Copyright Owners conclude that although variations exist among ringtones, none of them fit within the Section 115 licensing scheme.

Summary of Decision. We find that ringtones (including monophonic and polyphonic ringtones, as well as mastertones) are phonorecords and the delivery of such by wire or wireless technology meets the definition of DPD set forth in the Copyright Act. However, there are a variety of different types of ringtones ranging from those that are simple excerpts taken from a larger musical work to ones that include additional material and may be considered original musical works in and of themselves. Ringtones that are merely excerpts of a preexisting sound recording fall squarely within the scope of the statutory license, whereas those that contain additional material may actually be considered original derivative works and therefore outside the scope of the Section 115 license.[8] Moreover, we decide that a ringtone is made and distributed for private use even though some consumers may purchase them for the purpose of identifying themselves in public. We also conclude that if a newly created ringtone is considered a derivative work, and the work has been first distributed with the authorization of the copyright owner, then any person may use the statutory license to make and distribute the musical work in the ringtone. For those ringtones that are covered by Section 115 of the Copyright Act, all of the rights, conditions, and requirements in the Act would apply. For those ringtones that fall outside the scope of Section 115, the rights at issue must be acquired through voluntary licenses. While the Copyright Royalty Judges need not know which specific ringtones fall within/outside the scope of the license for the purpose of setting rates, and the parties have not asked the Register to undertake such a granular analysis here, we nevertheless offer some guidance on the legal matters raised in this proceeding.

II. Section 115 of the Copyright Act

Almost a century ago, Congress added to the Copyright Act the right for copyright owners to make and distribute, or authorize others to make and distribute, mechanical reproductions (known today as phonorecords) of their musical compositions. Due to its concern about potential monopolistic behavior, Congress also created a statutory license, Section 115 of the Act, to allow anyone to make and distribute a mechanical reproduction of a musical composition without the consent of the copyright owner provided that the person adhered to the provisions of the license, most notably paying a statutorily established royalty to the copyright owner. Although originally enacted to address the reproduction of musical compositions on perforated player piano rolls, the statutory license has for most of the past century been used primarily for the making and distribution of phonorecords and, more recently, for the digital delivery of music online.[9]

the Register will help determine the scope of the ratesetting proceeding before the Board.

[4] 17 U.S.C. § 802(f)(1)(B).

[5] *See In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding,* Notice of Oral Argument, Docket No. RF 2006–1 (Sept. 28, 2006).

[6] We note that for demonstration purposes at the oral argument, RIAA and Copyright Owners have created CDs containing many examples of ringtones as well as full length versions of some of the musical works from which the ringtones were based. Copyright Owners' CD also contains ringtones downloaded from specific mobile phone operators. These CDs are now part of the record in this proceeding as is the oral testimony of the parties.

[7] These types of ringtones are described in more detail below.

[8] We note that Section 115 permits the creation of derivative works, but this privilege under the statutory license is limited to making musical arrangements necessary to conform it to the style or manner of interpretation of the performance involved. 17 U.S.C. § 115(a)(2). For purposes of our discussion in this proceeding, when we refer to derivative works not covered by Section 115, we mean those types of works that exhibit a degree of ''originality'' as that term is defined in court precedent. The addition of original material would not only take a ringtone outside the scope of the privilege of making arrangements, it would also take the ringtone outside the Section 115 license altogether.

[9] Statement of Marybeth Peters, Register of Copyrights, Before the Subcommittee on Intellectual Property: Music Licensing Reform, U.S.

In 1995, Congress recognized that ''digital transmission of sound recordings [was] likely to become a very important outlet for the performance of recorded music.''[10] Moreover, it realized that ''[t]hese new technologies also may lead to new systems for the electronic distribution of phonorecords with the authorization of the affected copyright owners.''[11] For these reasons, Congress made changes to Section 115 to meet the challenges of providing music in a digital format when it enacted the Digital Performance Right in Sound Recordings Act of 1995 (''DPRA'')[12] which also granted copyright owners of sound recordings an exclusive right to perform their works publicly by means of a digital audio transmission subject to certain limitations.[13] Specifically, Congress wanted to reaffirm the mechanical rights of songwriters and music publishers in the new world of digital technology. The changes to Section 115 were also designed to minimize the burden on transmission services by placing record companies in the position to license not only their own rights, but also, if they chose to do so, the rights of writers and music publishers to authorize digital phonorecord delivery.[14] It is the DPRA amendments to Section 115 that are of particular interest here.

III. Ringtone Types

Before addressing the questions raised by the Copyright Royalty Judges, we must first determine the scope of the subject matter in this proceeding. According to RIAA, a ringtone is a digital file, generally no more that 30 seconds in length, played by a cellular phone or other mobile device to alert the user of an incoming call or message.[15] RIAA states that, initially, mobile carriers and other ringtone vendors distributed synthesized ringtones that embodied versions of musical works, but not recorded performances by featured recording artists. It states that these earlier forms of ringtones are commonly known as ''monophonic'' ringtones (having only a single melodic line) and ''polyphonic'' ringtones (having both melody and harmony). RIAA explains that typical commercial monophonic and polyphonic ringtones consist of a segment of the musical work representing its ''hook,'' or most memorable portion of the melody, with little or no revision.[16]

RIAA states that advances in technology now allow mobile devices to play digital copies of commercial sound recordings. As a result, mobile phone manufacturers are incorporating the functionality of stand–alone portable digital music players, thus permitting consumers to download sound recordings via the Internet or a computer connected to the Internet. RIAA states that, in addition to full song downloads of commercial recordings to such phones, there is consumer demand for downloads of shorter (partial–copy) excerpts of sound recordings for use as ringtones. These ringtones are commonly referred to as ''mastertones.''[17] RIAA asserts that mastertones are displacing monophonic and polyphonic ringtones as the ringtone of choice amongst consumers.[18] RIAA acknowledges that record companies and ringtone vendors must obtain licenses to reproduce and distribute the relevant musical works in ringtones and that Section 115 exists to enable use of musical works when licenses are not otherwise available.[19]

Copyright Owners describe ringtones as ten–to–thirty–second ''snippets'' of full–length musical works that are created to serve as ringers on cell phones and other mobile devices.[20] Copyright Owners alternatively describe a ringtone as a ten–to–thirty–second derivation of a musical work, sometimes repeated in a ''looping'' sequence and sometimes not.[21] Copyright Owners assert that the creation of ringtones, including mastertones, involves ''substantial'' creativity and ''significant'' changes to the underlying work. They state, for example, that making a ringtone requires creative determinations as to which portions of the work should be selected to best capture the ''hook'' of the full length recording and also to be most appealing as ringtones. They further state that many mastertones are designed to be looped, repeating the selected portions of the song multiple times until the phone or mobile device is answered.[22] Some songs have multiple hooks, each of which can be made into a separate ringtone. Other ringtones, they assert, include new content not present in the underlying work.[23]

Analysis. While RIAA and the Copyright Owners may disagree as to the amount of creativity it takes to create a ringtone, they do agree that, in general, ringtones are a unique category of sound recordings that are used to announce an incoming call. The most rudimentary ringtone, in musical terms, is the monophonic ringtone that only contains a musical work's melody (or a portion of the melody). One level up the musical hierarchy is the polyphonic ringtone that contains a work's melody and harmony (or a portion thereof). The most musically complex ringtones are mastertones. A mastertone is a portion of a pre–existing full length musical work that may play sequentially or is looped in a sequence. A mastertone could also contain a portion of a musical work combined with a message from the recording artist designed specifically for the ringtone user. It is important to note that there are also non–musical ringtones that are becoming increasingly popular with consumers.[24] As discussed below, different types of ringtones may be treated differently for Section 115 purposes.

House of Representatives, 109th Cong., 1st Sess. at 20 (June 21, 2005).

[10] S. Rep. No. 104-128, 104th Cong., 1st Sess. at 14 (1995).

[11] *Id.*

[12] Pub. L. No. 104-39, 109 Stat. 336 (1995).

[13] *See* 17 U.S.C. § 114.

[14] S. Rep. No. 104-128, at 37 (1995).

[15] Cellular phones typically have the ability to accept downloads of ringtones, usually directly over the cellular telephone network. Over the last decade, a new consumer market has developed for musical ringtones. According to RIAA, the vast majority of ringtones (99 percent) now in the marketplace consist of excerpts from sound recordings. Oral Argument Transcript at 7, 10.

[16] RIAA Initial Brief at 3-4; *see also* Neil J. Rosini and Michael I. Rudell, *Ring Tone Revenues Foster Copyright Detente,* 234 N.Y.L.J. 3, col. 1 (2005) (''Originally, musical ring tones were only available in 'monophonic' form: a simple series of tones–each a single note–that might remind one of several bars from a favorite CD as performed by a very simple computer. Technology then advanced to the 'polyphonic' level, which are like monophonic ring tones with multiple notes played at the same time, creating harmonies. They sound closer to that favorite CD, but without original instrumentation or vocals.'')(Hereinafter ''Rosini and Rudell'').

[17] RIAA explains that record companies hire contractors to select hooks from popular sound recordings and then create ringtones including these hooks. Oral Argument Transcript at 10.

[18] *See* Rosini and Rudell (Mastertones ''not only sound like a favorite CD but are that favorite CD.'').

[19] RIAA Initial Brief at 4-5.

[20] Copyright Owners Initial Brief at 1–2.

[21] *Id.* at 9. We note that looping involves a portion of a musical performance that is then sequenced in a repetitive manner.

[22] RIAA states that ringtone producers do not intentionally create looping sequences; instead, looping is the product of cellphones that do not have adequate storage capacity (memory). Oral Argument Transcript at 13-14.

[23] Copyright Owners Reply Brief at 5, 7.

[24] *See* Rosini and Rudell (''[C]onsumers aren't settling merely for musical ringtones and ringbacks. Audio clips from films and television programs; comic routines from Comedy Central; pithy observations by Donald Trump; and announcement of baseball plays are also available as ring tones.''); *see also* http://cyberextazy.wordpress.com/2006/09/01/ringtones-in-mtvs-video-music-awards/, *Ringtones in MTV's Video Music Awards*(Sept. 1, 2006) (stating that ringtones are evolving into watchtones, which are ringtones combined with video clips).

IV. The Applicability of Section 115 to Ringtones

Statutory Language. Section 115 of the Copyright Act provides a ''compulsory license to make and distribute phonorecords'' of any musical work previously recorded once a phonorecord of a nondramatic musical work has been ''distributed to the public in the United States under authority of the copyright owner.''[25] Such a license ''includes the right of the compulsory licensee to distribute or authorize the distribution of a phonorecord of a nondramatic musical work by means of a digital transmission which constitutes a digital phonorecord delivery.''[26] The term ''digital phonorecord delivery'' or ''DPD'' is defined, in part, as ''each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording.''[27]

Congress created the statutory mechanical license, as part of the Copyright Act of 1909, to prevent monopolistic control over musical works while ensuring that music publishers and songwriters receive an appropriate royalty.[28] Congress revisited the issue of statutory licensing in 1976 and 1995 and has reaffirmed these same purposes.[29] Congress added the DPD provisions to Section 115, as part of the DPRA of 1995, with support of the music publishers, noting: ''The intention in extending the mechanical compulsory license to digital phonorecord deliveries is to maintain and reaffirm the mechanical rights of songwriters and music publishers as new technologies permit phonorecords to be delivered by wire or over the airwaves rather than by the traditional making and distribution of records, cassettes, and CDs.''[30] The question presented here is whether ringtones qualify as digital phonorecord deliveries within the scope of Section 115.[31]

RIAA argues that, under the plain language of the Copyright Act, a distribution of a ringtone is a DPD subject to statutory licensing under the Copyright Act. RIAA asserts that a ringtone results from the fixation of a series of musical, spoken, or other sounds and therefore meets the definition of a ''sound recording'' in Section 101 of the Copyright Act; its fixation in a material object is a ''phonorecord.'' According to RIAA, it is a phonorecord of the relevant musical work as well. In the case of a mastertone, the sound recording is a clip of the commercially distributed recording. In the case of monophonic and polyphonic ringtones, the fixed sounds are rendered by a synthesizer in the telephone and so do not represent ambient sound in a recording studio.[32]

RIAA asserts that downloads of ringtones are DPDs because, when a ringtone is downloaded, there is a digital transmission of the sound recording that results in a specifically identifiable reproduction for the transmission recipient. RIAA argues that the statutory license under Section 115 includes the right of the licensee to distribute ringtones just as it includes the right of the licensee to make and authorize other kinds of downloads.[33] RIAA asserts that statutory licensing of ringtones is consistent with Congressional intent, as they are just the type of new technology contemplated by Congress to be included within the scope of the DPRA.[34]

Copyright Owners do not argue that ringtones are not DPDs, stating instead that since ringtones are not covered by Section 115, there is no need to address the question.[35] Rather, Copyright Owners argue that the statutory license for making and distributing phonorecords or musical works is narrow in scope and does not encompass uses such as ringtones. They assert that the inclusion of ringtones within the statutory license would contravene Congress' intent that Section 115 be a narrowly construed exception to certain exclusive rights of the musical work copyright owner. Copyright Owners state that, as a ''limited exception'' to certain exclusive rights granted to copyright owners, courts consistently have held that the statutory license ''be construed narrowly, lest the exception destroy, rather than prove, the rule.''[36]

With regard to the DPRA of 1995, Copyright Owners assert that Congress' clarification that Section 115 covered not only ''brick and mortar'' sales did not extend the license to cover any and all digital uses. They state that the existing limitations on the scope of the license did not change and that use of a work prior to publication, the creation of derivative works, and the synchronization of a musical work, are uses that remain outside of the license, whether in digital or physical form.[37]

Copyright Owners assert that RIAA's interpretation of Section 115 would ''potentially open the door'' to licensing of snippets of musical works used to enhance all sorts of other consumer products and devices, such as musical car alarms or doorbells. They state that the licensing of musical works for functional uses in consumer products is not what Congress intended when it enacted Section 115.[38]

RIAA, in its Reply, asserts that the statutory mechanical license has been a fixture of U.S. copyright law for nearly a century and argues that it should be construed in accordance with its terms. RIAA contests Copyright Owners' view that Section 115 should be construed narrowly, noting that the legislative history accompanying the 1976 Copyright Act states: ''The fundamental question of whether to retain the compulsory license or do away with it altogether was a major issue during earlier stages of the program for general revision of the copyright law. At the hearings it was apparent that the argument on this point had shifted, and the real issue was not whether to retain

[25] 17 U.S.C. § 115(a)(1).

[26] 17 U.S.C. § 115(c)(3)(A).

[27] 17 U.S.C. § 115(d). The legislative history accompanying this provision states, *inter alia*, that: (1) the phrase ''specifically identifiable reproduction'' should be understood to mean a reproduction specifically identifiable to the transmission service; and (2) a transmission by a noninteractive subscription transmission service that transmits in real time a continuous program of music selections chosen by the transmitting entity, for which the consumer pays a monthly fee would generally not be considered a DPD.

[28] *See* H. R. Rep. No. 60–2222, at 7 (1909) (''The main object to be desired in expanding copyright protection accorded to music has been to give to the composer an adequate return for the value of his composition, and it has been a serious and difficult task to combine the protection of the composer with the protection of the public, and to so frame an act that it would accomplish the double purpose of securing to the composer an adequate return for all use made of his composition and at the same time prevent the formation of oppressive monopolies, which might be founded upon the very rights granted to the composer for the purpose of protecting his interests.)''

[29] *See* H. R. Rep. No. 94–1476, at 107 (1976) (''[A] compulsory licensing system is still warranted as a condition for the rights of reproducing and distributing phonorecords of copyrighted music.'').

[30] *See* S. Rep. No. 104–128, at 37 (1995).

[31] We note that the Harry Fox Agency, Inc., a subsidiary of the National Music Publishers Association and the leading musical work licensing agency, released a notice in 2004 informing all licensees of its stated position that Section 115 does not cover ringtones or mastertones. *See* Mario F. Gonzales, *Are Musical Compositions Subject to Compulsory Licensing for Ringtones?*, 12 UCLA Ent. L. Rev. 11, 11–12 (2004). RIAA asserts that its dispute with the Harry Fox Agency over the interpretation of Section 115 remains unresolved and ''has cast a pall of legal uncertainty over the ringtone market.'' RIAA Initial Brief at 6.

[32] *Id.* at 6–7.

[33] *Id.* at 8.

[34] *Id.* at 21, 23.

[35] Oral Argument Transcript at 55.

[36] Copyright Owners Initial Brief at 5, citing *Fame Publishing Co. v. Alabama Custom Tape, Inc.*, 507 F. 2d 667, 670 (5th Cir. 1975)(noting that the compulsory license provision of the 1909 Copyright Act is a limited exception to the copyright holder's exclusive right to decide who shall make use of his composition).

[37] Copyright Owners Initial Brief at 7–8.

[38] Copyright Owners Reply Brief at 14–15.

the compulsory license but how much the royalty rate under it should be . .≥.≥. The Committee's conclusion on this point remains the same as in 1967: 'that a compulsory license system is still warranted as a condition for the rights of reproducing and distributing phonorecords of copyrighted music.'"[39] RIAA adds that Congress did not narrow the license through adoption of the DPRA in 1995, but rather stated that it was "extending the mechanical compulsory license to digital phonorecord deliveries" and that its purpose was to "maintain and reaffirm" that the Section 115 license would apply to "new technologies."[40] RIAA concludes that although some details of the Section 115 license have changed over the years, nothing in these enactments or the legislative history thereof suggests that Congress intended a narrow reading of the statute.

Analysis. We find that ringtones meet the definition of DPDs. The issue presented is one of pure statutory construction and there is no actual dispute on this point.[41] Based on the language of the statute, ringtones easily meet the requisite definitions under the Copyright Act to be included in the Section 115 licensing scheme. First, we hold that a ringtone meets the definition of "sound recording" under Section 101 of the Act as a work that results from "the fixation of a series of musical, spoken, or other sounds,"[42] and that the sound recording is fixed in the form of a "phonorecord," defined in the statute as a "material object in which sounds are fixed by any method now known or later developed."[43] The phonorecord here is the actual sound recording file stored as a "download" on either the cell phone's hard drive or on a cell phone's removable memory storage disk.[44] When downloaded through the Internet or by wireless transmission, a ringtone is part of a "digital phonorecord delivery" and a digital transmission of a sound recording which results in a "specifically identifiable reproduction" by or for any transmission recipient of a phonorecord of that sound recording.[45] We also believe that our statutory analysis comports with Congressional intent. Ringtones are delivered by means of the type of "new technologies" Congress intended to be included when it enacted the DPRA in 1995.[46]

We disagree with Copyright Owners that Congress did not intend for ringtones to be the kind of use of musical works contemplated for inclusion under the Section 115 license.[47] While we adhere to the general proposition that statutory licenses are to be construed narrowly,[48] we find that Section 115, as amended by the DPRA, purposefully broadened the scope of the statutory license to cover DPDs, and ringtones appear to fit comfortably within the definition of DPDs. On this note, we recognize that Copyright Owners have cited *Fame Publishing Co. v. Alabama Custom Tape, Inc.*, 507 F. 2d at 670, to support their narrow construction argument. However, we find this citation is inapt because the case arose out of a dispute concerning statutory language found in the 1909 Act that is not present in the current version of Section 115. In any event, the legislative history of the Copyright Act of 1909 states that from its inception, this compulsory license was intended to include all "mechanical reproductions" and that one of its purposes was "to secure to the composer an adequate return for *all use* made of his composition[.]"[49] (emphasis added). While the concept of the cellular phone ringtone undoubtedly would have astonished the members of the 1909 Congress, the license they devised was broad enough to include ringtones. Whether our interpretation "opens the door" to licensing of snippets of musical works to be used in car alarms or doorbells is a question that is outside the scope of this proceeding.

Works or Portions of Works. According to Copyright Owners, Section 115 is expressly limited to the making and distributing of phonorecords of "works," not portions of works such as ringtones. Copyright Owners argue that because a ringtone is not a reproduction of the entire musical work, it is not subject to the statutory license. They argue that Section 115 throughout its provisions makes clear that a "work," and not a "portion" of a work, is its subject. Copyright Owners state that this result was not an accident of drafting nor is it an unintended source of statutory ambiguity. They state that Congress had no difficulty using the term "portions" where in fact that concept was intended, such as in Sections 108(h)(1) and 110(2) of the Copyright Act.[50] Copyright Owners assert that this interpretation is confirmed by Section 115's legislative history which mentions "cover records" as well as cassettes and CDs.[51]

Copyright Owners remark that it is obvious that the Section 115 license applies only to physical or digital phonorecords of complete works since industry practices have developed on the basis of this interpretation of Section 115. They state, for example, that partial uses of compositions, such as medleys and samples, are licensed in market transactions. They further state that legal commentators have recognized that the Section 115 license does not apply to digital sampling and that it would have to be modified in order to include sampling within its scope.[52]

[39] RIAA Reply Brief at 3, citing H.R. Rep. No. 94–1476, at 107 (1976).

[40] *Id.* at 4, citing S.Rep. No. 104–128, at 37 (1995).

[41] *Id.* at 2, citing *Doyle v. Huntress, Inc.*, 419 F.3d 3, 7–8 (1st Cir. 2005) ("A question of statutory construction presents a purely legal question."); *Blackman v. District of Columbia*, 2006 WL 2034355, *6 (DC Cir. 2006) (statutory construction begins with "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole[.]").

[42] 17 U.S.C. § 101 ("'Sound recordings' are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.").

[43] 17 U.S.C. § 101 ("'Phonorecords' are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term 'phonorecords' includes the material object in which the sounds are first fixed.").

[44] *See* S. Rep. No. 104–128, at 39 (1995) (stating that storage of data in a "computer memory" is "technically the making of a phonorecord.").

[45] 17 U.S.C. § 115(d).

[46] *See* S. Rep. No. 104–128, at 37 (1995)

[47] We are not saying that Congress specifically contemplated ringtones and their inclusion in the Section 115 license. Rather, ringtones generally fall into the class of "new technologies" that Congress concluded should be included within the expanded statutory license.

[48] *See Public Performance of Sound Recordings: Definition of a Service,* Docket No. RM 2000–B, 65 FR 77,292, 77,297 (Dec. 11, 2000) (noting that the Copyright Office has historically construed limitations on copyright narrowly, especially those constrained by a compulsory license.).

[49] *See* H. R. Rep. No. 60–2222, at 7 (1909).

[50] Section 108(h)(1) states in part "a library or archives. . .may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research." Section 110(2) refers to "the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission."

[51] Copyright Owners Initial Brief at 9–11, citing *Supplementary Register's Report on the General Revision of the U.S. Copyright Law: 1965 Revision Bill*, House Comm. on the Judiciary, 89th Cong., Copyright Law Revision Part 6, at 54 (Comm. Print 1965) (discussing "cover" records); H.R. Rep. No. 90–83, at 67 (1967) (referring to "disks and audio tapes"); S. Rep. No. 104–128, at 37 (1995) ("extending the mechanical compulsory licenses. . .as new technologies permit phonorecord to be delivered by wire or over airwaves rather than by traditional making and distributing of record, cassettes and CDs").

[52] *Id.* at 11, citing Jennifer R.R. Mueller, *Note: All Mixed Up: Bridgeport Music v. Dimension Films and De Minimis Digital Sampling*, 81 IND. L.J. 435, 461 (Winter 2006).

RIAA asserts that Section 115 applies to whole musical works as well as portions of musical works, and that any other reading would be inconsistent with other provisions of the Copyright Act.[53] RIAA states that if the Copyright Owners are correct that the Copyright Act distinguishes between ''works'' and ''portions of works,'' then reproduction and distribution of ringtones would be permissible without a license as the provisions under Section 106 granting the exclusive rights to reproduction and distribution only refer to ''works,'' not ''portions of works.'' RIAA remarks that the Copyright Owners do not intend that interpretation nor is it a correct one. RIAA adds that Copyright Owners' approach to what constitutes a ''work'' would make other phrases in the statute superfluous. It notes, for example, that one of the factors used in determining whether a use of a work is a fair use under Section 107(3) is the ''amount and substantiality of the portion used in relation to the copyrighted work as a whole.'' The phrase ''as a whole'' would be superfluous if a ''work'' in the Act must always be the whole work and not a portion thereof.[54] RIAA asserts that although unstated, Copyright Owners apparently are relying on the canon of statutory construction *expressio unius est exclusio alterius*, which provides a general inference that omissions in statutory text are intentional.[55] RIAA notes, however, that this maxim ''requires great caution in its application'' and should be disregarded where ''its application would thwart the legislative intent made apparent by the entire act.''[56] It states that such caution should be exercised here because, unlike most of the relevant language in Section 115, the references to ''portions'' of works that Copyright Owners cite did not appear in the 1976 Act and were only added years later. RIAA asserts that there is no indication that either amendment was intended to affect the interpretation of the provisions of the Copyright Act enacted more that twenty years before. RIAA concludes that two isolated references in the Copyright Act to ''portions of works'' cannot imply that the hundreds of unadorned references to ''works'' apply only to works in their entirety.[57]

RIAA notes that Copyright Owners' argument that ringtones are analogous to sampling is equally misplaced. It states that ringtones are excerpts that are taken from musical works and distributed as such; samples, however, are short excerpts that are blended into what are clearly new creative works. RIAA asserts that the fact that the latter are licensed apart from Section 115 does not imply that the former should be.[58]

Analysis. The Section 115 license is not limited to the reproduction and distribution of phonorecords of the entire musical work, and an excerpt may qualify for the statutory license if all other requirements are met. We believe that the Copyright Act's language and purpose are broad and that ''portions of works'' should be treated the same as any other type of work under Section 115. This provision of the Act does not expressly exclude ''portions of works'' from its scope and we cannot assume that such treatment was intended in the absence of clear statutory language to that effect.[59] Contrary to Copyright Owners' assertion, we cannot find support for such a limited and narrow reading of the Act in the legislative history they cite.[60]

Moreover, we believe that Copyright Owners' citations to Sections 108 and 110 are inapt as these provisions were not enacted contemporaneously with Section 115 and cannot be read to provide any guidance as to Congressional intent or the purpose of the statutory license. We note, in particular, that their interpretation of Section 110(2) defies legislative intent as well as common sense.[61] Under Copyright Owners' interpretation, educators using the distance education exemption could transmit limited portions of works other than nondramatic literary or musical works, but if they transmit a performance of a nondramatic literary or musical work, they would have to transmit the entire work as a transmission of a portion of the work would not be permitted. Congress certainly did not intend this result.

We also find that Copyright Owners' reading of the Copyright Act, if adopted, would render certain provisions of the statute superfluous. For example, well–settled interpretation of and practice under Section 118 of the Act would be undermined if Copyright Owners' interpretation were correct. Under this provision, licensing agreements and related fees negotiated between noncommercial broadcasting entities and copyright owners of published nondramatic musical works are subject to ratesetting by the Copyright Royalty Board.[62] While Section 118 expressly refers to ''works,'' it has been understood to include portions of works as well. For example, under 37 CFR § 253.7(b)(3), which implements the rates set for the Section 118 statutory license, ''a 'Concert Feature' shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance or the nondramatic presentation in a program of portions of a serious work written for opera performances.''[63](emphasis added). If we were to accept Copyright Owners' argument that the Act covers only full musical works, and not portions of musical works, then the Board could never set such rates pursuant to Section 253.7. This result, we believe, was not intended by Congress.

We also believe that Copyright Owners analogy to sampling is inapt. Sampling generally refers to the appropriation of sounds from an existing sound recording for transformative use along with other sounds in a new work. A mastertone, in contrast, is taken from a single work, in the form of an excerpt.

Marketplace Developments. According to Copyright Owners, the statutory license was instituted to ensure a market where none existed, but there is an active market for freely negotiated licenses already in place. They assert that the Register of Copyrights has stated that ringtones are a subject more appropriately left to market forces than government regulation and that ''there is no need for Government to legislate what the parties can negotiate themselves.''[64] They state that Copyright Owners and record labels, recognizing that ringtones are not DPDs subject to the statutory license,

[53] RIAA Reply Brief at 7.

[54] *Id.* at 9, citing 17 U.S.C. § 107(3)

[55] *Id.* at 8, citing 2A *Sutherland, Statutes and Statutory Construction*, § 47:25 (Norman Singer ed., 6th ed. 2005).

[56] *Id.*

[57] *Id.* at 7, 9.

[58] *Id.* at n.8.

[59] We agree with RIAA that Section 115 makes no distinction between downloads of song excerpts and full songs delivered by online music services such as Apple's iTunes Music Store and Verizon Wireless' V Cast Music Store. *See* RIAA Initial Brief at 1.

[60] *See* n. 51, *supra*

[61] *See* 17 U.S.C. § 110(2) (discussing works ''produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks . . .'').

[62] *See* 17 U.S.C. § 118. Section 118(d) gives public broadcasters permission to engage in certain ''activities with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works . . .'' Under Section 118(d)(1), one of the activities is ''the performance or display of a work.'' 17 U.S.C. § 118(d)(1).

[63] *See*37 CFR § 253.7(b)(3).

[64] Copyright Owners Initial Brief at 8, citing *Copyright Office Views on Music Licensing Reform.* Hearings Before the Subcomm. on Courts, the Internet, and Intellectual Property. House Comm. on the Judiciary, 109th Cong., at 20 (2005) (Statement of Marybeth Peters, Register of Copyrights)

have entered into voluntary license agreements granting the labels the right to create ringtones at specified mutually–negotiated royalty rates.[65] Copyright Owners assert that these voluntary licenses provide further support that ringtones are outside the narrow scope of Section 115. They conclude that there exists a vibrant and growing market for ringtones, which makes it unnecessary and inappropriate to include ringtones within Section 115.[66]

According to RIAA, Copyright Owners mischaracterize current marketplace conditions and the Register's prior testimony, which, in any instance, are both irrelevant. RIAA asserts that the Register's testimony was in the context of an express legislative invitation to explore revision of the statute. The reform proposal presented by the Register, if adopted by Congress, would have repealed the statutory license and omitted from a successor licensing system the statutory treatment of ''ringtunes'' and certain other types of works. RIAA notes that the Register's reform proposal is not law, but Section 115 is.[67]

RIAA disputes Copyright Owners' claims that the purpose of the statutory license was to ensure a market where none existed and that the ringtone market is thriving. As to the former point, RIAA asserts that Section 115 was enacted to protect the market from a ''great music monopoly,'' not to create a market.[68] With regard to the latter point, RIAA asserts that although the U.S. has the world's largest music market, the U.S. ringtone market represents only a fraction of worldwide sales, with the bulk of the market in Europe and Asia. Moreover, aside from the EMI agreement cited by Copyright Owners, there are no other major ringtone licensing agreements of importance. RIAA states that with tens of thousands of music publishers, the need to clear all these rights through negotiation is a burden on the market and it is not surprising that the U.S. offerings lag behind other parts of the world. RIAA concludes that some mastertone agreements are no substitute for the Section 115 license.[69]

In Reply, Copyright Owners reiterate that the market for ringtones is thriving and no compulsory license is needed to ensure its continued growth. The suggestion by RIAA that, absent compulsory licensing, music publishers will ''prevent the commercialization'' of ringtones is belied by the years of voluntary licensing of compositions by music publishers for such uses.[70]

Analysis. The general success, or lack thereof, of the marketplace for ringtones is not dispositive, or even necessarily relevant, in this analysis. Commercial negotiations involving the use of copyrighted works cannot annul the force and effect of existing law, unless Congress explicitly so states. We in fact note that, despite the existence of the Section 115 license, the vast majority of sound recordings are made pursuant to direct licenses from music publishers or the Harry Fox Agency rather than under the provisions of the statute. These commercial agreements, however, do not negate the existence of the statutory license. Moreover, reliance on the statements made by the Register of Copyrights is both inappropriate and inapt. These statements were proposals for revising the law, not interpretations of the existing regulatory regime.

V. Derivative Works

Section 115 and Derivative Works. Section 101 of the Copyright Act defines a derivative work as a ''work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which as a whole, represent an original work of authorship, is a derivative work.''[71] Congress used one defined term, ''derivative work,'' to specify both that derivative works are protectable under Section 103 of the Copyright Act and that the copyright owner has the exclusive right to prepare derivative works under Section 106(2) of the Copyright Act.[72] According to the Act's legislative history, Section 115 exists to permit artists and record companies to create sound recordings, which are a type of derivative work.[73]

Copyright Owners generally assert that ringtones fall outside the ambit of the statutory license because they are derivative works. They argue that ringtones exceed the scope of the Section 115 license by infringing the copyright owners' exclusive right to prepare derivative works. They assert that Section 115 subjects only the rights to reproduce and distribute phonorecords of works to the statutory license, leaving derivative works outside its scope. Copyright Owners argue that ringtones fit squarely within the derivative work definition because they are based on pre–existing works, and typically reduce a three–to–five minute work to an abridged ten–to–thirty second work.[74]

RIAA asserts that the legal tests for protection of derivative works and infringement of the derivative work right are identical and, in any event, require originality.[75] It states that ''[F]or the derivative work right to be infringed, the defendant must have created a derivative work, and for the derivative work to have been created, the Act requires the contribution of expressive content capable of standing on its own as a copyrightable work.''[76] RIAA cites a string of precedent to support its position that derivative works must be original to be afforded copyright

[65] For example, Copyright Owners cite the November 1, 2004 Sony BMG/EMI Music Publishing Agreement that granted the former the right to create ringtones embodying EMI compositions

[66] Copyright Owners Initial Brief at 4.

[67] RIAA Reply Brief at 4, citing *Music Licensing Reform. Subcomm.* on Intellectual Property, Senate Comm. on the Judiciary, 109th Cong. (July 12, 2005) (Statement of Marybeth Peters, Register of Copyrights).

[68] RIAA Reply Brief at 5, citing *Melville B. Nimmer & David Nimmer, Nimmer on Copyright* § 8.04[A] (2004).

[69] *Id.* at 6–7.

[70] Copyright Owners Reply Brief at 15–16, citing Rudell and Rosini, (noting that U.S. ringtone sales in 2005 was approximately $500 million).

[71] 17 U.S.C. § 101.

[72] Section 103 states that ''the copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material.'' 17 U.S.C. § 103(b). Section 106 states that ''[s]ubject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following. . . (2) prepare derivative works based upon the copyrighted work. . .'' 17 U.S.C. § 106(2).

[73] *See* H. R. Rep. No. 94–1476, at 108–09 (1976) (noting that a Section 115 license permits either the creation of a new sound recording or a duplication of an existing one with the consent of the sound recording copyright owner).

[74] Copyright Owners Initial Brief at 12–13. Copyright Owners note that the Copyright Board of Canada recently observed in a proceeding to set the rates for ringtones that ''mastertones are created by taking an actual segment of a sound recording after determining which number of seconds out of a work will be most appropriate for the market.'' *Id.*, citing Copyright Board of Canada, Collective Administration of Performing Rights and of Communications Rights, *Statement of Royalties to be Collected by SOCAN for the Communication to the Public by Telecommunication, In Canada, of Musical or Dramatico-Musical Works*, Tariff No. 24–Ringtones (2003–2005) (Aug. 18, 2006) at 13. In response, RIAA notes that this statement by the Copyright Board confirms its supposition that the selection of a mastertone from the underlying musical work is a ''trivial omission.'' RIAA Reply Brief at n. 10.

[75] RIAA Initial Brief at 11, citing *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 346 (1991) (''Originality is a constitutional requirement.'').

[76] *Id.* at 11–12, citing 2 Paul Goldstein, *Copyright* § 7.3 (3d ed. 2005).

protection.[77] RIAA states that for mastertones, the trivial action of copying a clip from an existing sound recording does not stand on its own as meriting copyright protection.[78] RIAA also asserts that there is no precedent in copyright law for the proposition that every partial reproduction of a work constitutes a separate derivative work. RIAA concludes that ringtones are nothing more than partial copies that lack sufficient originality to be protected as derivative works or to infringe the derivative works right.[79] RIAA concludes that because ringtones do not fit under the definition of derivative works in Section 101 of the Act, the making of a ringtone cannot be excluded under Section 115 on this basis.

Analysis. As an initial matter, we agree with Copyright Owners' assertion that Section 115, by its terms, concerns only the rights to reproduce and distribute phonorecords of works, leaving derivative works outside its confines. Thus, consideration of the derivative work right is important only to the extent that a ringtone which is adjudged to be a derivative work cannot be licensed under Section 115. To be considered a derivative work, a ringtone must exhibit a degree of originality sufficient enough to be copyrightable.[80] With regard to the appropriate legal test regarding copyrightability, we believe that *Feist*is controlling precedent here.[81] In *Feist*, the Supreme Court observed that ''as a constitutional matter, copyright protects only those constituent elements of a work that possess more than a de *minimis quantum* of creativity,'' and that there can be no copyright in work in which ''the creative spark is utterly lacking or so trivial as to be virtually nonexistent.''[82] As illustrated below, there are ringtones that may be considered derivative works because they exhibit a degree of originality and creativity. However, there are many other ringtones that would not be considered derivative works because they exhibit only trivial changes from the underlying work. Those ringtones would not be considered derivative works and would be within the scope of the statutory license.

Court Precedent. Copyright Owners argue that caselaw compels a conclusion that ringtones are derivative works. They argue that ringtones satisfy any creativity requirement for the copyrightability of a derivative work.[83] They additionally argue that the selection process involved in the creation of ringtones meets the creativity standard for copyrightability under settled law.[84] Copyright Owners also assert that the courts have routinely held that shortened versions of a variety of different copyrighted works constitute derivative works under the Copyright Act. They note, for example, that courts have found that clips from full–length copyrighted works, such as movie trailers, constitute derivative works.[85]

RIAA cites cases contrary to Copyright Owners' position. For example, it cites precedent holding that the use of copyrighted music excerpts in the background of a television show did not infringe the derivative work right because the inclusion of the music did not create a new derivative work that warrants copyright protection.[86] It also refers to another case where the district court denied a claim that adding local commercials to rental videos was an infringement of the derivative work right because there was no evidence that ''the mere addition of a commercial to the front of a videocassette recasts, transforms, or adapts the motion picture in what could represent an original work of authorship.''[87] Relying on the district court's determination in *Agee* that copying an excerpt of a musical work does not infringe the derivative work right, RIAA argues that the creation of a ringtone does not infringe the exclusive right to prepare derivative works of the underlying musical work.[88]

RIAA argues that the cases involving the creation of unauthorized trailers through editing and condensing of motion pictures are inapt. According to RIAA, such cases involve claims of unauthorized reproduction, and that is a sufficient basis on which to decide

[77] *See id.* at 12-14, 20, citing *Woods v. Bourne Co.*, 60 F.3d 978, 989 (2d Cir. 1995)(holding that a musical work must have ''substance added making the piece to some extent a new work'' and that only the ''addition of such new material would entitle the creator to a copyright on the new material.''); *Lee v. Deck the Walls, Inc.*, 925 F. Supp. 576 (N.D. Ill 1996), *aff'd on other grounds sub nom., Lee v. A.R.T. Co.*, 125 F.3d 580 (7th Cir. 1997)(holding that notecard art image deposited on tile and covered with epoxy is not copyrightable because the work does not contain any original artistic expression); *Peker v. Masters Collection*, 96 F. Supp. 2d 216 (E.D.N.Y. 2000) (holding that an oil painting reproduction, made by transfer of a copy of a copyrighted painting from a poster to a canvas with the addition of resin to create a brushed-on look of the original was not a derivative work because there was no originality that would be considered copyrightable); *Precious Moments, Inc. v. La Infantil, Inc.*, 971 F. Supp. 66, 67 (D. Puerto Rico, 1997) (stating that originality is required for a derivative work to be copyrightable).

[78] *Id.* at 2.

[79] *Id.* at 10, citing *Nimmer on Copyright* § 8.09[A] (noting that no reported case finds the holder of a reproduction license barred from making trivial changes to a work even without a separate license to make derivative works).

[80] We recognize that in one sense, every ringtone will be a derivative work, in that every sound recording of music is a derivative work; the underlying work is the musical composition itself. See H. R. Rep. No. 94–1476, at 108–109 (1976) The issue before us is not whether a ringtone is a derivative work; by definition it is. Rather, the question is whether a musical composition as recorded in a ringtone infringes the derivative work right in the original musical composition. When we refer to ringtones as ''derivative works'' in this Memorandum Opinion, we are referring not to the sound recording, but to the musical composition recorded in the ringtone. *See also,* n. 8, *supra.*

[81] *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991). Original, as the term is used in copyright, means that: (1) the work was independently created by the author (as opposed to copied from other works); and (2) it possesses at least some minimal degree of creativity. *Id.* at 345. When we refer to ''originality'' in this Memorandum Opinion, we are referring not to independent creation, but to creativity.

[82] *Id.* at 359, 363; *see also Woods v. Bourne Co.*, 841 F. Supp. 118, 122 (S.D.N.Y. 1994) (quoting Fred *Fisher, Inc. v. Dillingham*, 298 F. 145, 148 (S.D.N.Y. 1924) (holding that a derivative work must be ''substantially a new and original work, not a copy of a piece already produced, with additions and variations, which a writer of music with experience and skill might readily make'').

[83] Copyright Owners Reply Brief at 8, citing *Video Pipeline, Inc. v Buena Vista Home Entm't, Inc.* 192 F. Supp. 2d 321 (D.N.J. 2002), *aff'd* on other grounds, 342 F.3d 191 (3d Cir. 2003); *Yurman Design, Inc. v. PAJ, Inc.*, 262 F.3d 101, 109 (2d Cir. 2001) (stating that ''Under the Constitution and by statute, copyright validity depends upon originality''), citing *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991).

[84] *Id.*, citing *U.S. Payphone, Inc. v. Executives Unlimited of Durham, Inc.*, 18 U.S.P.Q. 2d 2049, at *8 (4th Cir. 1991) (finding that a section of a reference guidebook was a protectable compilation because the author collapsed voluminous tariff information into an easily usable guidebook); *Caffey v. Cook*, 409 F. Supp. 2d 484, 497 (S.D.N.Y. 2006) (finding a protectable compilation in the selection and ordering, for a musical show, of thirty two songs from a universe of possible musical compositions based on the compiler's sense of musicality).

[85] Copyright Owners Initial Brief at 13, citing *Video Pipeline, Inc. v. Buena Vista Home Entm't, Inc.*, 192 F. Supp. 2d 321, 330 (D.N.J. 2002),*aff'd*on other grounds, 342 F.3d 191, 197 (3rd Cir. 2003); *John Lamb d/b/a Alpha Production v. Michael Starks 3D TV Corp.*, 949 F. Supp. 753, 755–56 (N.D. Cal. 1996)(finding that use of a portion of a full length movie to create a trailer, without permission, was infringing and not fair use).

[86] *See* RIAA Initial Brief at 15, citing *Agee v. Paramount Commc'ns, Inc*, 853 F. Supp. 778 (S.D.N.Y. 1994), *aff'd in part rev'd in part on other grounds*, 59 F.3d 317 (2d Cir. 1995) (holding that ''copying a sound recording for use in a broadcast television program does not create a derivative work which warrants protection under the Copyright Act of 1976''). The Second Circuit found it unnecessary to reach the derivative works question. *See id.* at 324 (stating that ''Although the interspersing and abridgement of a sound recording may not, strictly speaking, involve sampling or amount to the traditional creation of a derivative work, such use of a recording appears to fall within the language of section 114(b), perhaps constituting a rearrangement or alteration in sequence. We need not determine the extent to which the recording was altered, however, because the finding that Paramount created a derivative work is unnecessary to a finding of infringement in light of Paramount's reproduction of Agee's recording.'').

[87] *See id.* at 14, citing *Paramount Pictures Corp. v. Video Broad. Sys., Inc.*, 724 F. Supp. 808, 821 (D. Kan. 1989).

[88] *Id.* at 8, 15.

them. Moreover, in the few instances where those cases address the derivative work right, they point in conflicting directions depending on whether or not the court follows Ninth Circuit precedent.[89] RIAA argues that the Register should decline to follow the Ninth Circuit's holding that the derivative work right may be infringed without a finding of originality. RIAA explains that in the Ninth Circuit, all one must show to prove infringement of the derivative work right is substantial similarity between the derivative work and the underlying work and that, under this reasoning, there is no legal distinction between infringing the reproduction right and infringing the derivative work right.[90] RIAA submits that such an interpretation is wrong because it is contrary to the plain language of the statute and contrary to the weight of authority.[91] RIAA states that, in any event, the trailer cases are of marginal relevance here because they involve a greater degree of editorial judgment than copying a single clip for distribution as a mastertone or other typical commercial ringtone.

Copyright Owners assert that to the extent there is a dispute among the circuits as to whether creativity sufficient for copyright protection is required for a work to be a derivative work for purposes of infringement, that dispute is not appropriate for resolution by the Register and is, in any event, irrelevant to the Register's analysis here since ringtones satisfy the test for creativity in any circuit.[92]

Analysis. Given the wide range of ringtones available in the marketplace, and understanding that a derivative work analysis is factually intensive, our task here is not to provide a comprehensive analysis of the caselaw. However, we do need to address whether a musical excerpt, in the form of a ringtone, is a derivative work because it is a central issue in this proceeding. First, consideration of the derivative work right issue is important to the extent that a ringtone which is adjudged to be a derivative work cannot be licensed under Section 115. Second, we agree with RIAA that the Ninth Circuit's more lenient test for infringement of derivative works, which seemingly ignores the originality requirement, appears to be in error as it runs contrary to all other Circuit Court precedent.[93] Third, we agree with RIAA that reliance on derivative works precedent involving movie trailers, such as Video Pipeline, Inc., is inapt because the creating and editing process involved in making those trailers required much more originality than simply shortening an existing musical work to create a ringtone.[94] *Fourth, Woods v. Bourne* is guiding precedent for determining the derivative work right in musical compositions.[95] Under Woods, an excerpt of a musical work made into a ringtone without original embellishments likely would not be considered a derivative work because nothing of substance has been added and the ringtone is merely a copy of a work (albeit a portion) already produced, without additions or variations. Fifth, as for those mastertones that contain new words in the lyrics not found in the underlying musical works, we draw no conclusions based on precedent because they involve factual issues and potentially close questions that need not be resolved here. A court of competent jurisdiction would be the appropriate forum to make the necessary determinations.

Copyright Office Precedent. The Copyright Office has made certain pronouncements as to the registrability of derivative works in sound recordings and other works in various publications. For example, Section 408.07 of Compendium II of Copyright Office Practices states that ''An abridgement of a musical work may be registrable provided that there is a substantial amount of selectivity, for example, more than merely omitting a section from the beginning or end.'' Copyright Office Circular No. 14 (2006), *Copyright Registration for Derivative Works*, states that ''When the collecting of preexisting material that makes up the compilation is a purely mechanical task with no element of editorial selection or when only a few minor deletions constitute an abridgment, copyright protection for the compilation or abridgment as a new version is not available.'' Copyright Office Circular No. 56 (2006), *Copyright Registrations for Sound Recordings*, states, in part that ''[I]f only a few slight variations or purely mechanical changes (such as declicking or remastering) [of a work] have been made, registration is not possible.''

RIAA argues that mastertones and other typical commercial ringtones do not stand on their own as separately copyrightable works under the Copyright Office's interpretations. RIAA cites Section 408.07 of the Compendium II of Copyright Office Practices as support for its argument.[96] RIAA argues that a partial copy of a commercial sound recording distributed as a mastertone or a partial copy of a musical work distributed as a monophonic or polyphonic ringtone is not separately

[89] *Id.* at 15, comparing *Clean Flicks of Colo. v. Soderbergh*, 433 F. Supp. 2d 1236, 1242 (D. Colo. 2006) (holding that ''family friendly'' edited versions of movies ''are not derivative works and do not violate § 106(2)'') with *Video Pipeline, Inc. v. Buena Vista Home Entm't, Inc.*, 192 F. Supp. 2d 321, 330 (D.N.J. 2002),*aff'd on other grounds*, 342 F.3d 191 (3d Cir. 2003).

[90] RIAA cites *Mirage Editions, Inc. v. Albuquerque A.R.T. Co.,* 856 F. 2d 1341 (9th Cir. 1988) where the Ninth Circuit affirmed a district court finding that mounting legally purchased copies of copyrighted artworks on ceramic tiles infringed the right to prepare derivative works. The court found that appellant ''made another version'' of the artwork that amounted to the preparation of a derivative work because it '' recast or transformed the individual images by incorporating them into its tile–preparing process.'' This decision has been followed in subsequent cases within the Ninth Circuit. *See, e.g., Micro Star v. Formgen, Inc.*, 154 F.3d 1107, 1112 (9th Cir. 1998); *Sobhani v. Radical Media, Inc.,* 257 F. Supp. 2d 1234 (C.D. Cal. 2003). *See id.* at 16-17.

[91] *Id.*at 16. In its Reply Brief, RIAA again argues that mastertones and other typical commercial ringtones are not derivative works. It states that the cases cited by Copyright Owners all rely on Ninth Circuit precedent, and given that it is the lone Federal circuit in holding that there is a more lenient test for infringement of derivative works, that approach should be rejected. RIAA Reply Brief at 11.

[92] Copyright Owners Reply Brief at n. 13.

[93] We note that there is widespread disapproval of the Ninth Circuit's approach to derivative works. *See, e.g., Lee v. A.R.T,* 125 F.3d 580, 582 (7th Cir. 1997) (noting that if the Ninth Circuit is ''right about what counts as a derivative work, then the United States has established through the back door an extraordinarily broad version of the authors' moral rights.''); *Precious Moments, Inc. v. La Infantil, Inc.,* 971 F. Supp. 66, 69 (D. Puerto Rico 1997) (agreeing with the Seventh Circuit that Mirage and its progeny read the originality requirement out of the definition of derivative works and ''open[s] the door for the most trivial modifications to generate an infringing derivative work.''); *Goldstein* § 5.3 at 5:81–82; *Nimmer on Copyright* § 3.03. Although Copyright Owners assert that ''to the extent that there is a dispute among the circuits as to whether creativity sufficient for copyright protection is required for a work to be a derivative work for purposes of infringement, that dispute is not appropriate for resolution by the Register,'' the positions taken by the parties on this issue require the resolution of that issue. Having concluded that many ringtones do not exhibit sufficient creativity to qualify for copyright protection as derivative works, it is necessary to determine whether the derivative work right nevertheless could be infringed by making and distributing such ringtones.

[94] There are marked differences between the making of ringtones and the making of movie trailers in the cited cases. For example, the trailers at issue in *Video Pipeline* were 120 seconds in length and included the display of the movie studio's trademark, title of the motion picture, and two or more scenes from the film. *See* 342 F.3d at 195. In any event, the Third Circuit found that the trailers at issue were essentially copies of the original work that lacked ''any significant transformative quality'' and any ''creative ingenuity.'' *Id.* at 199–200. The trailer at issue in *John Lamb,* another case cited by Copyright Owners, was 2 minutes and 40 seconds in length and included individual images and scenes, among other things. Further, the original trailer was transformed into a 3–D format for use with specially engineered eyeglasses. *See* 949 F. Supp. at 755.

[95] *See* n. 77, 82, *supra.*

[96] Compendium II of Copyright Office Practices, § 408.07 (1984).

protectable as a derivative work under Copyright Office standards.[97] To the extent that it may be desirable to make technical adjustments to the commercial sound recording to improve playability on phones, RIAA asserts that process is in the nature of remastering and would not affect the underlying musical work.[98] As for RIAA's reliance on Copyright Office precedent, Copyright Owners refer to Copyright Office Circular No. 14 which states that ''a few minor deletions'' to a work will not suffice for a work to be protectable as a derivative work. Copyright Owners respond that ringtones do not involve the mere omission of portions of a work, but involve the creative selection of portions of a work and often more. They assert that the process used to construct a thirty second ringtone from a three–to–five minute work involves the ''substantial amount of selectivity'' acknowledged by the Copyright Office to suffice for the creation of a protectable work.

Analysis. The Copyright Office documents, noted above, are instructive. We note that the Circulars are designed to inform members of the public about how to register works with the Copyright Office offering guidelines for instructional purposes. The Compendium, generally used by the Copyright Office staff, serves as an internal manual detailing what works are copyrightable, and therefore registrable. Here, the cited materials are based on, and to a large extent, mirror judicial precedent on the subject of derivative works. Essentially, making ''minor deletions'' or ''slight variations'' to an original work will not result in the creation of a derivative work because there is no originality involved in the new work. Using the cited materials as references, then, the Copyright Office would refuse registration of a mastertone that is merely an excerpt of a full musical work because the new work lacks the requisite originality.

Examples in the Record. Copyright Owners state that creating ringtones involves making alterations to the underlying work that require skill, judgment, and creativity. According to Copyright Owners, all ringtones require the exercise of creative judgment in determining the points in the composition where the ringtone should begin and end so as to maximize appeal to consumers. They state that the decision as to what portion of a work to use in the ringtone is not trivial; shorter ringtones are sometimes designed to ''loop'' to achieve the appropriate length to function as a ringer, with the result that a musical phrase is repeated in a sequence unintended by the author of the work. They add that other mastertones involve the addition of new lyrics, spoken–word interludes, and other material designed to enhance sales. Copyright Owners conclude that, for a derivative work to be copyrightable under the copyright laws, the ''requisite level of creativity is extremely low'' and the alterations of ringtones in the manner described meet this test.[99]

RIAA disagrees and asserts that ringtones are nothing more than partial copies that lack sufficient originality to be protected as derivative works or to infringe the derivative works right. It states that copying a clip to distribute as a ringtone does not involve the addition of any new material. RIAA argues that because the definition of the term ''derivative work'' applies to both protection and infringement, and because the definition requires originality in both contexts, copying a single short clip from a sound recording and/or musical work to distribute as a mastertone or other ringtone does not meet the requirements for copyright protection as a derivative work or infringement as a derivative work.[100] RIAA has submitted, into the record, a CD with relevant examples of mastertones, that are simply partial copies of the underlying musical work.

In their Reply Brief, Copyright Owners reiterate that the creation of ringtones involves substantial creativity and that ringtones do not only feature the hook of a particular musical work. Moreover, they assert, there is no such thing as a ''typical commercial ringtone,'' as RIAA seems to suggest. Rather, they vary in kind and length. They note the following examples: (1) the ringtone for Leonard Cohen's ''Everybody Knows'' recording comprises nine seconds of the approximately five and a half minute full length work and the ringtone commences seven seconds into the song; (2) Britney Spears '' . . . Baby One More Time'' ringtone consists of a fifteen–second snippet of the recording that begins two and half minutes into the three and a half minute song; and (3) the mastertone for Jay Z's ''Change Clothes,'' consists of excerpts of two separate hooks repeated twice (even though these hooks are separated in the full–length song by other musical content), and then these two snippets are further repeated if the caller fails to answer the phone. Copyright Owners also note that some songs result in multiple ringtones, each focusing on different elements of the same underlying composition. They state, for example, that the Bubba Sparxx/Ying Yang Twins hit, ''Ms. New Booty,'' has spawned two ringtones–one featuring the lyric ''I found you''and the other emphasizing the lyric ''get it right.''[101]

They also assert that other ringtones include new content not present in the underlying work. Copyright Owners note, for example, that the Pussycat Dolls' mastertone derived from the best–selling song ''Don't Cha'' features the lyrics, ''Don't cha wish your girlfriend was hot like me. Don't cha wish your girlfriend was a freak like me,'' which are part of, but not all of the lyrics of the song. This ringtone, which is eleven seconds, as compared to the four and a half minute full length work, also includes new material different from those of the underlying work: ''Come on boy, don't cha wanna pick up? We're ready for ya.'' These additional words are spoken, not sung, and are not accompanied by music. Likewise, Copyright Owners note that in Beyonce's mastertone ''Let Me Cater 2 You,'' the ringtone contains a portion of the song, with an extra line added at the end: ''What's up, this is Beyonce from Destiny's Child and this call is for you.'' Again, the additional words are spoken, unaccompanied by music. Copyright Owners have submitted a CD, included in the record, that contains many more examples of ringtones that they assert support their case.

Analysis. The ringtone samples provided by the parties are instructive. The record evidence demonstrates that not all ringtones are the same. While we need not decide whether all of the ringtones presented to us are within the scope of Section 115, we observe that some undoubtedly are not. For example, the 16 second mastertone, *Grind With Me*, by performing artist, Pretty Rickey, was created solely for ringtone use and the lyrics used therein are not found in the 4:02 minute full length version of the work. This ringtone is likely copyrightable as a derivative work because it is original and demonstrates a ''creative spark.'' In any event, there are likely to be many ringtones, such as the mastertone that uses a portion of Otis Redding's classic ''*Sittin' On the Dock of the Bay*,'' that simply copy a portion of the underlying musical work and cannot be considered derivative works because such excerpts do not contain any originality and are created with rote editing. There are also

[97] RIAA Reply Brief at 13.

[98] RIAA Initial Brief at 21.

[99] Copyright Owners Initial Brief at 14-15, citing *Yurman Design, Inc. v. PAJ, Inc.*, 262 F.3d 101, 109 (2d Cir. 2001) (quoting *Feist*, 499 U.S. at 345).

[100] RIAA Initial Brief at 19-20.

[101] Copyright Owners Reply Brief at 5–6.

ringtones that contain a portion of the full length musical work and additional spoken material such as the Pussycat Dolls example, above. The determination of whether such a ringtone, or one that includes the addition of some new lyrics, results in a copyrightable derivative work is a mixed question of fact and law that is beyond the scope of this proceeding.

In sum, there is a broad spectrum of ringtones, and whether one would be considered a derivative work depends upon the nature of the ringtone. At one end of the spectrum are those ringtones that are simple excerpts of larger musical works. This type of ringtone is not a derivative work. At the other end of the spectrum are ringtones that contain additional original authorship. These would be considered derivative works if there was a sufficient amount of creative authorship in the new material. In between are ringtones that may include some new material (spoken words or music) in addition to the excerpt. Those ringtones cannot be properly analyzed in a factual vacuum and their status as derivative works need not be determined in this proceeding, but are more appropriately determined on a case–by–case basis by the courts.

VI. The ''Arrangement Privilege''

Section 115(a)(2) of the Copyright Act states that the ''compulsory license includes the privilege of making a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the *arrangement* shall not change the basic melody or *fundamental character of the work*, and shall not be subject to protection as a derivative work under this title, except with express consent of the copyright owner.''[102] (Emphasis added) According to the Act's legislative history, the purpose of the limitations in Section 115(a)(2) was to prevent the musical composition from being ''perverted, distorted, or travestied.''[103]

Arrangements. RIAA argues that ringtones are authorized by the arrangement privilege set forth in Section 115. RIAA argues that even if the Register were to determine that the creation of mastertones or other ringtones necessarily involves preparation of a derivative work, Congress specifically authorized the creation of certain derivative works under the express terms of the Copyright Act. RIAA asserts that creating arrangements by changing the length of musical works has been an accepted part of industry practice since before creation of the mechanical license. It states that shortening a musical work is necessary to conform the song to the style or manner of the performance involved because ringtones necessitate brevity.[104]

Copyright Owners take issue with RIAA's stance. They state that RIAA's argument rests on a false premise–that changing the length of a musical work necessarily results in an arrangement. They assert that arrangements are adaptations of whole works and involve changes to the style and interpretation of the underlying work. They conclude that a portion of a musical work for inclusion in a ringtone is not an arrangement of the underlying work.[105]

Copyright Owners strongly assert that a ringtone is not a musical arrangement as that term is understood in the music business. They state that it is well settled in the music industry that arrangements, intended to permit alterations solely in interpretation and style, are adaptions of entire works.[106] They note that an arrangement, as defined by the American Federation of Musicians, is ''the art of preparing and adapting an already written composition for presentation in other than its original form. An arrangement may include reharmonization, paraphrasing, and/or development of a composition, so that it fully represents the melodic, harmonic, and rhythmic structure.''[107] They assert that, by definition, there cannot be a ten–second arrangement of a three minute composition and a ringtone is no more of an arrangement of a song than the selection of four notes out of all the others is an arrangement of a song.[108]

RIAA asserts that the definitions of ''arrangement'' that Copyright Owners provide are unconvincing. It states that the only definition that even remotely suggests that an arrangement must always embody the full work and never a partial copy of that work is the definition from answers.com, but even that definition is not particularly instructive.[109] RIAA also argues that there is nothing in the Copyright Act, its legislative history, or the common usage of these terms to suggest that, by employing the phrase ''musical arrangements'' in either Section 101 or Section 115(a)(2), Congress was distinguishing between ''musical arrangements'' as a class and musical arrangements that happen to shorten versions of the underlying work. RIAA asserts that there are innumerable arrangements of a particular work and a shorter version of such a work is still referred to as an arrangement.[110]

Analysis. For purposes of our discussion here, ''arrangement'' pertains to the musical aspect of the work, and not to changes in lyrics. Even so, defining the parameters of Section 115(a)(2) is difficult because there is no precedent and there is no common ground among the parties regarding the appropriate definition of ''arrangement''for Section 115 purposes. Here, the parties have used various dictionaries and web sites to support their definitional argument, but there is no consensus on what sources are valid and reliable. While Copyright Owners' definition is appropriate to use in this context, we believe that the definition found in the *New Encyclopedia of Music and Musicians* (''NEMM'') is as reliable, if not more comprehensive.[111] NEMM

[102] 17 U.S.C. § 115(a)(2).

[103] H. R. Rep. 94–1476 at 62 (1976) (''The second clause of subsection (a) is intended to recognize the practical need for a limited privilege to make arrangements of music being used under a compulsory license, but without allowing the music to be perverted, distorted, or travestied. Clause (2) permits arrangements of a work ''to the extent necessary to conform it to the style or manner of interpretation of the performance involved,'' so long as it does not ''change the basic melody or fundamental character of the work.'' The provision also prohibits the compulsory licensee from claiming an independent copyright in his arrangement as a ''derivative work'' without the express consent of the copyright owner.''); *see also, Nimmer on Copyright* 17 U.S.C. § 115(a)(2). 8.04[F] (noting in reference to Section 115(a)(2) that ''Such respect for the integrity of a musical composition evinces Congressional regard for the moral rights of composers [.]'').

[104] RIAA Initial Brief at 23-25.

[105] Copyright Owners Reply Brief at 12.

[106] *Id.* at 3.

[107] Copyright Owners Initial Brief at 16, citing http://www.answers.com/topic/arrangement. They also cite the Oxford English Dictionary (an arrangement is ''[t]he adaptation of a composition for voices or instrument for which it was not originally written.'') and the Cambridge Advanced Learner's Dictionary (an arrangement is ''[a] piece of music that has been changed so that it can be played in a different way, especially by a different instrument'').

[108] *Id.* at 15–16.

[109] RIAA Reply Brief at 15, and n. 11, citing www.answers.com/topic/arrangement (stating that an arrangement ''fully represents the melodic, harmonic, and rhythmic structure'' of the work,'' but also stating that an arrangement ''may specify or vary some or all of . . . [the] sequence, including the order and number of repeats of sections such as verses and choruses. . .introduction, coda, modulations, and other variations.''

[110] *Id.* at 16.

[111] We note that when examining musical works for the purpose of copyright registration, the Performing Arts Section of the Copyright Office defines ''arrangement'' as ''harmony added to an existing melody, or a transcription, such as a band arrangement of a piano piece.'' Copyright Office examiners also rely on the definition of ''arrangement'' in Section 408.01 of Compendium II of Copyright Office Practices which states that: ''A musical arrangement is a work that results from the addition of new harmony to a preexisting work. The standard of originality for arrangements takes into

Continued

defines an arrangement as ''The process or result of readjusting a work for performance by different artistic means from that originally intended. Also, a relatively close or literal rendering of the substance and form of a work with only those modifications demanded by the limitations or peculiarities of the medium in view.''[112] We can make three general observations based on the definitions and the law. First, the user's right to make a melodic arrangement should be limited so that the basic character of the musical work is preserved.[113] Second, a mastertone that merely shortens the full length work to conform it to the physical limitations of the cellphone does not affect the musical work's arrangement. Finally, a ringtone that makes minor changes to lyrics of the underlying musical work generally does not affect its arrangement.[114] There may be other ringtones that are substantially different from the underlying musical work, but whether such changes impinge upon the arrangement of the work is a factual question, which goes beyond the scope of this proceeding.

Copyright Owners assert that ringtones are actually abridgements, not arrangements, of a musical work, and therefore they fall outside the Section 115 license.[115] While Copyright Owners do not fully state what constitutes an abridgement for the purposes of Section 115(a)(2), RIAA takes issue with this conclusion and cites a litany of definitions, references, and examples to support its case.[116] In this context, and without adequate explanation from the Copyright Owners, we surmise that the gist of their argument is that a ringtone abridges a full length musical work, and as such, should be considered a derivative work. If that is the case, we need not re–examine the matter as it is analyzed and discussed in detail in the derivative work section above. Our conclusion here is bolstered by the fact that the term abridgement does not appear in Section 115(a)(2), but it does appear in the definition of derivative works in Section 101 of the Copyright Act.

Fundamental Character of the Work. Copyright Owners state that even assuming, for argument's sake, that ringtones qualify as musical arrangements, Section 115 is inapplicable because the basic melody and fundamental character of the underlying work has been changed. They assert that ringtones delete large portions of the underlying works including much of the melody, verses, bridges, codas, and instrumental interludes. They conclude that the reduction of a work to a short refrain excludes all of the other elements that make up the overall character of the work.[117]

Copyright Owners assert that ringtones change the character of the underlying work in other ways as well. They assert that ringtones transform artistic works into utilitarian substitutes for the ring of the telephone; the character of a musical work fundamentally changes when the ''original artistic vision expressed by the work in the form of a full–length song is superseded by a new purpose of serving as a thirty second mobile phone ringer.'' Copyright Owners argue that the use of a musical work as a ringtone departs from the integrity of the original composition, ''a result that Congress properly avoided'' by excluding such uses from the Section 115 scheme.[118]

RIAA asserts that typical commercial ringtones do not change the basic melody of a musical work; to the contrary, ringtones by their very nature seek to accurately reproduce the basic melody with little or no alteration. RIAA asserts that the limitations in Section 115(a)(2) to prevent changes to the ''basic melody and fundamental character of the work'' were added specifically to address the objections of the copyright owners that the arrangement privilege would otherwise allow ''radical alterations'' to the ''material detriment of the work.''[119] RIAA states that in the case of mastertones, the melody is exactly the same as in the commercial sound recording release and distributing a clip does not radically alter, pervert, distort, or travesty the musical work in contravention of Congressional intent. RIAA asserts that since Copyright Owners frequently license large parts of their catalogs for use as ringtones, that use cannot be said to be to the material detriment of the work.[120] RIAA concludes that creating a partial copy of the work does not constitute a radical alteration, and if it did, mastertones would not be commercially successful.

Analysis. Before discussing the ''fundamental character'' issue, we must note that the arrangement privilege does not represent the outer limit of what other kinds of changes (apart from what is conventionally understood as an arrangement) may be made to a musical work within the scope of the Section 115 statutory license. In this sense, an analysis of the arrangement privilege as it applies to mastertones is irrelevant except to the extent that some of these types of ringtones may actually tinker with the style and interpretation of the underlying work. Mastertones are taken from commercially released sound recordings which may involve arrangements, but for purposes of this proceeding, we assume that the commercially released sound recording was licensed (either by means of a voluntary license or the statutory license), and that the arrangement in the sound recording was within the scope of the license. In such cases, which we will assume to be the norm, the use of the same arrangement in the mastertone would not be in contravention of the limitations of Section 115(a)(2). Given this conclusion, we need not specifically address whether mastertones change the fundamental character of the work, but a statutory analysis is still necessary to determine the legal status of monophonic and polyphonic ringtones under Section 115.

As stated above, Section 115(a)(2) of the Copyright Act permits statutory licensees to make a musical arrangement of the work ''to the extent necessary to conform it to the style or manner of interpretation of the performance involved,'' but the arrangement shall not ''change the basic melody or fundamental character of the work.''[121] The Act's legislative history states that the provision was enacted to prevent the music from being ''perverted, distorted, or travestied.''[122]

consideration the fact that a melody carries with it a certain amount of implied harmony.'' Compendium II of Copyright Office Practices, § 408.07 (1984).

[112] *See* Waldo Selden Pratt, *The New Encyclopedia of Music and Musicians*, Macmillan (1929).

[113] *See* Preliminary Draft for Revised U.S. Copyright Law and Discussion and Comments on the Draft. House Comm. on the Judiciary, 88th Cong., Copyright Revision Part 3, at 444 (1964).

[114] *See Shapiro, Bernstein& Co., Inc. v. Jerry Vogel Music Co., Inc.* (S.D.N.Y. 1947) (holding that a new version of copyrighted song ''Melancholy'' under the title ''My Melancholy Baby'' with an additional chorus in march time, but using identical lyrics except for a slight variation in the base of the accompaniment, did not constitute a copyrightable new work).

[115] Copyright Owners Initial Brief at n. 6.

[116] RIAA Reply Brief at 15. For example, referring to Cambridge Advanced Learner's Dictionary, RIAA states that an abridgment is ''to make a book, play or piece of writing shorter by removing details and unimportant information.''

[117] Copyright Owners Initial Brief at 16–17.

[118] *Id.* at 17.

[119] RIAA Reply Brief at 14, citing *Goldstein*, § 7.4.2, n. 7.

[120] RIAA Initial Brief at 26.

[121] 17 U.S.C. § 115(a)(2).

[122] *See* H. R. Rep. No. 94-1476, at 109 (1976). Congress did not define the terms ''perverted,'' ''distorted,'' or ''travestied.'' However, the America Heritage Dictionary defines ''perverted'' as ''Deviating from what is considered right and correct.'' It defines ''distorted'' as ''to give a false or misleading account of.'' And, it defines

The language of the statute was meant to avoid the desecration of the underlying musical work.[123] Under the statute, it is reasonable to conclude that a portion of a pre–existing musical work truncated to ringtone length does not change the basic melody and fundamental character of the work. Certainly, this conclusion applies to mastertones, and it would almost always apply to monophonic or polyphonic ringtones that preserve the basic melody of the underlying musical work. As such, we cannot conclude that the musical work customized for ringtone purposes has been perverted, distorted, or travestied, as those terms are commonly defined, as no changes have been made to the melody of the original work.[124] In sum, we do not believe, as Copyright Owners argue, that the reduction of a work to a short excerpt fundamentally changes the overall character of the work or impugns the integrity of the work.

In the absence of a case directly addressing the scope of Section 115(a)(2), it is useful to examine precedent involving the derivative work rights in a musical composition. For example, in *Woods v. Bourne*, the Second Circuit discussed the factors upon which a derivative musical work may be considered an original work for copyrightability purposes:

> ''something of substance added making the piece to some extent a new work with the old song embedded in it but from which the new has developed. It is not merely a stylized version of the original song where the major artist may take liberties with the lyrics or the tempo, the listener hearing basically the original tune. It is, in short, the addition of such new material as would entitle the creator to a copyright on the new material.''[125]

Under *Woods*, a typical monophonic or a polyphonic ringtone would be considered a mere ''stylized version'' of the original musical work with no changes to the melody, but perhaps some changes to the tempo. In such cases, an electronic synthesizer may generate a monophonic or polyphonic adaptation of the underlying musical work for play on a cellphone, and the ringtone may have been conformed to fit within the parameters of its intended use. However, where the ringtone has added non–trivial ''new material,'' such that it would be considered a derivative work, the Section 115 license may not be available because the ringtone was not changed simply to conform it for use in a cellphone.[126]

VII. Private Use

Section 115 states that ''a person may obtain a compulsory license only if his or her primary purpose in making phonorecords is to distribute them to the public for private use including by means of a digital phonorecord delivery.''[127] According to the Act's legislative history, the ''private use'' limitation was added to Section 115 to clarify that manufacturers of specialty recordings for use in jukeboxes and business music services could not rely on the mechanical license in their use of musical works.[128]

Copyright Owners assert that ringtones fail to satisfy Section 115's requirement that the phonorecords be distributed for private use. They argue that the ''private use'' limitation contemplated by Congress includes only ordinary listening use for private enjoyment of music. To bolster their argument that a ringtone serves only public functions, Copyright Owners assert that a ringtone: (1) is no substitute for enjoyment of the full length musical work; (2) provides the notification functions of a phone ring; and (3) is marketed as a lifestyle accessory. They conclude that ringtones provide mobile phone users a means to publicly identify and express themselves to their friends, colleagues and the public at large.[129]

RIAA asserts that ringtones are distributed to individual consumers for private use. It states Copyright Owners' arguments ignore common sense, the relevant statutory language, and the legislative history of the Copyright Act. RIAA states that although ringtones do provide users a means to identify and express themselves, that is true for any phonorecord. RIAA asserts that all kinds of phonorecords distributed and sold to private customers are sometimes used in public, yet no one argues that such uses make the Section 115 license inapplicable. It argues that uses of CDs in public places, for example, do not make the Section 115 license unavailable to distributors for the simple reason that it is the primary purpose of the distributor, not the use by the consumer, that is relevant. According to RIAA, the phrase ''private use'' is not the opposite of ''public performance,'' but means ''personal'' or ''noncommercial use.'' RIAA asserts that ringtones satisfy the private use requirement because the primary

''travestied'' as ''An exaggerated or grotesque imitation, such as a parody of a literary work.'' *See* http://dictionary.reference.com for these definitions.

[123] *See* Preliminary Draft for Revised U.S. Copyright Law and Discussion and Comments on the Draft. House Comm. on the Judiciary, 88th Cong., Copyright Law Revision Part 3, at 444 (1964) (noting the concern of composers: ''We have had numerous instances where a record manufacturer has taken a sacred or serious composition and without authority changed it into a Rock and Roll or jazz arrangement in such a manner as to constitute a desecration. We have also had instances of unauthorized adaptations which are beyond the limits of reason and good taste; the writing and recording of lyrics to instrumental compositions; the making and recording of burlesque versions and the recording of salacious versions.'')

[124] The legislative history notes that the statutory licensee should have some latitude, but not complete freedom, to alter the character of the work. *See Further Discussions and Comments on the Preliminary Draft for Revised U.S. Copyright Law*. House Comm. on the Judiciary, 88th Cong., Copyright Law Revision Part 4, at 430 (Comm. Print 1964).

[125] *Woods*, 60 F.3d at 991 (quoting *Woods v. Bourne Co.*, 841 F. Supp. 118, 121 (S.D.N.Y. 1994)). In *Woods*, the District Court decided the novel issue of whether any musical additions or variations to the preexisting melody and lyrics of a song resulted in a derivative work that was entitled to copyright protection. In order to qualify as a derivative musical work, the court found that ''there must be present more than mere cocktail pianist variations of the piece that are standard fare in the music trade by any competent musician. . . . [There must be] something of substance added making the piece to some extent a new work with the old song embedded in it but from which the new has developed. . . . It is, in short, the addition of such new materials as would entitle the creator to a copyright in the new material.'' *See Agee v. Paramount Commc'ns, Inc*, 853 F. Supp. 778, 788 (S.D.N.Y. 1994), *aff'd in part, rev'd in part on other grounds*, 59 F.3d 17 (2d Cir. 1995);*see also, Shapiro, Bernstein & Co. v. Jerry Vogel Music Co.*, 73 F. Supp. 165, 167 (S.D.N.Y. 1947) (finding changes in the rhythm and accompaniment, without changes in the tune or lyrics, were not protectable as a derivative work).

[126] *See Gilliam v. American Broadcasting Comp., Inc.*, 583 F. 2d 14, 20–21 (2d Cir. 1976) (holding that a licensee infringes a copyright where it publishes the protected work after making extensive, unauthorized changes which impair the integrity of the original work).

[127] 17 U.S.C. § 115(a)(1).

[128] *See Supplementary Register's Report on the General Revision of the U.S. Copyright Law: 1965 Revision Bill,* House Comm. on the Judiciary, 89th Cong., Copyright Law Revision Part 6, at 55 (Comm. Print 1965) (''[T]he provision would not apply, for example, to reproduction in a motion picture sound track or recording primarily for use in broadcasts, wired music transmissions, or jukeboxes.''). *See also* H. R. Rep. No. 94–1476, at 108 (1976) (''The second sentence of clause (1), which has been the subject of some debate, provides that 'a person may obtain a compulsory license only if his or her primary purpose in making phonorecords is to distribute them to the public for private use.'" This provision was criticized as being discriminatory against background music systems, since it would prevent a background music producer from making recordings without the express consent of the copyright owner; it was argued that this could put the producer at a great competitive disadvantage with performing rights societies, allow discrimination, and destroy or prevent entry of businesses. The committee concluded, however, that the purpose of the compulsory license does not extend to manufacturers of phonorecords that are intended primarily for commercial use, including not only broadcasters and jukebox operators but also background music services.'').

[129] Copyright Owners Initial Brief at 17-19, citing H.R. Rep. No. 90–83, at 68 (1967).

purpose of the distributor is to distribute them to individual consumers for their own personal use and enjoyment, on those consumers' cell phones, in whatever manner the consumer sees fit, not to distribute them for commercial use such as public broadcasting, in motion pictures, business music services or jukeboxes.[130]

Analysis. We believe that Copyright Owners' arguments are inconsistent with the law and ignore common uses of music by individuals. The controlling language here is ''for private use.'' It is undisputed that the term is directed at individual consumers who use music for personal enjoyment. However, Copyright Owners seem to suggest that once an individual takes the music out of the home, the statutory provision becomes null and void.[131] This cannot be what Congress intended. Here, we note that traditional phonorecords are used in public (*e.g.*, in boom boxes in public parks, in a car stereo while the automobile is driving down the street, etc.), but that does not disqualify them from the statutory license by violating their primary purpose of being for private use. While it may be true that some mobile phone users purchase ringtones to identify themselves in public, this use most likely would not be considered a public use as Congress intended that term to be understood in the Section 115 context, and in any event, there is no basis to conclude that the *primary purpose* of the ringtone distributor is to distribute the ringtone for ''public''use. The legislative history accompanying Section 115(a)(1) does not contradict this conclusion. In fact, it clarifies that ''the purpose of the compulsory license does not extend to manufacturers of phonorecords that are intended primarily for commercial use, including not only broadcasters and jukebox operators but also background music services.''[132] Section 115 does not, however, impose any limitations on the use of a phonorecord once it is purchased by the consumer. As such, Section 115(a)(1) is not a bar to the inclusion of ringtones under the statutory license.

VIII. First Use

The Section 115 license is available ''[w]hen phonorecords of a nondramatic musical work have been distributed to the public in the United States under authority of the copyright owner.'' According to the Act's legislative history, once a musical work has been recorded and ''distributed to the public,'' any person may obtain a compulsory license by complying with the provisions of Section 115.[133]

RIAA argues that a ringtone would be subject to statutory licensing after first use even if it were not otherwise covered by Section 115(a)(2). RIAA explains that even if certain musical works may be outside the scope of the statute in the first instance, Section 115 nonetheless would apply to the new musical work once that version was first distributed under the authority of the copyright owner. RIAA states that assuming for the sake of argument that a ringtone–length version of a musical work is a derivative work outside the scope of the Section 115 license, the music publisher would have the right to prevent distribution of that ringtone–length work. However, once the publisher allowed one record company or ringtone distributor to distribute phonorecords of that ringtone–length work, the ordinary operation of Section 115 would then allow any person to obtain a statutory license with respect to the ''new''ringtone version in question.[134]

Copyright Owners disagree that ringtones are subject to Section 115 after the public distribution by the copyright owner. They state that RIAA's argument is ''premised on the inaccurate assumption that Section 115 applies to every digital transmission of a copyrighted phonorecord.'' They reiterate that ringtones are not subject to Section 115 because they are not complete musical works as required by Section 115, and in any event, the license is narrow and does not apply to works that are not distributed for private use.[135]

Analysis. We find that RIAA's reading of the statute is a reasonable one. The issue arises only if a particular ringtone qualifies as a derivative work due to the presence of copyrightable derivative work authorship in the ringtone. If, as we expect will usually be the case, the ringtone is not a derivative work, there will be no reason to reach this issue; the ringtone will be within the scope of the Section 115 license for the reasons stated above. However, if a particular ringtone, released with the permission of the copyright owner of the underlying musical work, does constitute a derivative work, then once that derivative work has been distributed under the authority of the copyright owner, anyone else may, by complying with the formal requirements of Section 115, obtain a compulsory license to make and distribute copies of that derivative work.

IX. Conditions and Limitations

As noted above, the Copyright Royalty Board asked the Register to address the legal conditions and/or limitations that would apply to ringtones if such works were found to DPDs under Section 115 of the Act.

RIAA asserts that the same conditions and limitations that apply to other phonorecords apply to ringtones. It posits that first use of the song under the authority of the copyright owner, notice, and payment of royalties, would be among the statutory conditions that would apply to the licensing of ringtones.[136]

Copyright Owners assert that there is no need for any limitations or conditions on the licensing of ringtones under Section 115, as all ringtones are excluded from the reach of the statute as a matter of law. They note, however, that if the Register were to conclude that some ringtones are subject to statutory licensing, the appropriate scope of such licensing would involve factual issues. Copyright Owners state that in this case, the Copyright Royalty Boards' August 18, 2006 Order prohibited the submission of factual material that is required to make a reasoned determination of conditions on the licensing of ringtones within Section 115. They assert that the Copyright Royalty Boards' decision not to permit the submission of factual materials makes it ''impossible to delineate'' any informed conditions or limitations on the statutory licensing of ringtones.[137]

Analysis. We believe that Section 115's general requirements are applicable to all types of ringtones (monophonic, polyphonic, or mastertone). This applies to mastertones that are simple excerpts of the underlying musical work, ringtones (monophonic, polyphonic, and mastertones) that are not adjudged to be derivative works, and those ringtones that do not change the basic melody or fundamental character of the work. For newly created ringtones that have not been distributed to the public, and that

[130] RIAA Reply Brief at 17.

[131] *See* Copyright Owners Initial Brief at 19 (''In sum, far from being used for private musical entertainment in one's home, ringtones provide mobile phone users a means to identify themselves to their friends, colleagues and the public at large.'').

[132] *See* n.128, *supra*.

[133] 17 U.S.C.§ 115(a)(1). Mirroring the statutory language, the provision's legislative history states that the Section 115 license is ''available to anyone as soon as 'phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner.'" *See* H. R. Rep. No. 94 § 1476 (1976).

[134] RIAA Initial Brief at 26–27.

[135] Copyright Owners Reply Brief at 17–18.

[136] RIAA Reply Brief at 19, *citing* 17 U.S.C. § § 115(a)(1), 115(b), and 115(c)(2).

[137] Copyright Owners Reply Brief at 20 and n. 7.

fall outside the scope of the statute because they are derivative works or for any other reason outlined above, the Section 115 provisions do not apply. A commercial license is required to make and distribute those types of ringtones. There will, of course, be some instances where the status of a ringtone (monophonic, polyphonic, and mastertones) for Section 115 purposes is unclear. A judicial determination would be required where such mixed question of fact and law are present.

While we cannot delineate a litmus test that will in every case determine specifically whether a particular ringtone is or is not within the scope of the statutory license, the guidance offered above is sufficient for purposes of this proceeding. In general, a ringtone will fall within the scope of the compulsory license unless it has so altered the musical composition as to constitute a derivative work. Simply excerpting a single portion of a licensed sound recording of a musical composition will not constitute the making of a derivative work. It is clear that many, but not all, ringtones will fall within the scope of the Section 115 license. Therefore, it is appropriate for the Copyright Royalty Judges to determine royalties to be payable for the making and distribution of ringtones under the compulsory license.

Dated: October 16, 2006

Marybeth Peters,

Register of Copyrights.

[FR Doc. E6–18426 Filed 10–31–06; 8:45 am]

BILLING CODE 1410–30–S

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2006-6]

Notice of Intent to Audit

AGENCY: Copyright Office, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Office of the Library of Congress is announcing receipt of a notice of intent to audit 2005 statements of account concerning the eligible nonsubscription and subscription transmissions of sound recordings made by Live365, Inc. (''Live365'') under statutory licenses.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Associate General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024-0977. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: Section 106(6) of the Copyright Act, title 17 of the United States Code, gives the copyright owner of a sound recording the right to perform a sound recording publicly by means of a digital audio transmission, subject to certain limitations. Among these limitations are certain exemptions and a statutory license which allows for the public performance of sound recordings as part of ''eligible nonsubscription transmissions'' and digital transmissions made by ''new subscription services.'' 17 U.S.C. 114. The Copyright Act, title 17 of the United States Code, defines these terms as follows:

> An ''eligible nonsubscription transmission'' is a noninteractive digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as a part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the primary purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services.

See 17 U.S.C. 114(j)(6).

> A ''new subscription service'' is ''a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription or a preexisting satellite digital audio radio service.''

17 U.S.C. 114(j)(8).

Moreover, these services may make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act. Use of these licenses requires that services make payments of royalty fees to and file reports of sound recording performances with SoundExchange. SoundExchange is a collecting rights entity that was designated by the Librarian of Congress to collect statements of account and royalty fee payments from services and distribute the royalty fees to copyright owners and performers entitled to receive such royalties under sections 112(e) and 114(g) following a proceeding before a Copyright Arbitration Royalty Panel (''CARP'')—the entity responsible for setting rates and terms for use of the section 112 and section 114 licenses prior to the passage of the Copyright Royalty and Distribution Reform Act of 2004 (''CRDRA''), Pub. L. No. 108–419, 118 Stat. 2341 (2004). *See* 69 FR 5695 (February 6, 2004).

This Act, which the President signed into law on November 30, 2004, and which became effective on May 31, 2005, amends the Copyright Act, title 17 of the United States Code, by phasing out the CARP system and replacing it with three permanent Copyright Royalty Judges (''CRJs''). Consequently, the CRJs will carry out the functions heretofore performed by the CARPs, including the adjustment of rates and terms for certain statutory licenses such as the section 114 and 112 licenses. However, section 6(b)(3) of the Act states in pertinent part:

> [t]he rates and terms in effect under section 114(f)(2) or 112(e) . . . on December 30, 2004, for new subscription services [and] eligible nonsubscription services . . . shall remain in effect until the later of the first applicable effective date for successor terms and rates . . . or such later date as the parties may agree or the Copyright Royalty Judges may establish.

Successor rates and terms for these licenses have not yet been established. Accordingly, the terms of the section 114 and 112 licenses, as currently constituted, are still in effect.

One of the current terms, set forth in § 262.6 of title 37 of the Code of Federal Regulations, states that SoundExchange, as the Designated Agent, may conduct a single audit of a Licensee for the purpose of verifying their royalty payments. As a preliminary matter, the Designated Agent is required to submit a notice of its intent to audit a Licensee with the Copyright Office and serve this notice on the service to be audited. 37 CFR 262.6(c).

On December 23, 2005, SoundExchange filed with the Copyright Office a notice of intent to audit Live365 for the years 2002, 2003, and 2004. *See* 72 FR 624 (January 5, 2006). Subsequently, on October 5, 2006, SoundExchange filed a second notice of intent to audit Live365,[1] pursuant to § 262.6(c), notifying the Copyright Office of its intent to expand its current audit to cover 2005. Section 262.6(c) requires the Copyright Office to publish a notice in the **Federal Register** within thirty days of receipt of the filing announcing the Designated Agent's intent to conduct an audit.

In accordance with this regulation, the Office is publishing today's notice to fulfill this requirement with respect to

[1] A copy of the new Notice of Intent to Audit Live365, Inc. is posted on the Copyright Office Web site at http://www.copyright.gov/carp/live365-notice.2005.pdf.

the notice of intent to audit filed by SoundExchange on October 5, 2006.

Dated: October 26, 2006

Tanya M. Sandros,

Associate General Counsel.

[FR Doc. E6–18422 Filed 10–31–06; 8:45 am]

BILLING CODE 1410–33–S

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Theater (application review): November 14–17, 2006 in Room 730. This meeting, from 9 a.m. to 5 p.m. on November 14th, 15th, and 16th and from 9 a.m. to 3 p.m. on November 17th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 27, 2006.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E6–18453 Filed 10–31–06; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pubic Law 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 1, 2006. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Samuel D. Feola (Permit Application No. 2007–018), Raytheon Technical Services Company, LLC, Polar Services, 7400 S. Tucson Way, Centennial, CO 80112–3938.

Activity for Which Permit is Requested: Enter an Antarctic Specially Protected Area. The applicant proposes to enter the Avian Island Antarctic Specially Protected Area (ASPA #117) to gain access to a U.S. Antarctic Program (USAP) field research camp. Access to the camp is for: (a) Movement of personnel and supplies from ship to shore via Zodiac or other small boat; (b) opening and closing tasks for the research facilities on shore; and, (c) maintenance and servicing of on-shore facilities and equipment.

Location: Avian Island (ASPA #117).

Dates: October 23, 2006 to August 31, 2010.

2. *Applicant:* Samuel D. Feola (Permit Application No. 2007–019), Raytheon Technical Services Company, LLC, Polar Services, 7400 S. Tucson Way, Centennial, CO 80112–3938.

Activity for Which Permit is Requested: Enter an Antarctic Specially Protected Area. The applicant proposes to enter the Cape Shirreff Antarctic Specially Protected Area (ASPA #149) to gain access to a U.S. Antarctic Program (USAP) field research camp. Access to the camp is for: (a) Movement of personnel and supplies from ship to shore via Zodiac or other small boat; (b) opening and closing tasks for the research facilities on shore; and, (c) maintenance and servicing of on-shore facilities and equipment.

Location: Avian Island (ASPA #149).

Dates: October 23, 2006 to August 31, 2010.

3. *Applicant:* Anne Aghion (Permit Application No. 2007–020), P.O. Box 1528, New York, NY 10276.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Areas. The applicant plans to enter the historic huts at Cape Evans (ASPA #155), Cape Royds (ASPA #157), and Hut Point (ASPA #158) for the purpose of filming a documentary. This documentary is about the human experience of working and living in Antarctica. Access to the historic huts is to document the emotions displayed by visitors when experiencing the huts, the historical connection and to the original Antarctic explorers.

Location: Cape Evans (ASPA #155), Cape Royds (ASPA #157) and Hut Point (ASPA #158).

Dates: November 01, 2006 to December 31, 2006.

4. *Applicant:* Werner Herzog (Permit Application No. 2007–021), 8865 Wonderland Avenue, Los Angeles, CA 90046–1851.

Activity for Which Permit is Requested: Enter an Antarctic Specially Protected Area. The applicant plans to enter the historic hut at Cape Royds (ASPA #157) for the purpose of filming a documentary. This documentary is being filmed for the U.S. Discovery Channel.

Location: Cape Royds (ASPA #157).

Dates: November 14, 2006 to December 18, 2006.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E6–18387 Filed 10–31–06; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974; System of Records

ACTION: Notice of proposed revisions to an existing Privacy Act system of records NSF–66: NSF Photo Identification Card System.

SUMMARY: The National Science Foundation proposes to revise an existing systems of records titled ''NSF Photo Identification Card System (NSF–66),'' last published on August 21, 1998 (64 FR 44937).

The system of records is being revised to describe the additional types of information being collected by NSF as required by Homeland Security Presidential Directive 12 (Policy for a Common Identification Standard for Federal Employees and Contractors). This system collects information to produce photo identification cards for access to NSF facilities as well as for building security, for identifying the bearer of the card as a Federal employee or contractor, for changing access permissions on cards, and for tracking stolen or lost cards. The identity credential/ID card permits entry into NSF facilities.

44 U.S.C. 3101 and 42 U.S.C. 1870; Homeland Security Presidential Directive 12 (HSPD–12) dated August 2004, mandates a common identity standard for Federal employees and contractors on duty for more than 6 months.

DATES: Submit comments on or before December 1, 2006.

ADDRESSES: Address all comments concerning this notice to Leslie Jensen, National Science Foundation, Office of the General Counsel, Room 1265, 4201 Wilson Boulevard, Arlington, Virginia 22230 or by sending electronic mail (e-mail) to *ljensen@nsf.gov.*

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. NSF's Office of the General Counsel (OGC) has reviewed its Systems of Records notice and has determined that its records system, NSF–66 must be revised to incorporate the changes described herein.

Submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Identify all comments sent in electronic E-mail with Subject Line: Comments to proposed changes.

FOR FURTHER INFORMATION CONTACT: Leslie Jensen (703) 292–5065.

Words of Issuance

For the reasons stated in the preamble, the National Science Foundation is revising ''NSF Photo Identification Card System (NSF–66),'' to describe the additional types of information being collected by NSF as required by Homeland Security Presidential Directive 12 (Policy for a Common Identification Standard for Federal Employees and Contractors).

National Science Foundation

SYSTEM NAME:

NSF Photo Identification Card System (NSF–66).

SYSTEM LOCATION:

National Science Foundation, Division of Administrative Services, 4201 Wilson Blvd., Arlington, VA 22230; and XTec, Incorporated, 5775 Blue Lagoon Dr., Suite 280, Miami, Florida 33126–2034.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSF employees and NSF contractors employed for more than 6 months who require routine physical access to NSF controlled space at Stafford Place I and II must have a photo ID credential. Child Development Center staff and non-NSF parents of children in the Center are also in the database.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, digital photograph, Social Security Number, date of birth, LAN ID, card number, fingerprints, affiliation (*i.e.*, employee, contractor or associate), citizenship, expiration date, PIN number, card issue date, FASC–N, credential status, building name, sponsor name, sponsor email, room number, COTR name, background investigation type, initiation date, adjudication date, fingerprint adjudication date, contract end date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 and 42 U.S.C. 1870. Other authorities include: Homeland Security Presidential Directive 12 (HSPD–12) dated August 2004, which mandates a common identity standard for Federal employees and contractors onboard for more than six months.

Federal Information Processing Standard (FIPS) 201–1 dated March 2006, describing implementation requirements for HSPD–12 Presidential Order dated June 28, 1995, subject: ''Upgrading Security at Federal Facilities'' which directs that all federal agencies shall meet the minimum security standards recommended by the Department of Justice in their report entitled, Vulnerability Assessment of Federal Facilities. The report establishes ''agency photo ID for all personnel displayed at all times'' as a minimum standard for Level IV facilities. NSF has been designated as a Level IV facility. 5 U.S.C 301.

PURPOSE(S):

The information is used for producing photo identification cards for access to the building as well as for building security, for identifying the bearer of the card as a Federal employee or contractor, for changing access permissions on cards, and for tracking stolen or lost cards. The identity credential/ID card permits entry into NSF facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

1. Individuals, as necessary, for tracking stolen or lost identification cards.

2. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

3. Contractors, experts, advisors, grantees, volunteers or other individuals who perform a service to or work on or under a contract or other arrangement with or for the Federal government, as necessary to carry out their duties. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended 5 U.S.C. Sec. 552a.

4. Appropriate Federal, State, or local agencies responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, to disclose pertinent information when the NSF becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

5. To the National Archives and Records Administration or to the General Services Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

6. To notify another Federal agency when, or verify whether, a PIV card is no longer valid.

7. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored electronically.

RETRIEVABILITY:

Records may be retrieved by name, last name, user ID, e-mail address, Social Security Number, card number and card access point.

SAFEGUARDS:

Information access is controlled by password and restricted to a limited number of authorized users who require access because of their NSF position duties. Input devices and servers are stored in locked rooms.

RETENTION AND DISPOSAL:

Information is retained on all current employees and contractors throughout their employment/contract service. Separating employees and contractors return their identification cards when they are no longer employed by the agency. Their records will be deleted or destroyed after three months. Records on building access are retained for 90 days.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director, Division of Administrative Services, 4201 Wilson Boulevard, Arlington, VA 22230.

NOTIFICATION PROCEDURE:

The Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613.2.

RECORD ACCESS PROCEDURES:

See ''Notification'' above.

CONTESTING RECORD PROCEDURES:

The Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR 613.4.

RECORD SOURCE CATEGORIES:

Information in the System is obtained from a variety of sources to include the employee, contractor, Administrative Officer or COTR.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

Lawrence Rudolph,

General Counsel.

[FR Doc. E6–18213 Filed 10–31–06; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF MANAGEMENT AND BUDGET

Performance of Commercial Activities

AGENCY: Office of Management and Budget (OMB), Executive Office of the President.

ACTION: Update to civilian position full fringe benefit cost factor, Federal pay raise assumptions, inflation factors, and tax rates used in OMB Circular No. A–76, ''Performance of Commercial Activities.''

SUMMARY: OMB is updating the civilian position full fringe benefit cost factor used to compute the estimated cost of government performance in public-private competitions conducted pursuant to Office of Management and Budget (OMB) Circular A–76. The civilian position full fringe benefit cost factor is comprised of four separate elements: (1) Insurance and health benefits, (2) standard civilian retirement benefits, (3) Medicare benefits, and (4) miscellaneous fringe benefits. OMB is updating the insurance and health benefits and standard civilian retirement benefits cost elements based on actuarial analyses provided by the Office of Personnel Management.

OMB is also updating the annual Federal pay raise assumptions and inflation cost factors used for computing the government's personnel and non-pay costs in Circular A–76 public-private competitions. These annual pay raise assumptions and inflation factors are based on the President's Budget for Fiscal Year 2007. The tax rate tables used in connection with Circular A–76 competitions have also been revised. 2

DATES: *Effective date:* These changes are effective immediately and shall apply to all public-private competitions performed in accordance with OMB Circular A–76, as revised in May 2003, where the performance decision has not been certified by the government before this date.

FOR FURTHER INFORMATION CONTACT: Mathew Blum, Office of Federal Procurement Policy (OFPP), NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Tel. No. 202–395–4953.

Availability: Copies of OMB Circular A–76, as revised by this notice, may be obtained at *http://www.whitehouse.gov/omb/circulars/index.html#numerical.* Paper copies of the Circular may be obtained by calling OFPP (tel: (202) 395–7579).

Rob Portman,

Director.

Attachment

Memorandum for the Heads of Executive Departments and Agencies

FROM: Rob Portman, Director

SUBJECT: Update to Civilian Position Full Fringe Benefit Cost Factor, Federal Pay Raise Assumptions, Inflation Factors, and Tax Rates used in OMB Circular No. A–76, ''Performance of Commercial Activities.''

Office of Management and Budget (OMB) Circular A–76 requires agencies to use standard cost factors to estimate certain costs of government performance. These cost factors ensure that specific government costs are calculated in a standard and consistent manner to reasonably reflect the cost of performing commercial activities with government personnel. This memorandum updates the civilian position full fringe benefit cost factor, the annual Federal pay raise assumptions, inflation cost factors, and tax rate information. The update to the civilian position full fringe benefit cost factor is based on actuarial analyses provided by the Office of Personnel Management (OPM). The revised pay raise assumptions and inflation cost factors are based on the President's Budget for Fiscal Year 2007. The tax rates are based on information provided by the Internal Revenue Service.

Civilian Position Full Fringe Benefit Cost Factor

The Circular requires agencies to add the civilian position full fringe benefit cost factor to the basic pay for each full-time and part-time permanent civilian position in the agency cost estimate. This factor is comprised of four separate elements: (1) Insurance and health benefits, (2) standard civilian retirement benefits, (3) Medicare benefits, and (4) miscellaneous fringe benefits. OMB has determined, based on information provided by OPM, that the civilian position full fringe benefit cost factor needs to be adjusted upward, from 32.85 percent to 36.45 percent. This adjustment is necessary to account for increases in insurance and health benefits and civilian retirement benefits. The Medicare benefits and miscellaneous fringe benefits elements remain unchanged at this time. The revised cost elements of the civilian position full fringe benefit cost factor are summarized in the table below.

TABLE.—ELEMENTS OF THE CIVILIAN POSITION FULL FRINGE BENEFIT COST FACTOR

Element	Previous cost factor	Updated cost factor (percent)
Insurance and Health Benefit [a]	5.7	6.7
Standard Civilian Retirement Benefit [b]	24.0	26.6
Medicare Benefit	1.45	1.45
Miscellaneous Fringe Benefit	1.7	1.7
Total Civilian Position Full Fringe Benefits	32.85	36.45

[a] This factor is based on actuarial estimates for the costs of the government paid portion of health insurance under the Federal Employees Health Benefits (FEHB) Program and the Federal Employees Government Life Insurance (FEGLI) Program. This figure is multiplied by the average participation rates in these programs and divided by the average civilian employee's salary (as identified in the President's Budget) to derive a factor as a percentage of basic pay. This factor is based only on costs borne by the government (not enrollee premiums) and only on behalf of active Federal employees (not retirees). Increases in government costs for retirees are reflected in the standard civilian retirement benefit cost factor.

[b] The standard civilian retirement benefit cost factor includes the government's accruing cost for pension benefits (Social Security, Thrift Savings Plan, Federal Employees or Civil Service Retirement Systems) and the accruing cost for post-retirement health benefits.

The master tables for COMPARE (the costing software that incorporates the costing procedures of the circular) have been updated to reflect these changes. The updates are available at *http://www.compareA76.com.* Agencies shall use the updated COMPARE master tables to calculate and document public and private sector costs in competitions where a performance decision has not been certified by the government by the effective date identified in the **Federal Register** notice accompanying the publication of this memorandum.

OMB intends to conduct periodic reviews of the civilian position full fringe benefit cost factor. OMB is exploring options with OPM for updating this factor on a more regularized schedule.

Accordingly, the following changes are made to OMB Circular A–76.

1. Subparagraphs B.2.f.(1)(a) and (b) of Attachment C are revised to read as follows:

(1) Full-time and Part-time Permanent Civilian Positions. Full-time and part-time permanent civilian positions receive the civilian position full fringe benefit cost factor of 36.45 percent of the position's basic pay. The 36.45 percent civilian position full fringe benefit cost factor is the sum of the standard civilian position retirement benefit cost factor (26.6 percent), insurance and health benefit cost factor (6.7 percent), Medicare benefit cost factor (1.45 percent), and miscellaneous fringe benefit cost factor (1.7 percent).

(a) Retirement Benefit Cost Factors. The standard civilian retirement benefit cost factor represents the cost of the weighted Civil Service Retirement System/Federal Employees Retirement System to the government, based upon the full dynamic normal cost of the retirement systems, the normal cost of accruing retiree health benefits based on average participation rates, social security, and Thrift Savings Plan contributions. The standard civilian retirement benefit cost factor for civilian positions is 26.6 percent of the position's basic pay (20.4 percent retirement pension plus 6.2 percent for retiree health). The retirement cost factors for special class civilian positions are: 37.6 percent of basic pay for air traffic controllers (31.4 percent retirement pension plus 6.2 percent for retiree health) and 39.8 percent of basic pay for law enforcement and fire protection (33.6 percent retirement pension plus 6.2 percent for retiree health).

(b) Insurance and Health Benefit Cost Factor. The insurance and health benefit cost factor for civilian positions, based on actual cost, is 6.7 percent of the position's basic pay (0.2 percent for life insurance benefits and 6.5 percent for health benefits). The following standard cost factors and footnote no. 1 in Figure C.1 of Attachment C, ''Table of Standard A–76 Costing Factors,'' are revised as set forth below:

TABLE OF STANDARD A–76 COSTING FACTORS

Title	Originating source	Category of cost	Factor [1] (percent)
Civilian Position Full Fringe Benefit Cost Factor	OMB Transmittal Memoranda	Pay	36.45
Insurance and Health Benefit Cost Factor	OMB Transmittal Memoranda	Pay	6.7
Special Class Retirement Cost Factor (Law Enforcement & Fire Protection).	OMB Transmittal Memoranda	Pay	39.8
Special Class Retirement Cost Factor (Air Traffic Control)	OMB Transmittal Memoranda	Pay	37.6
Standard Civilian Retirement Benefit Cost Factor	OMB Transmittal Memoranda	Pay	26.6

[1] The factors listed in this column are factors in effect on December 2005. Agencies should refer to the COMPARE Web site at *http://www.compareA76.com.* for the updated COMPARE master tables and other updated information.

Federal Pay Raise Assumptions

The following Federal pay raise assumptions (including geographic pay differentials) that are in effect for 2006 shall be used for the development of government personnel costs.

The pay raise factors provided for 2007 and beyond shall be applied to all government personnel with no assumption being made as to how they will be distributed between possible locality and base pay increases.

FEDERAL PAY RAISE ASSUMPTIONS*

Efective date	Civilian (percent)	Military (percent)
January 2006	3.1	3.1
January 2007	2.2	2.7

*Federal pay raise assumptions have not been established for pay raises subsequent to January 2007. For January 2008 and beyond, the projected percentage change in the Employment Cost Index (ECI), 4.2 percent, should be used to estimate government personnel costs for public-private competitions. In future updates to cost factors in the Circular, as pay policy for years subsequent to 2007 is established, these pay raise assumptions will be revised.

Inflation Factors

The following non-pay inflation cost factors are provided for purposes of public-private competitions conducted pursuant to Circular A–76 only. They reflect the generic non-pay inflation assumptions used to develop the fiscal year 2007 budget baseline estimates required by law. The law requires that a specific inflation factor (GDP FY/FY chained price index) be used for this purpose. These inflation factors should not be viewed as estimates of expected inflation rates for major long-term procurement items or as an estimate of inflation for any particular agency's non-pay purchases mix.

NON-PAY CATEGORIES

[Supplies, equipment, etc.]

	(percent)
FY 2007	2.2
FY 2008	2.2
FY 2009	2.1
FY 2010	2.1
FY 2011	*2.1

*Any subsequent years included in the period of performance shall use a 2.2% figure, until otherwise revised by OMB.

Tax Rate Tables

The Circular requires that agencies subtract the Federal income tax generated for the government from the total cost of private sector performance. The tax rate tables used in connection with public-private competitions have been revised. COMPARE will apply the updated tax rate information to establish the adjusted cost of private sector performance.

[FR Doc. E6–18415 Filed 10–31–06; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c3–1; SEC File No. 270–197; OMB Control No. 3235–0200.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 15c3–1 (17 C.F.R. 240.15c3–1) under the Securities Exchange Act of 1934 requires brokers and dealers to have at all times sufficient liquid assets to meet their current liabilities, particularly the claims of customers. The rule facilitates monitoring the financial condition of brokers and dealers by the Commission and the various self-regulatory organizations. It is estimated that approximately 6,100 broker-dealer respondents registered with the Commission incur an aggregate burden of 88,181 hours per year to comply with this rule. Finally, the estimated cost for the annual hour burden for Rule 15c3–1 is approximately $22.7 million.

Rule 15c3–1 does not contain record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self-regulatory organization of which the broker-dealer is a member. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC, 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: October 23, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18350 Filed 10–31–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17i–8; SEC File No. 270–533; OMB Control No. 3235–0591.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [1] the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below. The Code of Federal Regulation citation to this collection of information is the following rule: 17 CFR 240.17i–8.

Section 231 of the Gramm-Leach-Bliley Act of 1999.[2] (the ''GLBA'') amended Section 17 of the Securities Exchange Act of 1934 to create a regulatory framework under which a holding company of a broker-dealer (''investment bank holding company'' or ''IBHC'') may voluntarily be supervised by the Commission as a supervised investment bank holding company (or ''SIBHC'').[3] In 2004, the Commission promulgated rules, including Rule 17i–8, to create a framework for the Commission to supervise SIBHCs.[4] This framework includes qualification criteria for SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor for SIBHCs and their affiliated broker-dealers.[5]

Pursuant to Section 17(i)(3)(A) of the Exchange Act, an SIBHC must make and keep records, furnish copies thereof, and make such reports as the

[1] 44 U.S.C. 3501 *et seq.*

[2] Pub. L. 106–102, 113 Stat. 1338 (1999).

[3] See 15 U.S.C. 78q(i).

[4] See Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[5] See H.R. Conf. Rep. No. 106–434, 165 (1999). See also Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

Commission may require by rule.[6] Rule 17i–8 requires that an SIBHC to notify the Commission upon the occurrence of certain events that would indicate a decline in the financial and operational well-being of the firm.

The collections of information included in Rule 17i–8 are necessary to allow the Commission to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of section 17 of the Act and allow the Commission to supervise the activities of these SIBHCs. Rule 17i–8 also enhances the Commission's supervision of the SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers. Without these notices, the Commission would be unable to adequately supervise an SIBHC, nor would it be able to determine whether continued supervision of an IBHC as an SIBHC were necessary and appropriate in furtherance of the purposes of section 17 of the Act.

We estimate that three IBHCs will file Notices of Intention with the Commission to be supervised by the Commission as SIBHCs. An SIBHC will require about one hour to create a notice required to be submitted to the Commission pursuant to Rule 17i–8. However, as these notices only need be filed in certain situations indicative of financial or operational difficulty, only one SIBHC may be required to file notice pursuant to the Rule every other year. Thus, we estimate that the annual burden of Rule 17i–8 for all SIBHCs would be about 30 minutes.

The reports and notices required to be filed pursuant to Rule 17i–8 must be preserved for a period of not less than three years.[7] The collection of information is mandatory and the information required to be provided to the Commission pursuant to this Rule is deemed confidential pursuant to section 17(j) of the Securities Exchange Act of 1934[8] and Section 552(b)(3)(B) of the Freedom of Information Act,[9] notwithstanding any other provision of law. In addition, paragraph 17i–8(c) specifies that the notices and reports filed in accordance with Rule 17i–8 will be accorded confidential treatment to the extent permitted by law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) The Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: October 23, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18355 Filed 10–31–06; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78q(i)(3)(A).

[7] 17 CFR 240.17i–5(b)(4).

[8] 15 U.S.C. 78q(j).

[9] 5 U.S.C. 552(b)(3)(B).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17Ad–15; SEC File No. 270–360; OMB Control No. 3235–0409.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17Ad–15—Signature Guarantees

Rule 17Ad–15 (17 CFR 240.17Ad–15) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act'') requires approximately 760 transfer agents to establish written standards for accepting and rejecting guarantees of securities transfers from eligible guarantor institutions. Transfer agents are also required to establish procedures to ensure that those standards are used by the transfer agent to determine whether to accept or reject guarantees from eligible guarantor institutions. Transfer agents must maintain, for a period of three years following the date of a rejection of transfer, a record of all transfers rejected, along with the reason for the rejection, identification of the guarantor, and whether the guarantor failed to meet the transfer agent's guarantee standard. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

There are approximately 760 registered transfer agents. The staff estimates that every transfer agent will spend about 40 hours annually to comply with Rule 17Ad–15. The total annual burden for all transfer agents is 30,400 hours. The average cost per hour is approximately $50. Therefore, the total cost of compliance for all transfer agents is $1,520,000.

The retention period for the recordkeeping requirement under Rule 17Ad–15 is three years following the date of a rejection of transfer. The recordkeeping requirement under the rule is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or by sending an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 23, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18361 Filed 10–31–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27540; File No. 812–13300]

AIG SunAmerica Life Assurance Company and Variable Annuity Account Seven, Notice of Application

October 26, 2006.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application for an order (the ''Order'') of approval pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'').

Applicants: AIG SunAmerica Life Assurance Company (''AIG SunAmerica''), and Variable Annuity Account Seven (collectively, the ''Applicants'').

Summary of the Application: The Applicants request an order permitting the substitution of the Equity Income Fund (the ''Replaced Portfolio'') with the Davis Venture Value Portfolio (the ''Replacement Portfolio'') both of which are Portfolios of the SunAmerica Series Trust (''SAST'') (the ''Substitution'').

Filing Date: The application was filed on June 2, 2006, and an amended and restated application was filed on October 19, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on November 16, 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 may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: c/o Jorden Burt LLP, 1025 Thomas Jefferson Street, NW., East Lobby, Suite 400, Washington, DC 20007–5208, Attention: Joan E. Boros, Esq.

FOR FURTHER INFORMATION CONTACT: Jeffrey Foor, Esq., Senior Counsel, or Zandra Y. Bailes, Esq., Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 100 F Street, NE., Room 1580, Washington, DC 20549 (202–551–8090).

Applicants' Representations

1. AIG SunAmerica is a stock life insurance company originally organized under the laws of the State of California in April 1965. AIG SunAmerica, redomesticated under the laws of the State of Arizona on January 1, 1996. AIG SunAmerica is a wholly-owned subsidiary of SunAmerica Life Insurance Company, an Arizona corporation, which is, in turn, wholly-owned by AIG Retirement Services, a Delaware corporation, which is, in turn, wholly-owned by American International Group, Inc. AIG SunAmerica is authorized to write annuities and life insurance in the District of Columbia and all states except New York.

2. Separate Account Seven (the ''Separate Account'') was established by AIG SunAmerica on August 28, 1998, in accordance with the laws of the State of Arizona. The Separate Account is registered as a unit investment trust under the 1940 Act. The Separate Account is used to fund the Contract and other annuity contracts issued by AIG SunAmerica and is currently divided into a total of 42 subaccounts (the ''Sub-Accounts''). Each of the available Sub-Accounts invests in shares of the available portfolios of the SAST. One of the Sub-Accounts currently invests in the Replaced Portfolio.

3. The Polaris Plus Contract (the ''Contract''), issued by AIG SunAmerica through the Separate Account, is a flexible premium group and individual deferred annuity contract that currently utilizes the Replaced Portfolio as one of many underlying investments. AIG SunAmerica discontinued offering the Contract as of the close of business on February 28, 2002. Existing Contractowners (''Owners'') may continue to allocate purchase payments to and transfer among the available Sub-Accounts, including the Sub-Account that currently invests in the Replaced Portfolio (the ''Equity Income Sub-Account''). The allocation/transfer rights will continue until one week prior to the date of the proposed Substitution requested by the application. The Contract is the only contract investing in the Equity Income Sub-Account, and no other sub-account of any other separate account invests in the Replaced Portfolio. During the accumulation period, there are no limits on the number of transfers Owners can make among the available Sub-Accounts under the Contract and/or the Contract fixed accounts. Transfers resulting from participation in the Dollar Cost Averaging or Asset Rebalancing Programs do not count against the fifteen (15) free transfers per contract year. All transfers in excess of fifteen (15) transfer requests per contact year must be submitted by mail until the next contract anniversary and may be subject to further restrictions.

4. SAST was organized as a Massachusetts business trust on September 11, 1992. SAST was established and serves to provide a funding medium for the Sub-Accounts which constitute its sole shareholders. SAST is registered as an open-end management investment company under the 1940 Act (File No. 811–07238), and its offering of its shares is registered under the Securities Act of 1933 (File No. 033–52742).

5. The Replaced Portfolio, which offers a single class of shares, constitutes a separate series available through SAST. The inception date of the Replaced Portfolio was December 14, 1998, and it has been offered in the Separate Account since the inception date of the Contract on March 19, 1999.

6. The Separate Account buys and sells shares of the Replaced Portfolio at net asset value that is net of the advisory fee of 0.650% based on average daily net assets, paid to the investment adviser, AIG SunAmerica Asset Management (''AIG SAAMCo''), to manage the business affairs of the Replaced Portfolio and to provide administrative services pursuant to a written investment advisory agreement (the ''Advisory Agreement''). The Replaced Portfolio's other expenses were 1.25% for the fiscal year ended January 31, 2006. The Replaced Portfolio's total annual operating expenses for this period were 1.90%, subject to voluntary fee waivers and expense reimbursement by AIG SAAMCo that provided for total annual net operating expenses of 1.35%. FAF Advisors, Inc., formerly U.S. Bancorp Asset Management, Inc. (''FAF'') serves as subadviser to the Replaced Portfolio. AIG SAAMCo is affiliated with AIG SunAmerica, but FAF is not affiliated with AIG SunAmerica.

7. The Replaced Portfolio is a portfolio in which the Separate Account invests under the Contract as one of the 42 Sub-Account investment alternatives currently available. If the requested Order is granted, the Substitution will result in the reduction of the available investment alternatives by one. Shares of the Replacement Portfolio will be offered at net asset value that is net of the current Replacement Portfolio's advisory fee of 0.71% which is paid to AIG SAAMCo to manage the business affairs of the Replacement Portfolio and to provide administrative services

pursuant to the Advisory Agreement. The Replacement Portfolio's other expenses are 0.05%, and the Replacement Portfolio's total annual operating expenses are 0.76% for Class 1 shares. The Replacement Portfolio does not pay Rule 12b–1 fees for distribution activities. Davis Selected Advisers, L.P. d/b/a Davis Advisers (''Davis'') serves as the sub-adviser to the Replacement Portfolio. Davis is not affiliated with AIG SunAmerica.

8. The application covers a single portfolio in which the Separate Account invests under the Contract. Applicants propose the Substitution due to the Replaced Portfolio's declining assets and relatively high total expenses. Applicants note that since the Replaced Portfolio's inception on December 14, 1998, the Replaced Portfolio has accumulated only $5.8 million in assets as of January 31, 2006. Applicants note further that the Equity Income Sub-Account is the only sub-account that invests in the Replaced Portfolio, that the Equity Income Sub-Account is offered as an investment option in only one variable contract (the Contract), and that the Contract is no longer offered to new contract owners. Applicants also note that the Replaced Portfolio's total net annual expenses of 1.35% exceed the median for its peer group by 0.43%. The Replaced Portfolio's sub-adviser announced its intention to terminate the voluntary expense reimbursement agreement within the current fiscal period. As a result, the Replaced Portfolio's total net annual expenses can be expected to increase significantly, further limiting the Replaced Portfolio's ability to achieve competitive performance. AIG SunAmerica undertook to review the various alternative investment portfolios to determine which would be a suitable replacement for the Replaced Portfolio. AIG SunAmerica determined that the Replacement Portfolio is an appropriate and suitable replacement for the Replaced Portfolio based on the following conclusions: (1) The Replacement Portfolio has investment objectives, policies, and restrictions substantially similar to those of the Replaced Portfolio; (2) the Replaced Portfolio and the Replacement Portfolio take on comparable levels of risk; (3) the Replacement Portfolio has significantly lower total annual expense ratios than the Replaced Portfolio prior to and after voluntary fee waivers and reimbursements for the Replaced Portfolio; (4) the Replacement Portfolio has a significantly greater number of outstanding shares than the Replaced Portfolio; (5) the Replacement Portfolio has a significantly larger asset base than the Replaced Portfolio. The Replacement Portfolio's total assets at January 31, 2006, were approximately $2.4 billion, while the Replaced Portfolio's assets at January 31, 2006 were approximately $5.8 million. The larger asset base of the Replacement Portfolio provides the potential for a future reduction in the total annual expenses of all its share classes, in addition to providing potential enhanced performance. Moreover, the larger asset base of the Replacement Portfolio provides greater protection against adverse effects on expenses and performance occasioned by large redemptions; and (6) the Replacement Portfolio has a performance record significantly superior to that of the Replaced Portfolio, and the potential for enhanced future performance.

9. The Applicants note that the Replaced Portfolio will process redemption requests and the Replacement Portfolio will process purchase orders at prices based on the current net asset values next computed after receipt of the requests and orders in a manner consistent with Rule 22c–1 under the 1940 Act. The Applicants will effect the proposed Substitution by redeeming shares of the Replaced Portfolio in cash at net asset value and then immediately contributing those assets to the Replacement Portfolio to purchase their Class 1 shares. At all times, before and after the Substitution, monies attributable to Owners that have allocated assets to the Equity Income Sub-Account will remain fully invested, and no change will result in the amount of any Owner's Contract value, death benefit or investment in the Equity Income Sub-Account so that the full net asset value of the redeemed shares will be reflected in the Owners' accumulation values or annuity unit values following the Substitution. In addition, AIG SunAmerica undertakes to assume all transaction costs and expenses relating to the Substitution so that the full net asset value of redeemed shares of the Replaced Portfolio held by the Equity Income Sub-Account will be reflected in the Owners' accumulation values or annuity unit values following the Substitution.

10. Owners will not incur any fees or charges as a result of the Substitution, nor will the rights of Owners or obligations of AIG SunAmerica under the Contract be altered in any way. The proposed Substitution will not have any adverse tax consequences to Owners. The proposed Substitution will not cause Contract fees and charges currently being paid by existing Owners to be greater after the proposed Substitution than before the proposed Substitution. The proposed Substitution will not be treated as a transfer for the purpose of transfer limits or assessing transfer charges.

11. AIG SunAmerica will schedule the Substitution to occur after issuance of the requested Order and any required state insurance department approvals. Further, although the Substitution will result in the replacement of the Replaced Portfolio as the investment of the Equity Income Sub-Account under the Contract, AIG SunAmerica will not exercise any right it may have under the Contract to collect transfer fees or impose any additional restrictions on Owners who may wish to make transfers from the Equity Income Sub-Account among the other available Sub-Accounts for a period of at least thirty (30) days following mailing of the Notice, as defined below, of the proposed Substitution (the ''Free Transfer Period''). During the Free Transfer Period, Owners may transfer all assets, as substituted, from the Equity Income Sub-Account to other available Sub-Accounts without charge or limitation and without those transfers being counted against any limit on free transfers under the Contract, or any requirements for the method of submitting transfer requests.

12. Upon filing the application, AIG SunAmerica supplemented the prospectus for the Contract to reflect the proposed Substitution. Within five days after the Substitution, AIG SunAmerica will send to its Owners written notice of the Substitution (''Notice'') identifying the shares of the Replaced Portfolio that have been eliminated and the shares of the Replacement Portfolio that have been substituted. AIG SunAmerica will include in the mailing the applicable prospectus supplement for the Contract describing the Substitution. AIG SunAmerica will also mail a copy of the prospectus for the Replacement Portfolio to Owners who have not already received a copy of that prospectus in the ordinary course. The Notice will further advise Owners that during the Free Transfer Period, Owners may transfer all assets, as substituted, from the Equity Income Sub-Account to the other available Sub-Accounts without limit or charge and without those transfers being counted against any limit on free transfers under their Contracts, or any requirements for the method of submitting transfer requests.

Applicant's Legal Analysis

1. Section 26(c) of the 1940 Act provides that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the

security of a single issuer to substitute another security for such security unless the [SEC] shall have approved such substitution.''

2. Applicants represent that the proposed Substitution involves a substitution of securities within the meaning of section 26(c) of the 1940 Act. The Applicants, therefore, request an order from the SEC pursuant to section 26(c) approving the proposed Substitution.

3. Applicants submit that the Substitution does not present the type of costly forced redemption or other harms that section 26(c) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons: (i) The Substitution will continue to fulfill Owners' objectives and risk expectations, because the Replacement Portfolio has substantially similar objectives, policies, and restrictions to the objectives, policies, and restrictions of the Replaced Portfolio and comparable risk characteristics; (ii) after mailing of the Notice informing an Owner of the Substitution, an Owner may request that his or her assets in the Equity Income Sub-Account be reallocated among the other available Sub-Accounts at any time during the Free Transfer Period without any limit or charge and without those transfers being counted against any limit on free transfers under the Contract, or any requirements for the method of submitting transfer requests. This right also will be granted to Owners, if any, who are receiving variable payments based on the Replaced Portfolio. The Free Transfer Period provides sufficient time for Owners to consider and effect their reinvestment and withdrawal options; (iii) the Substitution will be at net asset value of the respective shares determined on the date of the Substitution in accordance with section 22 of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge; (iv) AIG SunAmerica has undertaken to assume all expenses and transaction costs, including, but not limited to, legal and accounting fees and any brokerage commissions, in connection with the Substitution; (v) the Substitution will in no way alter the contractual obligations of AIG SunAmerica or the rights and privileges of Owners under the Contract; (vi) the Substitution will in no way alter the tax treatment of Owners in connection with their Contracts, and no tax liability will arise for Owners as a result of the Substitution; (vii) the Substitution is expected to confer certain future economic benefits on Owners by virtue of the greater asset base or lower portfolio expenses; (viii) at the time of the Substitution, the total annual expenses of the Replacement Portfolio's shares are expected to be lower than the Replaced Portfolio; (ix) the Substitution which will be effected in accordance with section 22 of the 1940 Act and Rule 22c–1 thereunder by redeeming shares of the Replaced Portfolio in cash to be conveyed immediately to the Replacement Portfolio to purchase its respective shares; and (x) AIG SunAmerica represents that at no time after date of the Substitution (the ''Substitution Date'') will AIG SunAmerica increase Contract charges or total Separate Account charges (net of any waiver or reimbursements) of the Sub-Account that currently invests in the Replacement Portfolio (the ''Davis Sub-Account''). If the total operating expenses for the Replacement Portfolio (taking into account any expense waiver or reimbursement) for any fiscal quarter following the Substitution Date, exceed on an annualized basis the net expense ratio for the Replaced Portfolio for the fiscal year ended January 31, 2006, AIG SunAmerica will reduce (through reimbursement) the Separate Account expenses paid during that quarter of the Davis Sub-Account to the extent necessary to offset the amount by which the Replacement Portfolio's net expense ratio for such period exceeds, on an annualized basis, 1.35%.

4. AIG SunAmerica has determined that the Replacement Portfolio is an appropriate replacement for the Replaced Portfolio. The Replacement Portfolio has investment objectives, policies, and restrictions substantially similar to the Replaced Portfolio with comparable levels of risk. The Replacement Portfolio has a significantly lower total expense ratio than the Replacement Portfolio. Also, the Replacement Portfolio has a significantly larger asset base than the Replacement Portfolio. In addition, the average annual total returns of the Replacement Portfolio are clearly superior to those of the Replacement Portfolio, other than with respect to the year to date performance.

Conclusion

For the reasons set forth in the application, the Applicants state that the proposed Substitution and the related transactions meet the standards of section 26(c) of the 1940 Act and that the requested Order should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18349 Filed 10–31–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54654; File No. SR–NASD–2006–060]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Require Members To File Regulatory Notices With NASD Electronically

October 26, 2006.

On May 16, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed a proposed rule change with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 under the Act.[2] The proposed rule change adopts NASD Rule 3170 to provide the NASD with the authority to require member firms to file or submit electronically with the NASD any regulatory notice or other document that member firms are required to file with (or otherwise submit to) the NASD. The NASD may specify the electronic format to be used. The proposed rule change does not specify the particular regulatory notices or documents that the NASD will require members to file electronically. Instead, the NASD's proposed rule change would give the NASD the authority to require members to file or submit electronically with the NASD any specified regulatory notice or document.

The NASD plans to require members to file certain specified notices with the NASD via an electronic, Internet-based receiving and processing system (''System''), using templates developed by the NASD for each notice. The System will be available to members on the NASD's Internet Web site. Initially, the NASD plans to require members to file notices that must be filed with the NASD under the following Exchange Act Rules electronically: [3]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The NASD has requested relief on behalf of its members from the Commission with respect to these Exchange Act rules. *See* Letter from Patrice Gliniecki, Senior Vice President and General Counsel, NASD, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation,

• Rule 15c3–1(e)—Withdrawals of equity capital.
• Rule 15c3–3(i)—Special Reserve Bank Account.
• Rule 17a–4(f)(2)(i); Rule 17a–4(f)(3)(vii)—Electronic storage media.
• Rule 17a–5(f)(4)—Replacement of accountant.
• Rule 17a–11(b)—Net capital deficiency.
• Rule 17a–11(c)(1)—Aggregate indebtedness is in excess of 1200 percent of net capital.
• Rule 17a–11(c)(2)—Net capital is less than 5 percent of aggregate debit items.
• Rule 17a–11(c)(3)—Net capital is less than 120 percent of required minimum dollar amount.
• Rule 17a–11(d)—Failure to make and keep current books and records.
• Rule 17a–11(e)—Material inadequacy in accounting systems, internal controls, or practices and procedures.

The proposed rule change was published for comment in the **Federal Register** on August 22, 2006.[4] A correction was published on September 22, 2006.[5] This order approves the proposed rule change.

The Commission received two comment letters in response to the proposed rule change.[6] Mr. Akridge supported the proposal. Wulff, Hansen supported the general purpose of the rule change, but stated that converting documents that exist only in paper form to electronic format could be burdensome for firms that do not have the necessary technology. On October 5, 2006, the NASD filed a response to the comment letters.[7] In its response, the NASD stated that it intends to accommodate firms that do not have the ability to convert documents to electronic format. Further, the NASD stated that when technologies change, the NASD will consider the economic effect of the new technologies and consult with its members regarding requiring filings that use the new technologies.

The Commission finds that the NASD's proposal to adopt NASD Rule 3170 is consistent with the requirements of the Act and the rules and regulations under the Act applicable to a national securities exchange.[8] In particular, the Commission believes that the proposal is consistent with section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest in that the proposed rule change will establish a cost-saving and efficient method of filing these notices that will enhance the speed and efficiency of processing the notices and reduce administrative costs.

The NASD will issue a *Notice to Members* and other member communications, as appropriate, to advise its members which regulatory notices or documents members will be required to file or submit electronically to the NASD and the date on which electronic filing or submission of these notices or documents will be required. These communications will also advise members that as of the specified date, electronic filing or submission of the specified regulatory notices or documents will be mandatory, and that the NASD will no longer accept facsimile or other non-electronic transmissions of these notices or documents.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2006–060) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18348 Filed 10–31–06; 8:45 am]

BILLING CODE 8011–01–P

Commission, dated May 16, 2006. The staff of the Division of Market Regulation is issuing a no-action letter providing such relief. *See* letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Patrice Gliniecki, Senior Vice President and General Counsel, NASD, dated October 26, 2006. Electronic filing of notices with the NASD does not affect requirements in these rules to file notices with the Commission or other securities regulatory agencies.

[4] *See* Securities Exchange Act Release No. 54319 (August 15, 2006), 71 FR 48958 (SR–NASD–2006–060).

[5] *See* Securities Exchange Act Release No. 54319A (September 18, 2006), 71 FR 55537 (SR–NASD–2006–060).

[6] *See* e-mail dated August 31, 2006 from Frank Akridge Jr. (''Mr. Akridge'') and letter dated September 7, 2006 from Chris Charles, President, Wulff, Hansen & Co. (''Wulff, Hansen'').

[7] *See* letter from Shirley H. Weiss, Office of General Counsel, NASD, to Katherine A. England, Division of Market Regulation, Commission.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

Social Security Administration

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235; Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Statement of Household Expenses and Contributions—20 CFR 416.1130–416.1148—0960–0456.* SSA needs the information about household expenses and contributions, which is collected on Form SSA–8011–F3, to determine whether the claimant or beneficiary receives in-kind support and maintenance. This is necessary to determine the claimant's or beneficiary's eligibility for Supplemental Security Income (SSI) and the amount of benefits payable.

This form is not used for all claims and posteligibility determinations; rather, it is used only when it is necessary to document in-kind support and maintenance and only in cases where the householder's corroboration is needed. Respondents are SSI applicants and/or beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 400,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 100,000 hours.

2. *Representative Payee Report of Benefits and Dedicated Account—20 CFR 416.546, 416.635, 416.640, 416.665—0960–0576.* The Social Security Act provides for representative payees (RPs) to submit a written report accounting for the use of money paid to Supplemental SSI beneficiaries, and that RPs must establish and maintain a dedicated account for these payments. The SSA–6233 is used to ensure that the RP is using the benefits received for the beneficiary's current maintenance and personal needs, and the expenditures of funds from the dedicated account are in compliance with the law. Respondents are representative payees for SSI beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 10,000 hours.

3. *Request for Reinstatement (Title II)—20 CFR 404.1592b—404.1592f—0960–NEW.* Form SSA–371 is used by former beneficiaries for Title II benefits who wish to request Expedited Reinstatement (EXR) of their Title II disability benefits. SSA uses the SSA–371 to obtain a signed statement from the individual stating a request for EXR and to verify that the applicant meets the EXR requirements. The form will be maintained in the disability folder of the applicant to demonstrate that the individual was aware of the EXR requirements and chose to request EXR. Respondents are applicants for EXR of Title II disability benefits.

Type of Request: Existing Information Collection in Use Without an OMB Number.

Number of Respondents: 10,000.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 333 hours.

4. *Request for Reinstatement (Title XVI)—20 CFR 416.999—416.999d—0960–NEW.* Form SSA–372 is used by former SSI claimants who wish to request Expedited Reinstatement (EXR) of their Title XVI disability payments. SSA uses the SSA–372 to obtain a signed statement from the individual stating a request for EXR and to verify that the requestor meets the EXR requirements. The form will be maintained in the disability folder of the applicant to demonstrate that the individual was aware of the EXR requirements and chose to request EXR. Respondents are applicants for EXR of Title XVI SSI payments.

Type of Request: Existing Information Collection in Use Without an OMB Number.

Number of Respondents: 2,000.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 67 hours.

5. *Non-Attorney Representative Demonstration Project Application—0960–0669.* Section 303 of the Social Security Protection Act of 2004 (SSPA) provides for a 5-year demonstration project to be conducted by SSA under which the direct payment of SSA-approved fees is extended to certain non-attorney claimant representatives. Under the SSPA, to be eligible for direct payment of fees, a non-attorney representative must fulfill the following statutory requirements: (1) Possess a bachelors degree or have equivalent qualifications derived from training and work experience; (2) pass an examination that tests knowledge of the relevant provisions of the Social Security Act; (3) secure professional liability insurance or equivalent insurance; (4) pass a criminal background check (information on these 4 requirements will be collected during initial reporting); (5) demonstrate completion of relevant continuing education courses (this information will be collected under the Continuing Education (CE) reporting), and (6) complete an annual Affirmations Worksheet to verify the participant's continued eligibility to participate in the demonstration project.

SSA collects this information through the services of a private contractor and uses it to determine if a non-attorney representative has met and continues to meet the statutory requirements to be eligible for direct payment of fees for his or her claimant representation services. The respondents are non-attorney representatives who apply for direct payment of fees.

Type of Request: Revision of an existing information collection.

Application Reporting

Number of Respondents: 500.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 500 hours.

CE Reporting

Number of Respondents: 300.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 150 hours.

Annual Reaffirmations Worksheet

Number of Respondents: 450.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 75 hours.

Total burden hours for all collection activities—725 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Employment Relationship Questionnaire—20 CFR 404.1007—0960–0040.* Form SSA–7160–F4 is used in developing the question of employer-employee relationships, except where the worker is an officer of a corporation. This form gathers the information needed for developing the employment relationship, and determining whether a beneficiary is self-employed or an employee. Respondents are beneficiaries questioning their status as employees and employers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 16,000.

Frequency of Response: 1.

Average Burden per Response: 25 minutes.

Estimated Annual Burden: 6,667 hours

2. *Vocational Rehabilitation Provider Claim—20 CFR 404.2108(b), 404.2117(c)(1)&(2), 404.2101(b)&(c), 404.2121(a), 416.2208(b), 416.2217(c)(1)&(2), 416.2201(b)&(c), 416.2221(a)—0960–0310.* The Social Security Administration (SSA) refers certain disability beneficiaries to State Vocational Rehabilitation (VR) agencies. The State VR agencies use the SSA–199 to make claims for reimbursement of the costs incurred from providing VR services for the beneficiaries. The information collected on the SSA–199 is

used by SSA to determine whether or not, and how much, to pay the State VR agencies under SSA's VR program. Respondents are State VR agencies who offer Vocational and Employment services for SSA beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 80.

Type of response (as explained below)	Number of respondents	Frequency of response	Total responses	Average burden per response (minutes)	Estimated annual burden hours
a. (404.2108 and 416.2208)	80	160 each/year	12,800	23	4,907
b. (404.2117 and 416.2217)	80	1 per year	80	60	80
c. (404.2121 and 416.2221)	80	2–3 per year	200	100	333
Total	80		13,080		5,320

Estimated Annual Burden: 5,320 hours.

3. *Pilot Program for Participating in Administrative Law Judge Hearings by Using Privately Owned Video Teleconferencing (VTC) Equipment—20 CFR 404.936(c) & 416.1436(c)—0960–NEW.*

Background

On February 3, 2003, the Commissioner of Social Security published a final rule allowing SSA to conduct hearings before administrative law judges (ALJs) at which a party or parties to the hearing and/or a witness or witnesses may appear before the ALJ by video teleconferencing (68 FR No. 22 , 5210). In that final rule we noted that dialing into SSA's VTC network from private facilities, such as facilities owned by a law firm, could be possible at a future date. Appearances by video teleconference are also central to the rules for the new disability determination process (final rule published March 31, 2006 71 FR No. 62, 16423). Pursuant to these rules, SSA is now preparing to pilot a program wherein private representatives and their clients may appear at ALJ hearings using privately owned video equipment.

The VTC Activity

SSA plans to expand its Video Teleconferencing program of Administrative Law Judge hearings by allowing these hearings to be conducted from private representative sites that have been certified by the agency. Representatives who are interested in participating in the pilot program or the permanent program will need to provide some basic information about their location, the area they serve and their expected workload. Because private video sites are being used, the pilot guidelines provide for site inspections, certain on-the-record certifications and other claimant safeguards to help ensure that no claimants are disadvantaged by participating in their hearing from a private site. Respondents to this collection will be the claimant's representatives who elect to participate in the pilot. The pilot is structured to begin with 10 private video sites expanding to 30 private sites after a six-month evaluation period. There will be a second evaluation period after the 30 sites have operated for a six-month period. SSA will then make final decisions regarding operating procedures for a permanent program.

Type of Request: New Information Collection.

Total Burden Hours for all Collections: 717 burden hours (shown below).

PHASE–I

[10 sites for 6 months]

Collection activity	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
Expression of Interest/Initial Contact	100	1	15	25
Certifications Made in the Opening Statement of the Hearing	10	100	10	167
Totals	110			192

PHASE–II

[30 sites for 6 months]

Collection activity	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
Expression of Interest/Initial Contact	100	1	15	25
Certifications Made in the Opening Statement of the Hearing	30	100	10	500
Totals	130			525

The estimated first year cost burden for all respondents to participate in the Privately Owned VTC Equipment pilot is—$450,000. This cost figure represents the agency's estimated for respondents to purchase and maintain video conferencing equipment, a FAX machine and a document camera as well

as the cost of an ISDN line or other data connection to the public network.

Dated: October 26, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E6–18322 Filed 10–31–06; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Document No. 2006–SSA–0093]

The Ticket To Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of quarterly meeting.

DATES: November 15, 2006—9 a.m. to 5 p.m.

November 16, 2006—1:30 p.m. to 5 p.m.

November 17, 2006—8:30 a.m. to 12 noon.

ADDRESSES: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Phone: 202–842–1300.

SUPPLEMENTARY INFORMATION: *Type of meeting:* On November 15–17, 2006, the Ticket to Work and Work Incentives Advisory Panel (the ''Panel'') will hold a quarterly meeting open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel. Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress, and the Commissioner of SSA on issues related to work incentive programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings and presentations on matters of interest, conduct full Panel deliberations on the implementation of the Act and receive public testimony.

The Panel will meet in person commencing on Wednesday, November 15, 2006, from 9 a.m. until 5 p.m. The quarterly meeting will continue on Thursday, November 16, 2006, from 1:30 p.m. until 5 p.m. and on Friday, November 17, 2006, from 8:30 a.m. until 12 noon.

Agenda: The full agenda will be posted at least one week before the start of the meeting on the Internet at *http://www.ssa.gov/work/panel/meeting_information/agendas.html*, or can be received, in advance, electronically or by fax upon request. Public testimony will be heard on Thursday, November 16, 2006, from 4 p.m. until 5 p.m. Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule a time slot. Members of the public must schedule a time slot in order to comment. In the event public comments do not take the entire scheduled time period, the Panel may use that time to deliberate or conduct other Panel business. Each individual providing public comment will be acknowledged by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute, verbal presentation.

Full written testimony on the Implementation of the Ticket to Work and Work Incentives Program, no longer than five (5) pages, may be submitted in person or by mail, fax or e-mail on an ongoing basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Ms. Tinya White-Taylor, at *Tinya.White-Taylor@ssa.gov* or by calling (202) 358–6420.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

- Mail addressed to the Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.
- Telephone contact with Tinya White-Taylor at (202) 358–6420.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: October 24, 2006.

Chris Silanskis,

Designated Federal Officer.

[FR Doc. 06–8995 Filed 10–31–06; 8:45 am]

BILLING CODE 4191–02–M

DEPARTMENT OF STATE

[Public Notice 5601]

Notice of Effective Date for Implementation of Five-Year Professor and Research Scholar Exchange Program

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: By final rule adopted May 19, 2005, 70 FR 28815, the Department of State amended its regulations and extended the permitted program duration from three to five years for professor and researcher participants in the Exchange Visitor Program. This rule also established clear eligibility requirements for repeat participation as a professor or researcher in the Exchange Visitor Program following a two-year bar. Implementation of these changes was delayed until the Department of Homeland Security could complete modifications to the Student and Exchange Visitor Information System (SEVIS) necessary to permit these changes to be reflected in SEVIS. By SEVIS broadcast on October 6th, 2006, The Department of Homeland Security announced its ability to facilitate these changes effective November 4, 2006.

Accordingly, as of November 4, 2006, current and future professor and researcher program participants will be eligible for five years of program participation as provided for in the final rule. These participants will also be subject to the eligibility requirements for repeat participation set forth in the final rule. Requirements governing initial eligibility for participation as a professor or researcher are unchanged.

The final rule published May 19, 2005 also established a new ''G–7'' administrative classification for certain program sponsors. The Department will contact directly those sponsors eligible for the classification. No action, inquiry, or request regarding this classification is necessary on the part of existing sponsors. This certification will be published in the **Federal Register**.

Dated: October 25, 2006.

Stanley S. Colvin,

Director, Office of Exchange Coordination and Designation, Department of State.

[FR Doc. E6–18409 Filed 10–31–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–38]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 21, 2006.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–2006–25888 or FAA–2006–26060) by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lender (202) 267–8029 or Frances Shaver (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on October 25, 2006.

Eve Taylor Adams,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–25888.
Petitioner: United Airlines.
Section of 14 CFR Affected: 14 CFR Part 43 Appendix A.
Description of Relief Sought: The exemption, if granted, would allow United to classify repairs and alterations using decision diagrams based on 14 CFR 1.1 rather than 14 CFR part 43 Appendix A.

Docket No.: FAA–2006–25888.
Petitioner: American Airlines, Inc.
Section of 14 CFR Affected: 14 CFR Part 43 Appendix A.
Description of Relief Sought: The exemption, if granted, would allow American Airlines to determine the major or minor classification of a repair or alteration using methodology based on the definitions for major repair and major alteration given in part 43 Appendix A.

[FR Doc. E6–18394 Filed 10–31–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1)–(2). The actions relate to various proposed transit and road improvement projects within the Interstate 405 (I–405) Corridor in the State of Washington. Those actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1)–(2). A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before April 30, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Stephen Boch, Major Project Oversight Manager, Federal Highway Administration, Jackson Federal Building, 915 2nd Avenue, Room 3142, Seattle, Washington, 98174; telephone: (206) 220–7536; and e-mail: *Steve.Boch@fhwa.dot.gov.* The FHWA Washington Division's Oversight Manager's regular office hours are between 8 a.m. and 4:30 p.m. (Pacific Time). You may also contact Allison Ray, I–405 Environmental Manager, Washington State Department of Transportation, 600–108th Avenue NE., Suite 405, Bellevue, Washington, 98004; telephone: (425) 456–8500; and e-mail: *rayalli@wsdot.wa.gov.* The I–405 Corridor Program's regular office hours are between 8 a.m. and 5 p.m. (Pacific Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the I–405 Corridor from the interchange with Interstate 5 in Tukwila to the interchange with Interstate 5 in Lynnwood and related I–405 Corridor Program projects in King and Snohomish Counties, Washington. Corridor improvements, phased over the next 20 to 30 years based on the availability of funding, include adding up to two new lanes in each direction to I–405, a corridor-wide bus rapid transit system and increased local transit. Corridor improvements also include improving the SR 167/I–405 interchange and some key arterials, expanding transit centers, adding approximately 5,000 park-and-ride spaces, and providing improved and new pedestrian / bicycle connections.

The actions by the Federal agencies on this project, and the laws under which such actions were taken, are described in the corridor-level final environmental impact statement (FEIS), Record of Decision (ROD), in project-level environmental assessments (EA) and Finding of No Significant Impact (FONSI), and a documented categorical exclusion (CE), and in other documents in the FHWA administrative record for the project. The FEIS, EAs, CE, and other documents from the FHWA administrative record files for the listed projects are available by contacting the FHWA or the Washington State Department of Transportation at the addresses provided above.

This notice applies to all Federal agency decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4351];

Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq*.].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq*.]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [42 U.S.C. 61].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund [16 U.S.C. 4601–4604]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [PL 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

The projects subject to this notice are:

1. *Project Location:* Tukwila, Renton, Newcastle, Bellevue, Kirkland, Bothell, and Lynnwood; King and Snohomish Counties; I–405. Project Reference Number: STP 4053(840). Project type: The ''I–405 Corridor Program'' consists of multi-modal improvements along the approximate 30-mile corridor of I–405. NEPA document: Corridor-level FEIS, June 2002; Record of Decision (ROD), October 9, 2002.

2. *Project Location:* Bellevue, Kirkland and Bothell; King County; I–405. Project Reference Number: Since federal funding is not currently available for this project, an FHWA project number has not been established. Project type: The ''I–405 SR 520 to SR 522—Kirkland Nickel Project'' is located along a 7.6-mile section of I–405 between SR 520 and SR 522. It consists of a new northbound general-purpose lane on I–405 from the NE 70th Street interchange to the NE 124th Street interchange, a new southbound general-purpose lane from just south of the SR 522 interchange to just north of the SR 520 interchange, and reconfiguration of the interchange at NE 116th Street to improve traffic operations. NEPA document: EA, February 2005; Finding of No Significant Impact (FONSI), signed April 14, 2005.

3. *Project Location:* Bellevue, King County, I–405. Project Reference Number: Since federal funding is not currently available for this project, an FHWA project number has not been established. Project type: The ''I–405 Bellevue Nickel Improvement Project—I–90 to Southeast 8th Street'' extends along a 2-mile section of I–405 between I–90 and SE 8th Street. It consists of one new general-purpose lane in each direction along I–405 and extends the existing outside southbound HOV lane north from I–90 near the Wilburton tunnel to SE 8th Street. NEPA document: EA, January 2006; Finding of No Significant Impact (FONSI), signed August 11, 2006.

4. *Project Location:* Bellevue, King County, I–405. Project Reference Number: Since federal funding is not currently available for this project, an FHWA project number has not been established. Project type: The ''I–405, 112th Ave SE to I–90 Widening Project'' extends along a 2-mile section of I–405 starting at the I–405 and 112th Ave SE interchange and extending to just north of the I–90 and I–405 interchange. It consists of one new northbound auxiliary lane, a new three-lane southbound structure over I–90 and converting the existing southbound structure to a northbound HOV lane. NEPA document: DCE, signed June 9, 2006.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)–(2).

Issued on: October 26, 2006.

Stephen P. Boch,

Major Project Oversight Manager, Seattle, Washington.

[FR Doc. E6–18369 Filed 10–31–06; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement for the Dumbarton Rail Corridor Project in the Southern Portion of the San Francisco Bay Area, CA

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Intent (NOI) to prepare Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration and the Peninsula Corridor Joint Powers Board (PCJPB) are planning to prepare an Environmental Impact Statement/Environmental Impact Report for the Dumbarton Rail Corridor (DRC) Project, an approximately 21-mile commuter rail extension on existing rail alignment to provide commuter rail service between the Peninsula and the East Bay across the southern part of the San Francisco Bay. The EIS will be prepared in accordance with regulations implementing the National Environmental Policy Act (NEPA) as well as provisions of the recently enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. The purpose of this Notice of Intent is to alert interested parties regarding the plan to prepare the EIS, to provide information on the proposed transit project, to invite participation in the EIS process, including comments on the scope of the EIS proposed in this notice, and to announce that public scoping meetings will be conducted.

DATES: Written comments on the scope of the EIS should be sent to Marie Pang,

PCJPB Environmental Manager, by November 30, 2006. Public scoping meetings will be held on November 15, 2006 and November 16, 2006 from 6:30 p.m. to 8:30 p.m. at locations indicated under **ADDRESSES** below. An interagency scoping meeting for agencies with an interest in the proposed project will be held on November 16, 2006 from 3 p.m. to 5 p.m. at the West Bay location listed below.

ADDRESSES: Written comments on the scope of the EIS should be sent to Marie Pang, Environmental Manager, Peninsula Corridor Joint Powers Board, P.O. Box 3006, San Carlos, CA 94070–1306. Comments may also be offered at the public scoping meetings. The addresses for the public scoping meetings are as follows:

East Bay Location: Wednesday, November 15, 2006, Newark Community Center, 35501 Cedar Blvd, Newark, CA 94560.

West Bay Location: Thursday, November 16, 2006, City of Menlo Park Senior Center, 110 Terminal Avenue, Menlo Park, CA 94025.

The meeting facilities will be accessible to persons with disabilities. If special translation or signing services or other special accommodations are needed, please contact Beth Altshuler at 510–845–7549, ext. 165 at least 48 hours before the scoping meeting.

FOR FURTHER INFORMATION CONTACT: Jerome Wiggins, Transportation Program Specialist, of the Federal Transit Administration's San Francisco Regional Office at (415) 744–3115.

SUPPLEMENTARY INFORMATION:

The Proposed Project: The Dumbarton Rail Corridor Project proposes to provide east-west commuter rail service across the southern section of the S.F. Bay. This would be accomplished by primarily rehabilitating and reconstructing rail facilities on existing alignment and right-of-way. The alignment consists of two parts. The first part is an existing 11-mile rail corridor extending east along the former Southern Pacific Centerville line from Redwood Junction in San Mateo County across the Dumbarton and Newark Slough Railroad Bridges to the Newark Junction in Alameda County. It is owned by the San Mateo County Transit District (Samtrans). The second part is an existing 10-mile rail corridor owned by the Union Pacific Railroad (UPRR), extending from Newark Junction east along the Niles subdivision through Union City to the UPRR Oakland subdivision rail corridor at Industrial Parkway. The project also includes the construction of a train layover yard on the east side and three new stations: Willow Road Station (Menlo Park/East Palo Alto), Newark Station, and the Union City Intermodal Station.

Service will consist of six daily trains originating from Union City in the morning peak period and traveling westward across the Dumbarton Rail Corridor, The trains converge with the existing Caltrain line in the West Bay. From the Caltrain line, three of the trains will travel north to San Francisco while the other three trains will travel south to San Jose. During the afternoon peak period, all trains will travel eastbound back to Union City. The three new stations plus the Centerville Station in Fremont would be directly served by DRC trains. The Capitol Corridor trains would also be served by the Union City Intermodal, Newark and Centerville stations. The ACE trains would be served by the Newark and Centerville stations.

Purpose and Need for the Proposed Project: In March 2004, the voters of the Bay Area counties passed the Regional Traffic Relief Plan, also known as Regional Measure 2 (RM2) to fund a variety of transportation improvements to help relieve traffic congestion and enhance the convenience and reliability of the region's public transit system by raising bridge tolls. RM2 includes funding for the proposed DRC Project. This project is included in the 2007 Transportation Improvement Program (TIP) adopted by the Metropolitan Transportation Commission (MTC) on October 2, 2006.

A connection is needed to address transportation issues and deficiencies related to highway congestion, transit, population and employment, and air quality in the corridor. The purpose of the proposed Dumbarton Rail Corridor Project is to use existing rail infrastructure to provide an east-west rail connection in the southern portion of the San Francisco Bay, connecting the communities of the East Bay and the West Bay.

Alternatives: In addition to the No Action Alternative, two rail alternatives and one bus alternative are proposed to be evaluated in the EIS. An Alternatives Analysis was conducted to identify the most feasible rail and bus alternatives to be carried forward into detailed environmental studies. The Alternatives Analysis study process was directed and guided by a Technical Advisory Committee (TAC) and a Policy Advisory Committee (PAC). These committees consisted of representatives from state, regional and county transportation/transit agencies, as well as the affected cities on both sides of the Bay. The Alternatives Analysis report was approved by the Policy Advisory Committee on June 20, 2006. The final report is available on the official Dumbarton Rail Corridor Project Web site at *www.caltrain.com/dumbartonrail.*

The alternatives under consideration are:

(1) No Action—The Dumbarton Express bus service will continue to be the only commuter transit between the East Bay and the Peninsula that crosses the southern portion of the Bay.

(2) Alternative A—DRC trackage, connecting to the existing Caltrain Corridor on the Peninsula at Redwood Junction, will cross the San Francisco Bay via the Dumbarton Railroad Bridge, run through Newark and connect to existing tracks that run north to Union City. The track improvements will include the Shinn Connection and the Industrial Parkway Connection, which will connect the DRC with ACE and Capitol Corridor trains in Fremont and Union City in the East Bay. A train storage and layover yard will be constructed. Two locations are under consideration. Three new stations will be constructed at Union City, Newark and Menlo Park. The Centerville Station in Fremont would be upgraded. Reconstruction of the marine bridges crossing the San Francisco Bay includes replacement of the Dumbarton and the Newark Slough moveable bridges and the modification of the Henderson Underpass. New railroad signals and a Centralized Traffic Control system will be provided to control movements onto and through the Dumbarton Rail Corridor.

(3) Alternative B—The same as Alternative A, with the addition of the Niles Junction Connection. The freight traffic through the Fremont Centerville station will be decreased by re-routing freight trains between the Oakland Subdivision and the Niles Subdivision over the new Niles Junction Connection.

(4) Bus Alternative—This alternative proposes a new bus route that originates in Union City, crosses the Dumbarton Highway Bridge (Route 84), and travels to Redwood Shores.

This alternative could serve as the initial start-up phase of an expanded bus service across the Dumbarton Highway Bridge. The expanded service would extend northward to Foster City, Millbrae, Oyster Point and Brisbane on the Peninsula.

The EIS Process and the Role of Participating Agencies and the Public: The purpose of the EIS process is to explore in a public setting potentially significant effects of implementing the proposed action and alternatives on the physical, human, and natural environment. Areas of investigation

include, but are not limited to, land use, environmental justice, historic resources, visual and aesthetic qualities, air quality, noise and vibration, energy use, traffic, safety and security, wetlands, threatened and endangered species, and hazardous materials. Regulations implementing NEPA, as well as provisions of the recently enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FTA and PCJPB do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project to become ''participating agencies'', (2) provide an opportunity for involvement by participating agencies and the public in helping to define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the impact statement, and (3) establish a plan for coordinating public and agency participation in and comment on the environmental review process. An invitation to become a participating agency, with the scoping information packet appended, will be extended to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project. It is possible that we may not be able to identify all Federal and non-Federal agencies and Indian tribes that may have such an interest. Any Federal or non-Federal agency or Indian tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify, at the earliest opportunity, the Environmental Manager identified above under **ADDRESSES**.

A comprehensive public involvement program has been developed. A Policy Advisory Committee (PAC) consisting of local and county officials and a Project Development Team consisting of representatives of state, regional and local agencies are already in place. A Community Advisory Committee will be established. The program also includes a public scoping process, public hearings on release of the Draft Environmental Impact Statement (DEIS), development of project newsletters and their distribution and posting on the project Web site.

We invite the public and participating agencies to consider the preliminary statement of purposes of and need for the proposed project, as well as the alternatives proposed for consideration. Comments on potential significant environmental impacts that may be associated with the proposed project are also welcomed. All comments and suggestions will be given serious consideration.

In accordance with 23 CFR 771.105(a) and 771.133, FTA will comply with all Federal environmental laws, regulations and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the regulations of the Council on Environmental Quality implementing NEPA (40 CFR parts 1500–1508 and 23 CFR part 771), the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93), section 404(b)(1) guidelines of EPA (40 CFR part 230), Executive Orders 11988, 11990 and 12898 regarding floodplains, wetlands, and environmental justice, respectively, Section 106 of the National Historic Preservation Act (36 CFR Part 800), Section 7 of the Endangered Species Act (50 CFR part 402), and section 4(f) of the Department of Transportation Act (23 CFR 771.135).

Issued on: October 26, 2006.

Leslie T. Rogers,

Regional Administrator, FTA, Region 9.

[FR Doc. E6–18393 Filed 10–31–06; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Applications for the IRS Advisory Committee on Tax Exempt and Government Entities

AGENCY: Internal Revenue Service (IRS).

ACTION: Notice.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications for membership to serve on the Advisory Committee on Tax Exempt and Government Entities (ACT). Applications will be accepted for several vacancies which will occur in June 2007: At least two (2) employee plans; at least two (2) exempt organizations; at least one (1) Indian tribal governments; and at least one (1) tax exempt bonds. (There are currently no vacancies for federal, state and local governments.) To ensure appropriate balance of membership, final selection from qualified candidates will be determined based on experience, qualifications, and other expertise.

DATES: Written applications or nominations must be received on or before December 1, 2006.

Application: Applicants may use the ACT Application Form on the IRS Web site (*http://www.irs.gov/ep; http://www.irs.gov.eo; http://www.irs.gov/bonds;* or *http://www.irs.gov/govts*) or may send an application by letter with the following information: Name; Other Name(s) Used and Date(s) (required for FBI check); Date of Birth (required for FBI check); City and State of Birth (required for FBI check); Current Address; Telephone and Fax Numbers; and E-mail address, if any. Applications should also describe and document the proposed member's qualifications for membership on the ACT. Applicants should also specify the vacancy for which they wish to be considered.

ADDRESSES: Send all applications and nominations to: Steven Pyrek; Director, TE/GE Communications and Liaison; 1111 Constitution Ave., NW.—SE:T:CL, Penn Bldg; Washington, DC 20224; Fax: (202) 283–9956 (not a toll-free number); E-mail: *steve.j.pyrek@irs.gov.*

FOR FURTHER INFORMATION CONTACT: Steven Pyrek (202) 283–9966 (not a toll-free number), or by e-mail.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Tax Exempt and Government Entities (ACT), governed by the Federal Advisory Committee Act, Public Law No. 92–463, is an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bonds, and Federal, State, local and Indian tribal government issues between officials of the IRS and representatives of the above communities. The ACT also enables the IRS to receive regular input with respect to the development and implementation of IRS policy concerning these communities. ACT members present the interested public's observations about current or proposed IRS policies, programs, and procedures, as well as suggest improvements.

ACT members shall be appointed by the Secretary of the Treasury and shall serve a two-year term. Terms can be extended for an additional year. ACT members will not be paid for their time or services. ACT members will be reimbursed for their travel-related expenses to attend working sessions and public meetings, in accordance with 5 U.S.C. 5703.

The Secretary of the Treasury invites those individuals, organizations, and groups affiliated with employee plans, exempt organizations, tax-exempt bonds, and federal, state, local or Indian tribal governments, to nominate individuals for membership on the ACT. Nominations should describe and document the proposed member's qualifications for membership on the

ACT. Nominations should also specify the vacancy for which they wish to be considered. The Secretary seeks a diverse group of members representing a broad spectrum of persons experienced in employee plans, exempt organizations, tax-exempt bonds, and Federal, State, local or Indian tribal governments.

Nominees must go through a clearance process before selection. In accordance with Department of the Treasury Directive 21–03, the clearance process includes, among other things, pre-appointment and annual tax checks, and a Federal Bureau of Investigation criminal and subversive name check and security clearance.

Dated: October 26, 2006.

Steven J. Pyrek,

Designated Federal Official, Tax Exempt and Government Entities Division, Internal Revenue Service.

[FR Doc. E6–18329 Filed 10–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 28, 2006, at 11 a.m., central time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, November 28, 2006, at 11 a.m., central time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, PO Box 3205, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org.* This meeting is not required to be open to the public, but because we are always interested in community input we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: October 23, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–18327 Filed 10–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0001]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's eligibility, dependency, and income, as applicable, for compensation and/or pension benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 2, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0001'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Veteran's Application for Compensation and/or Pension, VA Form 21–526.

OMB Control Number: 2900–0001.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans complete VA Form 21–526 to apply for compensation and/or pension benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 592,500 hours.

Estimated Average Burden per Respondent: 1 hour and 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 395,000.

Dated: October 19, 2006.

By direction of the Secretary.

Denise McLamb,

Initiative Coordination Service.

[FR Doc. E6–18417 Filed 10–31–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0569]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain

information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to customer satisfaction surveys.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 2, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov:* or to Nancy Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0569'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Voluntary Customer Surveys to Implement E.O. 12862.

OMB Control Number: 2900–0569.

Type of Review: Extension of a currently approved collection.

Abstract: VBA administers integrated programs of benefits and services, established by law for veterans and their survivors, and service personnel. Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. Customer satisfaction surveys are used to gauge customer perceptions of VA services as well as customer expectations and desires.

Affected Public: Individuals or households and businesses or other for-profits.

LISTING OF SURVEY ACTIVITIES

Year	Number of respondents	Estimated annual burden	Frequency of response
Survey of Veterans' Satisfaction with the VA Compensation and Pension Claims Process—20 minutes			
2007	24,000	8,000 hours	One-time.
2008	24,000	8,000 hours	One-time.
2009	24,000	8,000 hours	One-time.
Survey of Veterans'/Dependents' and Servicemembers' Satisfaction with the VA Education Claims Process—20 minutes			
2007	2,968	989 hours	One-time.
2008	2,968	989 hours	One-time.
2009	2,968	989 hours	One-time.
Survey of Educational Institution Certifying Officials—20 minutes			
2007	1,000	333 hours	One-time.
2008	1,000	333 hours	One-time.
2009	1,000	333 hours	One-time.
Survey of Veterans' Satisfaction with the VA Home Loan Guaranty Process—10 minutes			
2007	7,560	1,260 hours	One-time.
2008	7,560	1,260 hours	One-time
2009	7,560	1,260 hours	One-time.
VA Loan Guaranty Lender Satisfaction Survey—20 minutes			
2007	1,992	498 hours	One-time.
2008	1,992	498 hours	One-time.
2009	1,992	498 hours	One-time.

LISTING OF SURVEY ACTIVITIES—Continued

Year	Number of respondents	Estimated annual burden	Frequency of response
VA Survey of Veterans' Satisfaction with the Vocational Rehabilitation & Employment Program—20 minutes			
2007	3,300	1,100 hours	One-time.
2008	3,300	1,100 hours	One-time.
2009	3,300	1,100 hours	One-time.
Insurance Customer Surveys—6 minutes			
2007	2,800	280 hours	One-time.
2008	2,800	280 hours	One-time.
2009	2,800	280 hours	One-time.
Outreach Surveys—15 minutes			
2007	4,500	1,125	One-time.
2008	4,500	1,125	One-time.
2009	4,500	1,125	One-time.
Undetermined Focus Groups (Targeted population groups are to be decided)—2 hours			
2007	380	760 hours	One-time.
2008	380	760 hours	One-time.
2009	380	760 hours	One-time.
Telephone Survey—7 minutes			
2007	6,400	747 hours	One-time.
2008	6,400	747 hours	One-time.
2009	6,400	747 hours	One-time.
VA Regional Office-Based Survey Activities Customer Satisfaction Focus Groups—3 hours			
2007	360	1,080 hours	One-time.
2008	360	1,080 hours	One-time.
2009	360	1,080 hours	One-time.
VA Regional Office-Specific Service Improvement Initiatives (Comment Card)—5 minutes			
2007	40,000	3,333 hours	One-time.
2008	40,000	3,333 hours	One-time.
2009	40,000	3,333 hours	One-time.

Most customer satisfaction surveys will be recurring so that VBA can create ongoing measures of performance and to determine how well the agency meets customer service standards. Each collection of information will consist of the minimum amount of information necessary to determine customer needs and to evaluate VBA's performance.

Anyone may view the results of previously administered surveys on the internet by going to the following VBA surveys Web site: *http://www.vba.va.gov/surveys/*.

The areas of concern to VBA and its customers may change over time, and it is important to have the ability to evaluate customer concerns quickly. OMB will be requested to grant generic clearance approval for a 3-year period to conduct customer satisfaction surveys, focus groups and to send out comment cards. Participation in the surveys, focus groups, and comment cards will be voluntary and the generic clearance will not be used to collect information required to obtain or maintain eligibility for a VA program or benefit. In order to maximize the voluntary response rates, the information collection will be designed to make participation convenient, simple, and free of unnecessary barriers. Baseline data obtained through these information collections will be used to improve customer service standards. VBA will

consult with OMB regarding each specific information collection during this approval period.

Dated: October 19, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6–18418 Filed 10–31–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0465]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine an individual's continued entitlement to VA benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 2, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0465'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Student Verification of Enrollment, VA Form 22–8979.

OMB Control Number: 2900–0465.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–8979 contains a student's certification of actual attendance and verification of the student's continued enrollment in courses leading to a standard college degree or in non-college degree programs. VA uses the data collected to determine the student's continued entitlement to benefits. Students are required to submit verification on a monthly basis to allow for a frequent, periodic release of payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 45,475 hours.

Estimated Average Burden per Respondent: 1.3 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 429,488.

Estimated Number of Responses: 2,114,651.

Dated: October 19, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6–18420 Filed 10–31–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0567]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to request additional certificates, replacements or corrections to a President Memorial Certificate (PMC).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 2, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to Mechelle Powell, National Cemetery Administration (41D1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mechelle.powell@va.gov*. Please refer to ''OMB Control No. 2900–0567'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 501–1960 or FAX (202) 501–2240.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the

burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: President Memorial Certificate (PMC), VA Form 40–0247.

OMB Control Number: 2900–0567.

Type of Review: Extension of a currently approved collection.

Abstract: The purpose of the PMC insert is to allow next of kin, other relatives and friends to request additional certificates and/or replacement or corrected certificates upon the receipt of the original PMC. PMC are automatically issued without a request from the next of kin as part of processing death benefits claims.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,004.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 240,132.

Dated: October 19, 2006.

By direction of the Acting Secretary.

Denise McLamb,

Initiative Coordination Service.

[FR Doc. E6–18424 Filed 10–31–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0578]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to request preauthorization of certain health care services and benefits for children of Vietnam veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 2, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*: or to Ann Bickoff, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov*. Please refer to ''OMB Control No. 2900–0578'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Health Care for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects—Regulation.

b. Claim for Miscellaneous Expenses, VA Form 10–7959e.

OMB Control Number: 2900–0578.

Type of Review: Extension of a currently approved collection.

Abstract: VA's medical regulations 38 CFR part 17 (17.900 through 17.905) established regulations regarding provision of health care for women Vietnam veterans' children born with spina bifida and certain other covered birth defects. The information collected will be used to determine whether to approve requests for preauthorization of certain health care services and benefits for children of Vietnam veterans; the appropriateness of billings for such services; and to make decisions during the review and appeal process.

Beneficiaries complete VA Form 10–7959e to claim payment/reimbursement of expenses related to spina bifida and certain covered birth defects. Health care providers complete standard billing forms such as: Uniform Billing-Forms (UB) 92, and HCFA 1500, Medicare Health Insurance Claims Form. Without the requested information VA will be unable to determine the correct amount to reimburse providers for their services or beneficiaries for covered expenses.

Affected Public: Individuals or households, Business or other for-profit, and Not for profit institutions.

Estimated Total Annual Burden: 3,400 hours.

Estimated Average Burden per Respondent: 6 ½ minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,600.

Estimated Total Annual Responses: 31,400.

Dated: October 19, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6–18427 Filed 10–31–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has scheduled a meeting for November 16, 2006, at the Embassy Suites Hotel, 900 10th Street, NW., Washington, DC. The meeting will begin at 8:30 a.m. and end at 4:15 p.m. The meeting is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

The agenda for the meeting will include updates on the progress of the studies being conducted by the Center for Naval Analyses (CNA) and the Institute of Medicine (IOM). The Commission will receive initial presentations on several draft Issue Papers. The Commission will also review and approve an Issue Paper outlining the Commission's position to

recommend lump sum payments be removed from consideration as an option for compensating veterans with disabilities.

Interested persons may attend and present oral statements to the Commission, November 16. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Commission prior to the meeting or at any time, by e-mail to *veterans@vetscommission.com* or by mail to Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004.

Dated: October 25, 2006.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–8983 Filed 10–31–06; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
November 1, 2006

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 292

New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM06–10–000; Order No. 688]

New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities

Issued October 20, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations governing small power production and cogeneration in response to section 1253 of the Energy Policy Act of 2005 (EPAct 2005), which added section 210(m) to the Public Utility Regulatory Policies Act of 1978 (PURPA).

DATES: *Effective Date:* The rule will become effective January 2, 2007.

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SUPLEMENTARY INFORMATION:

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

I. Introduction

1. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005)[1] was signed into law. Section 1253(a) of EPAct 2005 adds section 210(m) to the Public Utility Regulatory Policies Act of 1978 (PURPA)[2] which provides, among other things, for termination of the requirement that an electric utility enter into a new contract or obligation to purchase electric energy from qualifying cogeneration facilities and qualifying small power production facilities (QFs) if the Federal Energy Regulatory Commission (Commission) finds that the QF has nondiscriminatory access to one of three categories of markets defined in section 210(m)(1)(A), (B) or (C). Thus, to relieve an electric utility of its mandatory purchase obligation under PURPA, the Commission must identify which, if any, markets meet the criteria contained in 210(m)(1)(A), (B) or (C), and, if such markets are identified, it must determine whether QFs have nondiscriminatory access to those markets.

2. On January 19, 2006, the Commission issued a notice of proposed rulemaking (NOPR) proposing regulations to implement the provisions of the new PURPA section 210(m) and proposing to terminate the requirement that an electric utility enter into a new contract or obligation to purchase electric energy from QFs if the electric utility is a member of Midwest Independent Transmission System Operator, Inc. (Midwest ISO), PJM Interconnection, L.L.C. (PJM), ISO New England, Inc. (ISO–NE), or New York Independent System Operator (NYISO). After considering industry comments on the NOPR, the Commission issues this Final Rule amending the Commission's regulations to implement the requirements in section 210(m). We believe the regulations adopted in the Final Rule reflect Congress's intent to differentiate between three types of market structures, each of which presents differing factors relevant to our determination of whether QFs have access to a sufficiently competitive market to support elimination of the purchase requirement. Our Final Rule also recognizes the special circumstances faced by small QFs and, accordingly, applies a different test for this class of QFs. In addition to a presumption in favor of small QFs, the rule also recognizes that some QFs, irrespective of size, may not have the ability to sell in certain markets because of operational characteristics or other constraints.

3. The Commission received extensive comments on its NOPR.[3] At one extreme are commenters who argue that the Commission may not address the mandatory purchase requirement issues by rulemaking and that competitive capacity and energy markets do not yet exist to support a generic finding that QFs in the four regional transmission organization/independent system operator (RTO/ISO) regions should lose the right to require electric utilities to purchase their electric output. At the other extreme are those who argue that the Commission, with limited exceptions, should eliminate the mandatory purchase requirement altogether.

4. We do not believe that either extreme reflects the letter or the spirit of section 210(m). The QFs who advocate that we may not or should not act at all by rulemaking fail to recognize that the Commission has broad latitude to act by either rulemaking or adjudication. Nowhere does section 210(m) preclude the Commission from acting by rulemaking. Moreover, where, as here, recurring and common issues of fact arise, acting by rulemaking is not only permissible, but provides more effective notice to and opportunity for participation by all affected parties. To some extent, generic findings about markets are inevitable, either by rulemaking or in the first utility specific filing concerning a specific market. Making generic findings by rulemaking provides affected entities, including QFs, a better opportunity to participate in the generic proceeding as well as the individual proceedings that will follow. Finally, the substantive arguments of these entities that underlie their procedural objections fail to recognize that Congress, in enacting section 210(m), explicitly recognized three different market structures and required the Commission to respect the differences in those markets when making determinations as to whether to rescind the purchase obligation. In essence, they are rearguing the very debates that Congress settled in adopting section 210(m).

5. We also do not agree with the position of utilities that advocate we should terminate the purchase obligation in summary fashion in this rulemaking. Although our action today respects the choice of Congress in establishing different tests for different market structures, we do not, in this rulemaking, terminate the purchase obligation of any utility. In this respect, we modify our approach in the NOPR. In contrast to the NOPR, in this Final Rule we establish only rebuttable presumptions that the purchase obligation should be eliminated with respect to certain QFs, not final determinations.

6. In sum, this Final Rule appropriately reflects Congressional intent in enacting section 210(m). It does not, as some commenters suggest, ignore the fact that Congress did not repeal PURPA section 210(a)'s directive

[1] Pub. L. 109–58, 1253, 119 Stat. 594 (2005).

[2] 16 U.S.C. 824a–3 (2000).

[3] Attached as Appendix A is a list of all commenters and the abbreviations that are used throughout the order to refer to the commenters.

that the Commission prescribe, and from time to time revise, such rules as it determines necessary to encourage cogeneration and small power production. Rather, it recognizes the fundamental change which Congress made to the statutory construct when it determined that ''no electric utility shall be required * * * to purchase electric energy from'' a QF if certain findings are made with respect to various markets. Our action properly implements Congressional intent in the new section 210(m) that the three different market structures present different considerations in determining whether to relieve utilities of the purchase obligation. Our action also properly recognizes that smaller QFs can face more significant challenges than larger QFs in accessing competitive wholesale markets. Our action continues to support QF development by ensuring that, where the requirements of section 210(m) are met, QF development will, as determined by Congress, be stimulated by market forces, and that where those requirements have not been met, QF development will continue to be stimulated as it is today through the mandatory purchase obligation. Finally, nothing in this Final Rule affects any electric utility's resource adequacy obligations, compliance with the Electric Reliability Organization's reliability standards, prudent utility practice to build or purchase reliable power at the most economical price, or resource portfolio obligations under state law including obligations to purchase renewable energy.

II. Executive Summary

7. This Final Rule amends the Commission's regulations in part 292 [4] (pertaining to electric utilities' requirement to purchase electric energy from or sell electric energy to a QF) to implement section 1253 of the EPAct 2005. As relevant here, section 1253 added a new section 210(m) to PURPA, which:

A. Provides for the termination of the requirement that an electric utility enter into new contracts or obligations to purchase electric energy from a QF, after appropriate findings by the Commission;

B. Preserves existing contracts and obligations to purchase electric energy or capacity from or to sell electric energy or capacity to a QF;

C. Provides for the reinstatement of the requirement to purchase electric energy from a QF, upon a showing that the conditions for terminating the requirement are no longer met; and

D. Provides for the termination of the requirement that an electric utility enter into new contracts to sell electric energy to QFs, after appropriate findings by the Commission.

The Commission is amending its Part 292 regulations to address the above section 210(m) provisions and also to provide a process for applying for the reinstatement of the requirement to sell electric energy to QFs upon a showing that the conditions for the removal of that requirement are no longer met.

A. Termination of the Mandatory Purchase Requirement That an Electric Utility Enter Into a New Contract or Obligation To Purchase Electric Energy From QFs

8. This Final Rule promulgates regulations that set forth the process by which electric utilities may apply to be relieved of the requirement that they enter into new contracts or obligations for the purchase of electric energy from QFs after August 8, 2005. New § 292.309 of the Commission's regulations describes the findings that the Commission must make to justify relieving an electric utility's obligation to enter into new QF purchase contracts. If the Commission finds that the QF has nondiscriminatory access to one of three wholesale markets described in the statute, the requirement that the electric utility enter into new contracts or obligations is terminated. These three wholesale markets, set forth in the statute in section 210(m)(1), and incorporated in the new Commission regulations at § 292.309, are:

(A)(i) Independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy; or

(B)(i) Transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and (ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or

(C) Wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B).

We interpret section 210(m)(1) to require the Commission to eliminate the purchase obligation in markets which meet the criteria of section 210(m)(1)(A), (B) or (C) if QFs have nondiscriminatory access to such markets. These three wholesale markets are characterized in this rule in short-hand terms as ''Day 2'' markets (auction based day-ahead and real-time markets), ''Day 1'' markets (auction based real-time markets but not auction based day-ahead markets), and comparable markets, respectively.[5] The Final Rule finds that the Midwest ISO, PJM, ISO–NE, and NYISO all meet the criteria of section 210(m)(1)(A). These RTOs are independently administered and offer auction-based day ahead and real time wholesale markets for the sale of electric energy; and within the regions represented by these RTOs there is nondiscriminatory access to wholesale markets for long-term sales of capacity and electric energy. Therefore, except for the rebuttable presumptions set forth below, the member electric utilities of these four RTO/ISOs will be eligible for relief from the requirement to enter into new contracts for the purchase of QF electric energy.

9. The Final Rule creates three rebuttable presumptions:

(A) For all three of the above markets, with the exception of the 20 megawatt (MW) presumption discussed next, the Final Rule finds that the existence of an open access transmission tariff (OATT), or a reciprocity tariff filed by a non-jurisdictional utility, pursuant to the Commission's open access regulations,[6] creates a rebuttable presumption, under section 210(m)(1), that QFs have ''nondiscriminatory access to'' the relevant wholesale markets.[7]

(B) For all three of the above markets, the Final Rule establishes a rebuttable presumption that QFs with a net capacity no greater than 20 MW, do not have nondiscriminatory access to

[4] 18 CFR part 292, subpart C, *Arrangements Between Electric Utilities and Qualifying Cogeneration and Small Power Production Facilities Under section 210 of the Public Utility Regulatory Policies Act of 1978.*

[5] Reference to ''Day 2'' and ''Day 1'' and the corresponding parenthetical are meant to be descriptive and thus are not a recitation of the elements of section 210(m)(1)(A) or (B).

[6] 18 CFR 35.28(e). An OATT provides interconnection as well as transmission services on a nondiscriminatory basis.

[7] To the extent that a QF raises issues about the adequacy of an electric utility's implementation of an OATT, such issues are more properly addressed in a complaint proceeding and will not be considered in the context of petitions for the termination of mandatory purchase requirements. However, a QF may raise other issues, such as operational characteristics and transmission limitations, to attempt to rebut the presumption of market access when it files a response to an application submitted pursuant to section 210(m)(3) of PURPA and section 292.310 of our regulations.

wholesale markets.[8] Unless an electric utility seeking the right to terminate its requirement to purchase small QF power specifically rebuts this small QF presumption, and that electric utility's request is granted by the Commission, a small QF would be eligible to require the electric utility to purchase its electric energy.

(C) The Final Rule finds that the four RTO/ISOs with ''Day 2'' markets, *i.e.*, the Midwest ISO, PJM, ISO–NE, and NYISO, qualify as markets under section 210(m)(1)(A) and establishes a rebuttable presumption that these organizations provide large QFs (above 20 MWs net capacity) interconnected with member electric utilities with nondiscriminatory access to the ''Day 2'' wholesale markets set forth in section 210(m)(1)(A). An electric utility member of one of these four RTO filing for relief from the requirement to purchase will need to refer to this rebuttable presumption in the Final Rule as part of its application. When it files an application for relief from the purchase requirement it must also submit certain information, including information about transmission constraints within its service territory, in order to give potentially affected QFs information that may be useful in rebutting the presumption that they have access to all aspects of the applicable ''Day 2'' markets.[9] A QF above 20 MWs net capacity may rebut the presumption of nondiscriminatory access by showing that it in fact lacks access.

10. The rule does *not* find that any markets meet the statutory criteria at this time other than the four listed RTO/ISOs (Midwest ISO, PJM, ISO–NE, and NYISO) and the Electric Reliability Council of Texas (ERCOT) (discussed below). There will be a rebuttable presumption that QFs above 20 MWs net capacity have nondiscriminatory access to these markets if they are eligible for service under a Commission-approved OATT or Commission-filed reciprocity tariff.

11. With respect to the California Independent System Operator (CAISO), and the Southwest Power Pool (SPP), which have only ''Day 1'' markets, it would be premature to find now that the CAISO and SPP would meet the criteria of section 210(m)(1)(A) once their ongoing market redesigns become effective. However, we find that: the CAISO and SPP meet the section 210(m)(1)(B)(i) criterion because they are Commission-approved regional transmission entities that provide transmission and interconnection services pursuant to open access transmission tariffs that provide nondiscriminatory treatment to all customers. A member electric utility of the CAISO or SPP may rely on this finding in its application to be relieved of the obligation to enter into new contracts to purchase QF electric energy, but must make all the other showings required under section 210(m)(1)(B) before its request may be granted.

12. The Final Rule finds that ERCOT meets the criteria of section 210(m)(1)(C). ERCOT offers wholesale markets for the sale of capacity and electric energy that are of comparable competitive quality as the markets described in sections 210(m)(1)(A) and (C). Therefore, except for the rebuttable presumptions set forth herein, the member electric utilities of ERCOT will be eligible for relief from the requirement to enter into new contracts for the purchase of QF electric energy.

13. New § 292.310 of the Commission's regulations sets forth the filing requirements for an application by an electric utility seeking to terminate its requirement to enter into new purchase contracts with QFs. Among other things, the regulations require the electric utility to list the names and addresses of all potentially affected QFs, existing or under development. After notice and comment, the Commission will issue an order making a final determination within 90 days of the application, as required by section 210(m)(3).

B. Preservation of Existing Contracts

14. The Final Rule preserves the rights or remedies of any party under existing contracts or obligations, in effect or pending approval before the appropriate state regulatory authority or non-regulated electric utility on or before August 8, 2005, to purchase electric energy from or to sell electric energy to a QF. This provision is stated in the new § 292.314 of the Commission's regulations. The Final Rule defines the term ''obligations'' broadly to encompass any legally enforceable obligation established through a state's implementation of PURPA.

C. Reinstatement of the Mandatory Purchase Requirement

15. The Final Rule also sets forth a process by which a QF may seek the reinstatement of the requirement to purchase electric energy, by showing that the conditions necessary for the removal of the requirement to purchase are no longer met. After notice, including notice to the affected utilities, and comment, the Commission will issue an order within 90 days of the application. This process is set forth in the new § 292.311 of the Commission's regulations. A QF's request may be specific (and limited) to itself alone, generic for the entire service territory of an electric utility, or regional in scope. The Commission will address the merits of each request as warranted by the circumstances presented in each case.

D. Termination of the Requirement To Sell Electric Energy to QFs

16. The Final Rule provides for applications to remove the requirement to enter into new contracts to sell electric energy to QFs. The statute provides that if the Commission finds that competing retail electric suppliers are willing and able to sell and deliver electric energy to a QF, and the electric utility is not required by state law to sell electric energy in its service territory, the requirement to sell should be terminated. The new § 292.312 of the Commission's regulations describes this process. The Final Rule makes no findings or presumptions with respect to an electric utility's obligation to sell electric energy to QFs.

E. Reinstatement of the Requirement To Sell Electric Energy to QFs

17. Finally, the Final Rule provides for applications to reinstate the requirement of an electric utility to sell electric energy to QFs, by showing that the conditions necessary for the removal of the requirement to sell are no longer met. After notice and comment, the Commission will issue an order within 90 days if the required showing is made. Applications for reinstatement are addressed in the new § 292.313 of the Commission's regulations.

F. Recovery of Prudently Incurred Costs Relating to QF Power Purchases

18. The Final Rule does not adopt new regulations implementing section 210(m)(7), regarding an electric utility's recovery of prudently incurred costs relating to purchases of electricity from QFs.

III. Background

A. History of Section 210 of PURPA

19. When Congress enacted section 210 of PURPA, it required the Commission to prescribe such rules as the Commission determined necessary to encourage cogeneration and small power production, including rules requiring electric utilities to offer to purchase electric energy from and sell

[8] Herein referred to as small QFs.

[9] The electric utility would have to make additional showings if it wished to rebut the presumption that small QFs do not have nondiscriminatory access to its region's ''Day 2'' wholesale markets.

electric energy to QFs. Additionally, section 210 of PURPA authorized the Commission to exempt QFs from certain federal and state laws and regulations if necessary to encourage cogeneration and small power production.

20. A cogeneration facility is defined in the Federal Power Act (FPA)[10] as a facility which produces electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes.[11] Thus, cogeneration facilities simultaneously produce two forms of useful energy, namely electric energy and heat. Cogeneration facilities can use significantly less fuel to produce electric energy and steam (or other forms of energy) than would be needed to produce the two separately.

21. Small power production facilities, as defined in the FPA, use biomass, waste, or renewable resources, including wind, solar energy and water, to produce electric energy and have a power production capacity which, together with any other facilities located at the same site, is not greater than 80 megawatts.[12] Reliance on these sources of energy can reduce the need to consume fossil fuels to generate electric power.

22. Prior to the enactment of PURPA, a cogenerator or small power producer seeking to establish interconnected operation with a utility faced three major obstacles. First, utilities were not generally willing to purchase this electric output or were not willing to pay an appropriate rate for that output. Second, utilities generally charged discriminatorily high rates for back-up service to cogenerators and small power producers. Third, a cogenerator or small power producer which provided electric energy to a utility's grid ran the risk of being considered a public utility and thus being subjected to extensive state and federal regulation.

23. Section 210 of PURPA was designed to remove these obstacles. Each electric utility is required under section 210 to offer to purchase available electric energy from cogeneration and small power production facilities which obtain qualifying status. The rates for such purchases from QFs must be just and reasonable to the ratepayers of the utility, in the public interest, and must not discriminate against cogenerators or small power producers. Rates also must not exceed the incremental cost to the electric utility of alternative electric energy (also known as the electric utility's ''avoided costs''). Section 210 also requires electric utilities to provide electric energy to QFs at rates which are just and reasonable, in the public interest, and which do not discriminate against cogenerators and small power producers. Rates for the purchase of energy from and the sale of energy to a QF are set by the appropriate state regulatory authority or non-regulated utility pursuant to the Commission's regulations, 18 CFR 292.301–308 (2006).

24. Since Congress enacted PURPA, electric utilities have complained that their requirement to purchase from and sell to QFs, as implemented by the Commission in 18 CFR 292.303(a)–(b), was not economically beneficial and that they were purchasing energy they did not need and selling energy they did not want to sell. In 1995, the Commission clarified that determinations of the avoided-cost rate must take into account all alternative sources including third-party suppliers and an electric utility does not pay for electric energy it does not need.[13] In the past decade, with the development of exempt wholesale generators (EWGs) introduced by the Energy Policy Act of 1992,[14] the implementation of open access transmission via Order No. 888, the advent of ISOs and RTOs and organized markets, the Commission's new interconnection requirements, and increasing competition in wholesale electric markets as well as some retail electric markets, Congress has debated whether to repeal PURPA altogether, or to revise it. The result is new section 210(m), which is the subject of this rulemaking, and new section 210(n), which was addressed in Docket No. RM05–36–000.[15]

B. New Section 210(m)

25. Section 210(m) of PURPA is titled ''Termination of Mandatory Purchase and Sale Requirements.'' The section revises the rights and obligations between electric utilities and QFs. Section 210(m)(1) requires the Commission to terminate the requirement of an electric utility to enter into a new contract or obligation with the QF if it finds that a QF has nondiscriminatory access to a market described in section 210(m)(1)(A), (B) or (C). Section 210(m)(2) states that after the date of enactment, no utility will be required to enter into a contract to purchase from or sell to a new cogeneration facility, unless the facility meets the criteria for new cogeneration facilities established by the Commission in implementing section 210(n) of PURPA. Section 210(m)(3) provides that an electric utility may file ''an application for relief from the mandatory purchase obligation'' on a service territory-wide basis and provides that the Commission must make a final determination on such an application within 90 days of the application. Section 210(m)(4) provides that a QF, a state agency, or other affected person may apply for an order reinstating the electric utility's ''obligation to purchase electric energy under this section'' upon a change in the market. Section 210(m)(5) provides for the termination of the requirement that an electric utility enter into a new contract or obligation to sell electric energy to a QF upon a finding that specified competitive conditions exist. Section 210(m)(6) provides that nothing in section 210(m) affects the rights or remedies of any party under any contract or obligation in effect or pending approval before the appropriate state regulatory authority or nonregulated utility on the date of enactment of section 210(m). And finally, section 210(m)(7) provides that the Commission shall issue and enforce such regulations as are necessary to ensure that an electric utility that purchases electric energy or capacity from a QF in accordance with a legally enforceable obligation entered into or imposed under section 210 of PURPA recovers all prudently incurred costs associated with the purchase.

C. NOPR

26. On January 19, 2006, the Commission issued a NOPR containing its proposal to implement section 210(m) of PURPA. Generally, the Commission proposed to incorporate the language of section 210(m) in its regulations. While section 210(m) permits electric utilities to file applications for relief from the mandatory purchase requirement, and requires the Commission to act on such applications within 90 days, the Commission determined in the NOPR that it is appropriate to act generically as much as possible. Specifically, section 210(m)(1)(A) is most suitable for

[10] 16 U.S.C. 824 *et seq.*

[11] *Id.* 796(18).

[12] *Id.* 796(17)(A)(i)–(ii).

[13] *Southern California Edison Company and San Diego Gas & Electric Company,* 70 FERC ¶ 61,215 at 61,677–78, *reconsideration denied,* 71 FERC ¶ 61,269 at 62,078 (1995) (finding that the determination of avoided cost must take into account ''all sources'').

[14] Energy Policy Act of 1992, Pub. L. No. 102–486, 106 Stat. 2776, (1993) (EPAct 1992). EPAct 1992 added a new section 32 to the Public Utility Holding Company Act of 1935 (PUHCA) to permit a category of sellers called EWGs to be exempt from PUHCA.

[15] *Revised Regulations Governing Small Power Production and Cogeneration Facilities,* Order No. 671, 71 FR 7852 (Feb. 15, 2006), FERC Stats. & Regs. ¶ 31,203 (2006), *order on reh'g,* Order No. 671–A, 71 FR 30585 (May 30, 2006), FERC Stats. & Regs. ¶ 31,219 (2006).

such a generic implementation and the Commission proposed to make generic findings that certain markets meet the section 210(m)(1)(A) criteria. The NOPR concluded that the most reasonable interpretation of section 210(m)(1)(A) is that it was crafted to apply to regions in which ISOs and RTOs administer auction-based day ahead and real time wholesale markets for the sale of electric energy; and wholesale markets for long-term sales of capacity and electric energy are that these are available to participants/QFs in these markets.[16] The Commission proposed in the NOPR that it would make a generic finding that the Midwest ISO, PJM, ISO–NE, and NYISO provide markets that meet the requirements of section 210(m)(1)(A) and therefore utilities that are members of those ISOs or RTOs meet the criteria for relieving those electric utilities of the requirement to enter into new contracts or obligations with QFs.[17] Because the Commission proposed to make a generic finding with respect to 210(m)(1)(A), the Commission proposed that the electric utilities that are members of these four RTO/ISOs submit a compliance filing instead of filing applications for relief of the purchase requirement pursuant to 210(m)(3). In the compliance filing, the electric utility would demonstrate: (1) Membership in the RTO/ISO; (2) that the Commission has made a final finding that the RTO/ISO it is a member of provides nondiscriminatory access to a section 210(m)(1)(A) market; (3) a list of all potentially affected QFs; and (4) the QFs have the rights to request service under the OATT.[18]

27. The Commission concluded that QFs have nondiscriminatory access to transmission and interconnection if they have access to utilities providing service under an Order No. 888 OATT (or to utilities providing service under a Commission-accepted reciprocity tariff) and interconnection services pursuant to the Commission's interconnection rules.[19] The Commission also proposed, however, that there be a rebuttable presumption that a utility provides *nondiscriminatory access* if it has an open access transmission tariff in compliance with our *pro forma* OATT (or a Commission-approved reciprocity tariff) and that QFs or any other affected party should be allowed to rebut that presumption, for example, by providing specific and credible evidence that the QF does not have nondiscriminatory access to wholesale markets.[20] The Commission noted that improper implementation of an OATT is more properly the subject of a complaint.

28. Further, the Commission proposed in the NOPR that other markets, *i.e.*, both non-auction-based markets and non-RTO/ISO markets described in section 210(m)(1)(B) and (C), would not be addressed generically in this rulemaking but would be addressed on a case-by-case basis in response to applications filed pursuant to the Commission's implementation of section 210(m)(3) of PURPA, *i.e.*, pursuant to the proposed § 292.310 of the Commission's regulations.[21] The Commission proposed that subsequent changes to market conditions in all markets, *i.e.*, markets described subparagraphs (A), (B) and (C) also would be handled on a case-by-case basis as well. Applications for termination of the requirement to enter into new contracts or obligations to purchase from QFs in markets described in subparagraphs (B) and (C) would be addressed pursuant to the proposed § 292.310 of the Commission's regulations. An application to reinstate the requirement that a utility enter in the new contracts or obligations to purchase from QFs, alleging subsequent changes to market conditions, would be addressed pursuant to the proposed § 292.311 of the Commission's regulations. The Commission noted that it must make a *finding* regarding an application for relief of the purchase requirement and that the finding must be made within 90 days of the date of such application. The Commission stated that it expected an application for relief to be fully supported by documentation upon which the required finding can be made.[22]

29. Of the approximately 2,000 pages of comments the Commission has received to its NOPR, a large portion of the comments focused on the standards applicable to utilities within the ''Day 2'' RTO/ISOs and the procedures for utilities within ''Day 2'' markets to claim relief from the purchase requirement. Based on careful consideration of the comments submitted in response to the NOPR, the Commission adopts a Final Rule that makes certain modifications and clarifications to the approach in the NOPR.

IV. Discussion

A. Section 210(m)(1)

30. The new PURPA section 210(m)(1) amends the statutory requirement that electric utilities purchase electric energy from QFs and states that:

> * * * No electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has nondiscriminatory access to—
> (A)(i) Independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy; or
> (B)(i) Transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and (ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or
> (C) Wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B).

1. Three Standards for Relief

a. NOPR

31. Section 210(m)(1) defines under what conditions the Commission must relieve an electric utility of the obligation to enter into a new contract or obligation to purchase electric energy from a QF. Essentially, section 210(m)(1) establishes three different standards for relief from the purchase requirement depending on whether: (1) Electric utilities are members of ''Day 2'' RTO/ISOs; (2) electric utilities are members of ''Day 1'' RTO/ISOs; and (3) electric utilities are in neither ''Day 2'' nor ''Day 1'' RTO/ISOs. The NOPR interpreted the language of section 210(m)(1) as to what conditions must exist for the three types of markets and sought comments.

32. The NOPR explained that the first standard for relief is established in section 210(m)(1)(A) of section 210(m)(1), which applies to ''Day 2'' markets with wholesale bilateral long-

[16] NOPR at P 14.

[17] *Id.* at P 22–28.

[18] *Id.* at P 40. We note that, since the time comments were filed in this proceeding, the Commission has issued a NOPR proposing amendments to the OATT. *Preventing Undue Discrimination and Preference in Transmission Service,* 71 FR 32636 (2006), FERC Stats. & Regs. ¶ 32,603 (2006).

[19] *Id.* at P 20.

[20] *Id.* at P 31.

[21] *Id.* at P 29–30.

[22] The Commission interprets the 90-day period to begin upon receipt of a completed application.

term contracts for the sale of capacity and electric energy available to participants. The Commission indicated that, under section 210(m)(1)(A)(ii), there was no requirement, given the statutory language, to consider ''evidence of transactions within the relevant market'' when determining whether QFs have nondiscriminatory access to ''wholesale markets for long-term sales of capacity and electric energy.'' The Commission suggested that Congress presumed QFs, which have ''nondiscriminatory access to'' ISO and RTO regions with auction-based day ahead and real time markets, have nondiscriminatory access to long-term sales of electric energy and capacity wholesale markets outside the interconnected utility. The Commission proposed to find that Midwest ISO, PJM, ISO–NE, and NYISO meet the requirements of section 210(m)(1)(A).

33. The second standard for relief is established in section 210(m)(1)(B), which the Commission found to be intended to apply in ''Day 1'' RTO/ISOs, *i.e.*, those that do not have both auction-based day ahead and real time markets. Section 210(m)(1)(B) provides for termination of the requirement that an electric utility enter into a new contract or obligation to purchase electric energy from a QF so long as there is (i) a Commission-approved regional transmission entity providing nondiscriminatory transmission and interconnection services; and (ii) ''*competitive* wholesale markets that provide a *meaningful opportunity*'' to sell capacity and energy on both a short- and long-term basis and energy on a real-time basis (emphasis added) to buyers other than the utility to which the QF is interconnected. In the NOPR, the Commission stated that ''meaningful opportunity'' is to be determined by the Commission after considering, among other factors, ''evidence of transactions within the relevant market.'' The Commission indicated that taken together, the terms ''competitive,'' ''meaningful opportunity'' and ''evidence of transactions'' suggest that Congress intended that termination of the purchase requirement in a ''Day 1'' market only if it could be established that QFs had opportunities to make long-term and short-term sales of capacity and long-term, short-term and real-time sales of energy into competitive wholesale markets.

34. The third standard for relief is established in section 210(m)(1)(C) of section 210(m)(1). Under this standard, the purchase requirement is removed in wholesale markets for the sale of capacity and electric energy that are, ''at a minimum,'' of comparable competitive quality as markets described in subparagraphs (A) and (B). The Commission explained that although this provision is not clear on its face, its reference to subparagraphs (A) and (B) requires the Commission to be mindful, in interpreting the provision, of the two types of requirements that are embodied in those sections, *i.e.*, (1) nondiscriminatory access to transmission and interconnection services, and (2) competitive short-term and long-term markets that provide a meaningful opportunity to sell to buyers other than the utility to which the QF is interconnected.

b. Comments

35. ELCON, AWEA, Caithness and Public Interest Organizations (PIOs),[23] for example, state that Congress did not repeal the mandatory purchase requirement and that the Commission has a continuing obligation to promote QF development. This, they contend, can only be accomplished by assuring that markets meet criteria that guarantee that QFs will enter into contracts with electric utilities of similar quality to those that they received prior to the enactment of section 210(m) of PURPA before the mandatory purchase obligation can be terminated. ELCON appears to suggest that there is only one standard for relief from the purchase requirement: ''assurance of a competitive market.'' [24] In essence, ELCON argues that sections 210(m)(1)(A), (B) and (C) establish a single standard for terminating the mandatory purchase obligation. ELCON states that section 210(m) authorizes the Commission to grant relief from the purchase requirement ''if and only if a viable market exists.'' [25] ELCON expresses its concern that because discrimination continues and the markets are flawed, competition and on-site generation will be discouraged. AWEA and Caithness state that the Commission should grant relief from the purchase requirement only in markets which are ''sufficiently competitive.'' [26] EPSA argues that the mandatory purchase requirement can be terminated only where the Commission finds that the ''economic and technical equivalent to mandatory purchase is available through a competitive market.''[27] PIOs argue that electric utilities have to demonstrate that QFs do, in fact, have physical and economic access to all of the required markets on a nondiscriminatory basis. The American Chemistry Council contends that the mandatory purchase requirement can be terminated only in those situations where wholesale markets have evolved to ensure the long-term commercial viability of QFs which enables QFs to attract investment capital and facilitates QF development; the American Chemistry Council urges the Commission to interpret section 210(m)(1) in such a manner.

36. NPRA reminds the Commission that the main purpose of cogeneration is not to serve the needs of an electric power grid or ''market,'' but, rather, it is to serve the interconnecting industrial thermal and electrical load. Consequently, NPRA argues that the operation of these facilities may require different market features than are required by utility electric generation or merchant generation. NPRA argues that Congress intended to terminate the ''must take'' requirement only when it can be demonstrated that an electric market supports not only the role of merchant power, but the retention and encouragement of cogeneration. In other words, while a market may prove an efficient and viable alternative for a merchant plant, it does not necessarily ensure that it is an efficient and viable alternative for sales of power by a cogeneration facility.

c. Commission Determination

37. We disagree with commenters' interpretation of the statutory standard for relief from the requirement that an electric utility enter into a new contract or obligation to purchase electric energy from a QF. There is nothing in section 210(m) to suggest that Congress intended to ensure a QF's commercial viability. Nor does the statute require the Commission to find that the ''economic and technical equivalent to mandatory purchase is available through a competitive market'' before it terminates the requirement that an electric utility enter into a new contract or obligation to purchase electric energy from QFs. Although we certainly agree with the QF commenters that Congress did not repeal the mandatory purchase requirement in its entirety, Congress clearly left the Commission with no choice but to eliminate the mandatory purchase requirement for utilities operating in certain markets upon

[23] The PIOs filing these comments are the Center for Energy Efficiency & Renewable Technologies, Delaware Division of the Public Advocate, Environmental Law & Policy Center, Interwest Energy Alliance, Izaak Walton League of America, Natural Resources Defense Council, Northwest Energy Coalition, Office of the Ohio Consumers' Counsel, Pace Energy Project, Project for Sustainable FERC Energy Policy, West Wind Wires, and Western Resource Advocates.

[24] ELCON Comments at 8.

[25] *Id.*

[26] AWEA Comments at 2.

[27] EPSA Comments at 9.

certain findings being made. The fact is that the language of section 210(m)(1) provides that an electric utility shall be relieved of the requirement to purchase from a QF if the Commission makes certain findings, which findings do *not* include a determination that the ''economic and technical equivalent to mandatory purchase is available through a competitive market.'' This is not what section 210(m) says, nor would it make any sense to infer such an interpretation. Competitive markets do not, by definition, impose ''mandatory'' purchase obligations on buyers. Buyers choose among differing sellers based on their relative cost, reliability, etc. The QFs making this argument therefore ignore the relevant statutory language and, in doing so, reargue the debate before Congress when it enacted section 210(m).

38. The most reasonable interpretation of section 210(m)(1) is that Congress, in setting forth discrete tests for three different types of markets, was requiring the Commission to differentiate among these markets, and the differing circumstances they present, in determining whether a utility must be relieved of the mandatory purchase obligation. Although the statute is ambiguous in certain respects, it clearly reflects Congressional intent that the Commission differentiate among these three markets in making its determination regarding whether to terminate the purchase obligation. This approach not only reflects a natural reading of the words of the statute, it also is reasonable given the nature of the determination being made. There is little debate in this proceeding that Day 2 organized markets, as a general matter, provide greater opportunities for QFs (and other independent generators) to compete than unorganized markets because of the existence of day-ahead and real-time energy markets that allow *all* competing generators to submit bids to participate in the market on a nondiscriminatory basis. Although other markets—including ''Day 1'' markets and non-organized markets—also provide opportunities for independent generators to compete, it is not surprising that Congress would find that, as a general matter, they have less formalized structures for doing so and, hence, utilities seeking relief from the purchase obligation in those markets would bear a heavier evidentiary burden to obtain relief. The Commission cannot, as some commenters in effect ask us to do, simply collapse the three discrete tests into one test that requires an electric utility to demonstrate that a QF will remain economically viable if the purchase requirement is eliminated. This would make the three different statutory standards meaningless.

2. The Nondiscriminatory Access Requirement of Section 210(m)(1) and the OATT

a. NOPR

39. Section 210(m)(1) provides for termination of the requirement for an electric utility to enter into a new contract or obligation to purchase from a QF if the QF has ''nondiscriminatory access'' to a wholesale market described in section 210(m)(1)(A), (B), or (C). In the NOPR, the Commission proposed that there be a rebuttable presumption that a utility provides nondiscriminatory access if it has an Order No. 888 OATT (or a utility providing service under a Commission-approved reciprocity tariff). The Commission stated that QFs or any other party should be allowed to rebut that presumption, but that improper *implementation* of an OATT is more properly the subject of a complaint to ensure that the OATT is properly implemented.

b. Comments

40. ELCON and virtually every other commenter from the QF industry argue that the Commission erred in the NOPR by proposing a rebuttable presumption that a utility provides ''nondiscriminatory access'' to the market conditions identified in section 210(m)(1)(A), (B), or (C) if it has an OATT in compliance with the Commission's *pro forma* OATT, or a Commission-approved reciprocity tariff. They argue that the proposal reflects an overly simplified interpretation of the statute's ''nondiscriminatory access'' requirement and that the mere existence of transmission rights under an OATT does not necessarily ensure that QFs have nondiscriminatory access to markets. ELCON and the QF industry argue that barriers that discriminate against QFs could exist notwithstanding the adoption of an OATT. The California Cogeneration Council (CCC), for instance, states that these barriers could be present in ISO policies that make it more difficult or burdensome for QFs to participate in a market as compared with other types of generators or market participants. ELCON and the QF industry argue that section 210(m)(1) requires the Commission to consider such potential barriers, and to evaluate whether QFs truly have nondiscriminatory access to alternative markets, before concluding that the requirements of section 210(m)(1) have been met.

41. In addition, ELCON and the QF industry state that the Commission has recognized that the intent of Order No. 888 concerning nondiscriminatory access to transmission has not been fully realized; first in Order No. 2000 [28] and more recently in the NOPR on Preventing Undue Discrimination and Preference in Transmission Service.[29]

42. EPSA, Reliant and PIOs add that any tariff for transmission and interconnection services must incorporate changes consistent with the Commission's pro-competitive policies of Order No. 2000 and any further improvements determined as part of the notice of inquiry (NOI). EPSA argues that only then will the transmission and interconnection services be provided on a nondiscriminatory, pro-competitive basis.

43. Dow Chemical Company (Dow) states that there are numerous instances in which QFs effectively have no access to organized markets or to transmission services regardless of whether the utilities to which they are interconnected technically participate in organized markets or provide transmission and interconnection services on an open access basis. Dow states that instead, in such instances, the only entity physically capable of acquiring QF output is the utility with which the QF is interconnected. American Forest & Paper states that market rules designed for merchant generation are often highly discriminatory to QFs which, because of the thermal needs of a cogeneration QF's thermal host, have limited dispatchability and must often be operated in base load configurations. American Forest & Paper states that market rules designed around the dispatchability of resources which do not have attendant manufacturing facility obligations may discriminate unnecessarily and unreasonably against QFs. Council of Industrial Boiler Owners (CIBO) state that by finding that an OATT is sufficient to ensure nondiscriminatory access to markets, the Commission fails to consider the operational differences faced by QFs.

44. In addition, Commenters argue that the NOPR's proposal that there be a rebuttable presumption that a utility provides nondiscriminatory access if it

[28] *Regional Transmission Organizations,* Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs. P 31,089 (1999), *order on reh'g,* Order No. 2000–A, 65 FR. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. P 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington* v. *FERC,* 272_F.3d_607 (D.C. Cir. 2001).

[29] *See supra* note 15.

has an OATT is in essence an irrebuttable presumption. ELCON and the American Chemistry Council state that although the Commission characterizes the presumption as ''rebuttable,'' it also states that the presumption ''cannot be rebutted by an argument that the utility has not properly implemented or administered its OATT.''

45. ELCON argues that it will be difficult for the Commission to sustain on judicial review an irrebuttable presumption that the OATT provides nondiscriminatory transmission access for all QFs when its own NOI recognizes the continuation of patterns of abuse—if anything exacerbated as transmission owners feel the pressure of competition from independent generation. ELCON states that the concern over potential discrimination will only be exacerbated in a scenario like the Entergy Independent Coordinator of Transmission (ICT) where the utility and not the RTO provide service. ELCON states that while the problem of discrimination in transmission is pervasive, *a fortiori,* QFs of whatever size connected at distribution voltage do not have access to markets. ELCON states that the scenario of QFs connected at distribution voltage and the circumstances of small QFs illustrate why generic conclusions are inappropriate.

46. Further, Occidental Chemical Corporation (Occidental) argues that the Commission's conclusion that a complaint, rather than the application proceeding, is the only vehicle available to address a QF's concern that the OATT is being administered or implemented in a discriminatory manner is inconsistent with the plain language of the statute. Occidental states that a QF cannot provide meaningful comments on whether an electric utility's application meets the nondiscriminatory showing required by statute, if the QF is barred from raising issues regarding discriminatory administration or implementation of the OATT and can only raise such issues in a separate complaint proceeding. In addition, Occidental argues that it is unclear how the Commission could make a determination that QFs have nondiscriminatory access under an electric utility's OATT if the Commission bars, from the outset, all evidence that the OATT is being administered or implemented in a discriminatory manner.

47. PJM is concerned with the Commission's presumption for both section 210(m)(1)(B) and (C) that having an Order No. 888 OATT on file is enough to establish a presumption of nondiscriminatory access to the grid. PJM states that rather, the Commission should analyze particular facts and circumstances relative to concerns raised with potential access to the marketplace for QFs.

48. EEI, Allegheny Power, Alliant, Entergy, National Grid and PSNM/TNP agree with the NOPR's proposal. EEI states that QF commenters raise no compelling evidence that access provided pursuant to Commission-approved OATTs is deficient. EEI states that nondiscriminatory access is the standard set by Congress in EPAct 2005, and Congress was fully aware when it used this standard that the OATT is the mechanism for achieving nondiscriminatory access. Allegheny joins EEI in stating that the Commission should make a generic finding that QF access pursuant to a Commission-approved OATT meets the ''nondiscriminatory access'' test of section 210(m) for all markets, whether centrally organized and administered or not.

49. EEI states that the fact that the Commission is considering updating Order No. 888 through its ongoing NOI does not mean that reliance on the OATT as the current benchmark for nondiscriminatory access is inappropriate. EEI states that at this preliminary stage of the Commission's inquiry into whether changes to the OATT should be required, it is premature to predict what the Commission may or may not finally conclude with respect to the OATT. EEI states that by basing so much of their argument on the Commission's consideration of reforms to Order No. 888, QF commenters are in essence converting a Commission NOI into a Commission final rule. EEI states that even if the Commission fine tunes the OATT, it would not mean that existing open access practices pursuant to Commission-approved OATT are discriminatory. EEI states that if the Commission does ultimately require changes, QFs—like any other generator—will reap the benefit of those enhancements.

50. EEI further argues that where issues regarding implementation or administration of a particular OATT arise, a complaint pursuant to section 206 of the FPA is the established mechanism available to QFs (or any other generator or transmission customer) to raise such concerns. It states that in a complaint proceeding, the Commission has the ability to remedy any denial of open access that results from improper administration of an OATT, but that ability is not present under PURPA section 210(m), where the Commission's only authority is to reject an application for termination of the mandatory purchase requirement.

51. EEI argues against the QFs' claim that the Commission has made the presumption of nondiscriminatory access under an OATT essentially irrebuttable. It states that as the NOPR provides, QFs or any other party will be afforded the opportunity to provide ''specific and credible evidence that the QF does not have nondiscriminatory access to wholesale markets.''

c. Commission Determination

52. Under section 210(m)(1), the Commission must find that the QF has ''nondiscriminatory access'' to the wholesale markets described in section 210(m)(1)(A), (B), or (C) in order to terminate the requirement that an electric utility enter into a new contract or obligation to purchase electric energy from a QF. The Commission proposed in the NOPR that there be a rebuttable presumption that a utility provides the *nondiscriminatory access* required in section 210(m)(1) if it has an open access transmission tariff in compliance with our *pro forma* OATT (or a Commission-approved reciprocity tariff). However, the Commission also proposed that QFs or any other affected party should be allowed to rebut that presumption, for example, by providing specific and credible evidence that the QF does not have nondiscriminatory access to wholesale markets.

53. The Commission reaffirms the determination in the NOPR that only issues not related to the provision of open access transmission under the OATT may be raised to rebut the nondiscriminatory access presumption. We disagree with arguments of ELCON and Occidental that a QF should be able to litigate open access implementation issues in the context of 90-day QF applications or that, as Occidental claims, use of complaint proceedings to address OATT implementation is inconsistent with the language of the statute. We also reject arguments that, because the Commission issued a NOPR to reform the OATT, that we can no longer adopt a presumption that a Commission-approved OATT meets the requirements of section 210(m) regarding nondiscriminatory transmission access.[30] As we have

[30] In this regard we note that the rulemaking to reform the OATT is intended to remedy the ''opportunity'' for undue discrimination; the Commission did not base its institution of the rulemaking in Docket No. RM05–25–000 on any finding that the OATT allows actual discrimination. To the extent that ELCON argues that, through the NOPR process, the Commission has recognized ''the

Continued

found in market-based rate proceedings and other contexts, a transmission owner that has an OATT on file has met the obligation set forth in Order No. 888 to provide nondiscriminatory transmission access. Until we issue a Final Rule in RM05–25–000 that modifies Order No. 888, no more is required. Further, the FPA provides specific mechanisms, complaints under FPA section 206 or 306, to address allegations that a particular utility is not properly administering the OATT. We take very seriously allegations that a transmission owner is violating its OATT, but there are established statutory procedures for addressing such allegations. PURPA section 210(m) does not change this statutory framework.[31]

54. As to PJM's argument that a filed Order No. 888 OATT is not enough to establish a presumption of nondiscriminatory access to the grid with respect to markets in subparagraphs (B) and (C) of section 210(m)(1), we find PJM to have misinterpreted the NOPR. Affected parties under subparagraphs (B) and (C) have the same opportunity to rebut the presumption of nondiscriminatory access as parties affected under subsection (A). We note that, in general, the evidentiary showings for relief from the requirement that an electric utility enter into a new obligation to purchase electric energy from a QF in section 210(m)(1)(B) are higher than the evidentiary showings in section 210(m)(1)(A), and the evidentiary showings in section 210(m)(1)(C) are higher than the evidentiary showings required in section 210(m)(1)(B).

55. Comments discussed above that are raised in the context of open access service but also touch upon concerns with market rules and or operational issues, for example, are addressed further below.

3. Other Market Access Issues Under Section 210(m)(1)

56. The Commission explained in the NOPR, and has confirmed in this rule, that the OATT adopted in Order No. 888,[32] and interconnection rules, adopted in Order Nos. 2003 [33] and 2006,[34] are designed to eliminate undue discrimination in the provision of transmission and interconnection services. However, in the NOPR the Commission recognized that small QFs may be in a unique situation with respect to nondiscriminatory access because they interconnect with the interconnected utility at a distribution level.[35] In the NOPR, the Commission sought comment on whether the utilities' purchase obligation should be retained for small renewable projects. The Commission also sought comment on whether there may be other categories of QFs that lack nondiscriminatory access to RTO/ISO short-term or long-term wholesale markets for which the Commission should retain the utilities' purchase obligation. With respect to whether the purchase obligation should be retained for small renewable projects, the Commission sought comments on how to define ''small,'' *e.g.,* 5 MWs or below, 20 MWs or below.[36]

57. Commenters from the QF industry essentially argue that certain categories of QFs should be ''exempt'' from section 210(m)(1) because these QFs lack nondiscriminatory access to the markets described in section 210(m)(1)(A), (B), or (C). In general, they argue that QFs lack nondiscriminatory access if: (1) They are of a small size, (2) they have certain operational characteristics such that the QF cannot access a particular market, (3) they are interconnected at the distribution level, or (4) a combination of the above. As discussed further below, the comments we have received do not provide a justification for categorically exempting any category of QFs from any future orders which may terminate a utility's requirement to enter into new contracts or obligations to purchase from QFs. No class of QFs has been shown to uniformly lack nondiscriminatory access based on a single factor. We also agree with commenters, such as AEP, Entergy, Missouri River, Montana-Dakota, PJM Transmission Owners, PPL, Progress Energy and Xcel, that section 210(m) does not give the Commission authority to categorically exempt certain QFs from statutory provisions. However, we believe the record does support creating a rebuttable presumption that certain QFs may not have nondiscriminatory access to markets because of their small size.

a. Small Size

i. Comments

58. CIBO argue that smaller QFs typically are less able to predict their generation and power export/import levels due to unpredictable demand fluctuations. They state that while larger facilities may face similar unpredictable situations, they may have more latitude in selecting and operating alternative equipment and that latitude could allow for a higher level of power flow control. CIBO also argue that because of a QF's small size, the transmission charges involved in accessing the three markets described in section 210(m)(1), including locational marginal pricing and transition charges, can place a small QF in a position where it cannot reach those markets. Also, CIBO, AWEA, and Granite State argue that certain markets may require membership fees in order to participate in the market. CIBO state that a sufficiently large QF may face similar problems, but it presumably has greater resources to address those problems, and sufficient economic interest in the success of the generator to bring those resources to bear on the problem. On the other hand, they argue that a small QF is more likely to lack the resources and to have less economic incentive to apply those resources to the problem, especially in light of the staying power of its competition.

59. Granite State adds that most small QF hydroelectric plants, for example, are located in areas which do not provide direct access to RTO/ISOs. It states that small QF hydroelectric projects are generally located in areas remote from high voltage power lines, their locations being determined by the site of existing dams. Granite State states that the amount of generation

continuation of patterns of abuse,'' ELCON mischaracterizes the basis of the OATT rulemaking.

[31] In fact, PURPA section 210(m) provides a compressed 90-day time frame in which the Commission, after notice and opportunity for *comment,* must act on applications. This provides a clear indication that Congress did not intend hearing or lengthy proceedings in order to make a determination of whether the electric utility must be relieved of the mandatory purchase requirement. A QF may, of course, file a complaint with the Commission at any time, including a separate complaint in conjunction with its comments on an electric utility's application for relief from the mandatory purchase requirement.

[32] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.* Transmission *Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[33] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, 68 FR 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g,* Order No. 2003–A, 69 FR 15932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g,* Order No. 2003–B, 70 FR265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g,* Order No. 2003–C, 70 FR 37661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005).

[34] Standardization of Small Generator Interconnection Agreements and Procedures, Order No. 2006, 70 Fed. Reg. 34,100 (Jun. 13, 2005), FERC Stats. & Regs. ¶ 31,180 at 31,406–31,551 (2005), *order on reh'g,* Order No. 2006–A, 70 Fed. Reg. 71,760 (Nov. 30, 2005), FERC Stats. & Regs. ¶ 31,196 (2005).

[35] NOPR at P 20.

[36] *Id.*

from a small QF hydroelectric plant is dependent on the amount of water flowing through the turbines on a particular hour. It states that they have limited resources and the staff employed by these projects are generally engaged in the day to day operation of the projects. Granite State states that developers of small hydroelectric plants do not have the software, computer and monitoring equipment to integrate to RTO/ISO operations and, in many regions, would not even be eligible to bid their energy into these markets because they are too small for the applicable minimum block.

60. CIBO also argue that a small QF exemption, such as a MW limit, would provide an administrative advantage because it would be less likely to involve the QF and the Commission in additional proceedings and thus, avoid potential additional burden on parties and the Commission.

61. Although not arguing for a size exemption, EEI states that it would be appropriate to allow affected small QFs in all markets, including ''Day 2'' organized markets, to have an opportunity to demonstrate that they effectively lack nondiscriminatory access to those markets, despite their legal right to such access under an OATT.

62. EEI suggests that that the Commission could consider evidence of the following limited circumstances as a basis for finding that a small QF effectively may not have nondiscriminatory access to markets. One, where a small industrial cogenerator [37] (with a nameplate capacity of 5 MW or less) has: (a) highly variable thermal and electrical demand on a daily basis; (b) highly variable and unpredictable wholesale sales on a daily basis; and (c) no access to a mechanism to schedule transmission service or make sales in advance on a consistent basis, either because of the variability of its electricity production or because of market rules that prevent the QF from scheduling transmission service or participating in organized markets. Two, where a QF is very small,[38] and cannot aggregate its electricity production with other nearby facilities, and can demonstrate that it is not directly or indirectly modeled in the energy management or market information system, cannot directly sell any product or service into the RTO or ISO market and appears to the RTO or ISO only as a reduction to load.

63. AEP, Entergy, FirstEnergy, Missouri River and Montana-Dakota, PJM Transmission Owners, PPL, Progress Energy and Xcel argue that no exemption should be allowed because: (1) All QFs are eligible to receive transmission service under the *pro forma* OATT, regardless of the level at which they are interconnected; (2) Congress has not given the Commission the authority to exempt QFs from the provisions of section 210(m); and (3) an exemption could lead to uneconomic QF ''gaming'' strategies through dividing generating facilities so that they are under the size limit for the mandatory purchase obligation to kick-in.

64. Other Commenters argue that no exemption should be granted in certain RTO/ISOs. PJM Transmission Owners and PPL Electric argue that PJM has developed special procedures to ensure that small generators, even those under 20 MW, have comparable access to energy and capacity markets. Specifically, the PJM Transmission Owners state that Subpart G of PJM's tariff is dedicated to small generators to provide clear and concise rules for these power producers to ensure that they have comparable access to participate in energy and capacity markets allowing load to rely upon such resources. PJM notes that since 1999, PJM has successfully interconnected numerous small projects. These include 44 projects rated between 5–20 MW and 28 rated at 5MW or less. It further states that the majority of these projects are sponsored by developers unaffiliated with transmission or distribution system owners. Montana-Dakota adds that QFs have nondiscriminatory access to the Midwest ISO markets regardless of size.

65. With regard to the Midwest ISO, several commenters such as Missouri River Energy and Montana-Dakota argue that no exemption is necessary for small QFs because small renewable projects have become very marketable given the current regulatory and political environment of increasing renewable portfolio standards.

66. As to NYISO and ISO–NE, National Grid states that they have generation interconnection policies in place for small as well as large generators. National Grid states that there are no minimum size requirements for a generator to join NEPOOL, and while the NYISO currently will not accept bids in the markets it administers from generators with 1 MW or less of capacity, that limitation is not immutable. It states that subject to that limitation, the market rules in ISO–NE and the NYISO allow settlement for all sizes of generators. NSTAR adds that there are sufficient privileges afforded to small renewable resources in NEPOOL, and regulatory requirements and monetary incentives in the New England states to sustain small renewable projects. The New York Transmission Owners argue that in NYISO, all facilities, including those with a capacity under 20 MW, have the same equal and nondiscriminatory access to all NYISO markets and all services offered by the NYISO under its tariffs. NYISO does not take a position on whether there should be an exemption. It states, however, that any unit, regardless of ownership or QF status, that has a generating capacity of two MWs or higher can bid directly into the NYISO markets.

67. As to what QF size should be considered ''small,'' the proposals varied significantly from 1 MW to 80 MWs.[39] However, in general, most of the QF industry supports a 20 MW exemption, utilities generally support no exemption, and some entities are willing to support an exemption for very small QFs (*i.e.*, smaller than 1 MW) in specific service territories. Granite State and American Energy argue that a 20 MW demarcation strikes a reasonable balance between small and large projects. The nameplate capacity of many renewable technologies like wind and hydro do not accurately reflect the annual generating capacity of such units due to the lower capacity factor dictated by the variability in available river flow and wind. Granite State states that the 20 MW limitation would provide the

[37] EEI does not expect that the Commission would extend the opportunity to demonstrate lack of access under this proposal to wind generators. EEI states that while electricity production from wind power is variable, wind generation is predictable in its variability, and the Commission has accommodated this variability through interconnection rules and other policies. EEI asserts that wind generators differ as well from small industrial cogenerators, whose primary purpose, in accordance with PURPA, is not intended to be the production of electricity, while wind generators are exclusively electricity producers.

[38] EEI states that the size of a ''very small'' QF for purposes of its proposed exception to the termination of the mandatory purchase obligation is likely to vary among RTO/ISOs, based on factors such as operational requirements of the particular RTO, any threshold level for transactions that may be required in an RTO, any minimum size requirements for participation in the RTO market, or other factors specific to the RTO/ISO market involved. For example, EEI notes a ''very small'' QF for the NYISO market could be a QF less than 1 MW that has not been able to aggregate supply in order to participate at the 1 MW minimum transaction level established in the NYISO tariff. See NYISO FERC Electric Tariff, Original Volume No. 2 (''Services Tariff''), Sections 4.1.4, 4.2.2(c)(1) and 5.12.

[39] Industrial Boilers proposed 80 MW, UAE proposed 30 MW, AWEA and ELCON proposed 20, and EEI proposed 1 MW for cogeneration and 5 MW for small production.

needed flexibility to ensure that small projects are protected.

68. In addition, ELCON, Granite State, AWEA, and Landfill Gas state that the 20 MW demarcation is consistent with: (1) Order No. 671; and (2) the Standardization for Small Generation Interconnection Agreements and Procedures, Order Nos. 2006 and 2006–A, which recognizes that small generators, *i.e.*, 20 MW or below, should have different standards than large generators. AWEA also states that utilizing a 20 MW threshold for ''small'' generators will also avoid inconsistencies with state interconnection procedures which are designed around the current 20 MW threshold for ''small'' generators. Further, AWEA states that a 20 MW threshold will help prevent RTO/ISO market-participation costs from discouraging market participation and development of small generators.

69. CIBO argue that ''small'' should be defined as 80 MW or less. They state that Congress already adopted 80 MW to reflect what is small in PURPA, which used 80 MW to treat as QFs small power production facilities with a net capacity of 80 MW or less that produce electricity from biomass, waste, renewable resources, geothermal resources, or any combination of these sources. In addition, CIBO argue that an 80 MW bright line would also resolve a number of the operational concerns faced by QFs. They argue that a QF of greater than 80 MW is more likely to interconnect to the grid at higher voltages, and less likely to interconnect at distribution voltages, thereby addressing a number of the transmission access issues, including in particular the distribution facilities charges that lower voltage QFs will face. Regardless of the interconnection voltage, CIBO argue that a QF of greater than 80 MW will more likely have an economic interest sufficient to seek to participate in the market and the resources to participate. Further, CIBO argue that a QF of greater than 80 MW will probably have more latitude in selecting and operating alternative equipment and that latitude can allow for a higher level of power flow control. Finally, they argue that an 80 MW bright line will not undercut what they claim is the Commission's goal of limiting PURPA abuse and would ensure that units benefiting from the mandatory purchase and sale obligations will in fact be the QFs that Congress has wanted to protect.

70. Granite State and USCHPA are open to a hybrid definition of ''small'' QF whereby small QFs with a nameplate capacity of 5 MW or less would automatically retain the right to make sales to their utilities at avoided cost rates. Those QFs with capacities of more than 5 MW and less than 20 MW would have the benefit of a rebuttable presumption in favor of retaining the utility's mandatory purchase obligation. UAE simply states that it believes that a small QF should be defined as less than 30 MW without elaboration.

71. PJM agrees that EEI's size limit exception (1 or 5 MWs) may be appropriate as applied to very small entities that do not aggregate their generation. PJM states, however, that in the PJM market resources rated below very small levels are permitted to aggregate for the purpose of submitting offers. Therefore, PJM concludes that a facility less than 100 kW may meet a ''unique circumstances'' standard. PJM states that it does not impose a size limit on modeling. PJM states that it requires that new resources rated higher than 10 MW, whether in the PJM market or behind the meter, as well as any new capacity resource intending to set real-time locational marginal pricing (LMP), must be explicitly modeled in the PJM Energy Management System network model. As to access, PJM states that the PJM market has a 100 kW minimum for offers to buy and sell in the Capacity and Day-Ahead Markets and 1 kW for offers in the Real-Time Market.

ii. Commission Determination

72. We believe that the record supports creating a rebuttable presumption [40] that certain QFs may not have nondiscriminatory access to markets because of their small size. In addition, we find that a reasonable and administratively workable definition of ''small'' is 20 MW. As a result, the Final Rule creates a rebuttable presumption that the requirement that an electric utility enter into new contracts or obligations to purchase from a QF remains in effect, *in all markets*, for QFs sized 20 MW net capacity [41] or smaller.[42] This rebuttable presumption will apply to applications in markets described in section 210(m)(A), (B), or (C). To rebut this presumption, the filing electric utility will be required in its application to demonstrate, with regard to each small QF that it, in fact, has nondiscriminatory access to the market.

73. The Commission finds persuasive commenters' arguments that some QFs may not have nondiscriminatory access to one of the three markets described in section 210(m)(1)(A), (B), or (C) because of their small size. There was agreement among commenters representing both QFs and utilities that small size could affect a QF's ability to access markets. To varying degrees, the QF industry, EEI, and also PJM, recognized that small QFs may not have nondiscriminatory access to the three markets described in section 210(m)(1)(A), (B), or (C). There was not, however, consensus as to what constitutes ''small'' for purposes of identifying QFs that may not have nondiscriminatory access to markets.

74. In determining what constitutes ''small'' for purposes of the rebuttable presumption, we are not making a finding that all QFs smaller than a certain size lack nondiscriminatory access to markets. Rather, utilities seeking to terminate the requirement that they enter into new contracts or obligations to purchase from small QFs will be required to rebut the presumption that QFs sized 20 MW net capacity or smaller do not have access. A utility's demonstration must be filed as part of its application filed pursuant to section 292.310 of our regulations.

75. Commenters suggested various sizes as the demarcation between QFs that can access markets. CIBO suggested 80 MW as the logical demarcation point, pointing to the definition of ''small power production facilities'' in PURPA. Granite State, AWEA and Landfill Gas suggest that the Commission use 20 MW as the demarcation pointing to the Commission's use of 20 MW as being the demarcation between large and small generators for interconnection purposes and for purposes of QF exemption from sections 205 and 206 of the FPA.

76. Keeping in mind that we are creating a rebuttable presumption, and to include most small QFs that may lack nondiscriminatory access to markets within the presumption, we find that the 20 MW demarcation is reasonable. As pointed out by commenters, the Commission used 20 MW in Order No. 671 to exempt QFs that are 20 MW or smaller from sections 205 and 206 of the FPA. The Commission also used the 20 MW demarcation for eligibility for the interconnection rules contained in Order Nos. 2006 and 2006–A, which recognize that small generators, *i.e.*, 20

[40] As we noted above in P 57, no class of QFs has been shown to uniformly lack nondiscriminatory access based on a single factor. Thus, we are not making a finding here but are establishing a rebuttable presumption.

[41] A QF, when it seeks certification, states what size it is. The size it is required to state is its ''net capacity'' which is its gross capacity, less station power. In the case of Commission-certified facilities, the Commission certifies the QF at its net capacity; self-certified facilities self-certify at net capacity. The Commission has been consistent over the years in requiring QFs to state their net capacity in the Form 556 which is the basis of both applications for Commission certification, and notices of self-certification. A QF's Commission certified (or self-certified) net capacity would determine whether the QF qualifies for the ''small size'' rebuttable presumption in this Final Rule.

[42] Herein referred to as ''small QF.''

MW or below, should be subject to different standards than large generators.[43] In adopting this 20 MW demarcation in this proceeding, we recognize that no single per-MW demarcation is perfect. However, we believe that, in creating a rebuttable presumption, it is necessary to establish a clear demarcation and, as indicated, that 20 MW is appropriate for that purpose. We are influenced by the fact that the statute provides a very compressed 90-day time frame in which parties may provide the record support for a determination of whether a utility must be relieved of the purchase obligation. The statute does not provide time for lengthy litigation. Unlike other provisions of the FPA, which require notice and an opportunity for ''hearing,'' section 210(m)(a)(3) provides for notice and opportunity for ''comment'' and a final decision within 90 days of filing. Thus, it is consistent with the statutory framework to provide clear demarcations that will permit the Commission to make reasoned determinations within the 90-day period. After balancing all relevant considerations, we therefore adopt a clear demarcation of ''small QF'' in this Final Rule.

77. The Commission will not allow for gaming of this 20 MW rebuttable presumption. If parties are concerned that a QF has engaged in such gaming with regard to the certification or siting of a particular facility, we encourage those parties to bring their concerns to our attention. In any such proceeding, we will consider all relevant factors, including, but not limited to, ownership, proximity of facilities, and whether facilities share a point of interconnection. For purposes of evaluating proximity of facilities with regard to alleged gaming of this rebuttable presumption, we will not be bound by the one-mile standard set forth in 18 CFR 292.204(a)(2).

78. In order to rebut the 20 MW presumption, an electric utility will have the full burden to show that small QFs have nondiscriminatory access to the market of which the electric utility is a member. We will not specify, in this Final Rule, what evidence would be sufficient, but note that relevant evidence may include the extent to which the QF has been participating in the market or is is owned by, or is an affiliate of, a entity that has been participating in the relevant market.

b. Operational Characteristics and Transmission Constraints

i. Comments

79. Many commenters argue that dispatchability and intermittent resource characteristics do not allow QFs to have nondiscriminatory access to the markets described in section 210(m)(1)(A), (B), or (C). Several commenters argue that before the purchase requirement is lifted the Commission must consider the unique generation operational differences of certain QFs that affect their nondiscriminatory access to competitive markets. For example, American Forest & Paper states that real-time and day-ahead, bid-based markets are, in themselves, inadequate to support baseload operations of QFs with limited dispatchability. American Forest & Paper states that bidding into an hourly energy market subjects QFs to unworkable dispatch risks which may require either: (1) Bidding a price too low to support fixed cost recovery in order to ensure dispatch; or (2) jeopardizing industrial or other processes required to be primary under newly enacted section 210(n). Similarly, CIBO argues that the Commission should require an analysis of the operational issues, including, for example, the voltage level of the interconnection between the QF and the grid, and the fact that cogeneration thermal host limits the ability to dispatch a QF. It states that the mandatory purchase obligation should only be removed if it is demonstrated that markets are truly accessible to QFs, taking into consideration QF operational issues, including size, in some cases interconnecting at distribution voltage (with the attendant costs of paying for distribution adders), the different efficiency and operational constraints of industrial boilers, the different efficiency and operational constraints caused by industrial cogeneration hosts, and the impact of transmission charges, including locational marginal pricing and transition charges, on economically marginal QF generation.

80. Florida Industrial argues that the Commission should specifically retain the utility obligations to purchase for that category of ''process-following'' QFs that rely on a reject waste heat from an associated industrial manufacturing process for the production of electricity and thermal energy—and where the amount of reject waste heat varies with manufacturing production rates—such as in phosphate fertilizer manufacturing operations. It states that such process-following QFs generate at high efficiencies and consume little or no fossil fuels. However, because the rate of electric energy production varies (''follows'') in direct proportion to the underlying manufacturing processes, such QFs would find themselves at a significant and untenable disadvantage—especially with regard to deviation from schedule and energy imbalances, as well as other associated factors—if PURPA's mandatory purchase obligation were lifted in Florida.

81. In addition to EEI's comments regarding a QF's size as a contributor to a lack of nondiscriminatory access, EEI states that it would also be appropriate to allow affected QFs in all markets, including ''Day 2'' organized markets, to have an opportunity to demonstrate that they effectively lack nondiscriminatory access to those markets, despite their legal right to such access under an OATT where an existing QF[44] is located in an area in which persistent transmission capacity constraints effectively cause the QF to have neither physical[45] nor financial access[46] to markets outside the persistently congested area and there is not a sufficient opportunity to relieve the transmission constraint or to sell its output or capacity within the area on a short-term and long-term basis because of the transmission constraint.

[43] Order No. 2006 defined a ''Small Generating Facility'' as a device used for the production of electricity having a capacity of no more than 20 MW. The Commission concluded in Order No. 2006 that general consistency between the Commission's interconnection procedures document and interconnection agreement adopted in that final rule and those of the states will be helpful to removing roadblocks to the interconnection of Small Generating Facilities. *See* Order No. 2006 at P 4.

[44] An existing QF is one that is in existence as of the date the mandatory purchase obligation is terminated.

[45] EEI suggests that for purposes of this exception, a QF is prevented from having ''physical access'' outside its congested area when the QF is located in a ''generation pocket.'' EEI believes this means that during annual system peak conditions, the QF is unable (because of transmission congestion) to deliver the power it generates that is not consumed by local loads to the remainder of the relevant ISO's or RTO's control area, or to other areas if the QF is not located in an ISO or RTO control area. EEI concludes the geographic area that should be evaluated as a potential ''generation pocket'' is the area containing the QF and other generators that sufficiently contribute to the congestion on the transmission line, as defined by the ISO or RTO in its applicable resource adequacy deliverability analysis, if the QF is located in an ISO or RTO control area. *See, e.g.,* CAISO Preliminary Deliverability Baseline Analysis Study Report, May 3, 2005, Appendix I. In addition, a given QF's lack of physical access should be subject to annual review in order to determine whether the mandatory purchase obligation should continue.

[46] EEI states that existing ''Day 2'' organized markets rely on LMP and financial transmission rights rather than physical transmission rights. Where a financial right exists, a generator enjoys access to markets, regardless of whether a physical right exists.

ii. Commission Determination

82. While we agree with commenters that there may be factors unique to a QF that prevent its nondiscriminatory access to one of the three markets described in section 210(m)(1), we do not believe that any factor, other than small size, has been shown in this rulemaking to be an appropriate basis on which the Commission can establish a rebuttable presumption of lack of nondiscriminatory access. Unlike the size limitation discussed above, operational characteristics and transmission limitations are not susceptible to a clear demarcation for purposes of establishing a rebuttable presumption. We do believe, however, that by establishing a rebuttable presumption based on size, we in effect capture some of the operational issues expressed by commenters. Accordingly, the final rule does not establish a rebuttable presumption specific to operational characteristics.

83. However, with respect to the rebuttable presumption that QFs larger than 20 MW net capacity in the four listed RTO/ISOs do have access to markets, QFs larger than 20 MW may seek to rebut this presumption in their response to applications pursuant to section 210(m)(3) of PURPA and § 292.310 of our regulations. The comments suggest that a QF may rebut the presumption by showing, for example, one or more of the following factors. Although we do not make any final determinations herein as to whether any such factor, standing alone, is sufficient to rebut the presumption of market access, we do agree with the commenters that these factors are relevant to the question of whether the purchase obligation should be terminated and, upon an appropriate evidentiary showing, may be sufficient to rebut that presumption:

(A) The QF has certain operational characteristics that effectively prevent the QF's participation in a market. Such operational characteristics might include, but are not limited to: (a) Highly variable thermal and electrical demand (from the QF host) on a daily basis, such that the QF cannot participate in a market; or (b) highly variable and unpredictable wholesale sales on a daily basis.

(B) The QF has no access to a mechanism to schedule transmission service or make sales in advance on a consistent basis, either because of the variability of the QF's electric energy production or because of market rules that prevent the QF from scheduling transmission service or participating in organized markets. Such operational characteristics might include, but are not limited to, dispatchability or some other characteristic.

(C) A QF lacks access to markets due to transmission constraints. A QF may show that it is located in an area where persistent transmission constraints in effect cause the QF not to have access to markets outside a persistently congested area to sell the QF output or capacity.

84. In evaluating transmission constraints, the Commission will consider, on a case-by-case basis, among other things, the opportunity for QFs, on a nondiscriminatory basis, to obtain transmission upgrades to relieve constraints and whether the structure of the relevant market provides for the opportunity for the QF to sell notwithstanding the constraint.

c. Distribution Level

i. Comments

85. AWEA and others point out that the problems for QFs connecting at the distribution level include: (1) Wheeling charges over distribution to reach RTO/ISO markets; (2) costs associated with access to the RTO/ISO market; and (3) other costs and procedural barriers that can be unilaterally imposed by the distribution utility to deny or hinder access to the market.

86. Many commenters including AWEA, argue that QFs are typically located in areas which do not provide direct access to competitive wholesale markets, such as RTO/ISO markets. AWEA states that, instead such facilities are forced to connect to the distribution market operated by competing utilities. AWEA states that utilities and state commissions—not FERC or RTOs—control who can interconnect at the distribution level and charge costs that are prohibitive for many QFs. AWEA states that because QFs cannot reach the RTO/ISO without incurring significant costs to interconnect at the distribution level, access is typically uneconomic for QFs. AWEA states that accordingly, these QFs have no opportunity to sell power in a competitive market. AWEA states that there is no way to ensure fair and nondiscriminatory treatment to QFs forced to interconnect with a competing utility. NPRA states that a competitive market in which the utility baseloads its own generation and seeks ''competitive'' solutions for peaking power may not fairly accommodate the sale of capacity and energy from non-dispatchable QF generating facilities.

87. Other commenters disagree with the argument that the Commission should retain the mandatory purchase obligation for QFs interconnected at the distribution level. They argue that whether a QF interconnects at the distribution or transmission level is irrelevant because it has nondiscriminatory access to competitive markets through open access transmission and interconnection services. Central Vermont and Southern California Edison Company (SCE) state that under Order Nos. 2003–C and 2006–A all of the utility's facilities, including its distribution facilities, that are used to implement a sale for resale or to transmit electricity in interstate commerce are subject to the nondiscriminatory requirements of the utility's OATT. In addition, EEI and SCE state that QFs may take advantage of the interconnection provisions of section 210 of the FPA, under which they can obtain services at Commission-determined rates, terms and conditions. Also, EEI points out that section 1.11 of the pro forma OATT makes clear that a generator interconnected at the distribution level is entitled to request transmission service under the OATT.

88. PJM states that regardless of whether a resource interconnects at the transmission or distribution level, it is entitled in PJM to obtain interconnection service and open-access delivery service. SCE argues that if the Commission does not adopt a generic finding that generators have open access on a nondiscriminatory basis to the local distribution facilities of all Commission-regulated utilities, there is support for such a finding as to the State of California, given the existence of Wholesale Distribution Access Tariffs

ii. Commission Determination

89. The connection of a QF to distribution-level facilities can present two different issues: (i) Whether the utility owning the distribution facilities will permit the QF to have access to markets and (ii) if that access is granted, whether any associated distribution charges are sufficient to negate that access for purposes of applying section 210(m). As to the first question, we agree that a denial of actual access to distribution facilities for purposes of selling power into the wholesale market would constitute sufficient evidence to find that section 210(m) has not been satisfied (and hence to retain the mandatory purchase obligation). We recognize that open access transmission service, adopted in Order No. 888,[47] and interconnection rules, adopted in Order Nos. 2003 [48] and 2006,[49] are designed to eliminate undue discrimination in the

[47] *Supra* note 32.

[48] *Supra* note 33.

[49] *Supra* note 34.

provision of transmission and interconnection services but do not address certain distribution level issues. Indeed, the Commission does not have jurisdiction over all distribution level facilities,[50] and thus QFs interconnected to those facilities face access issues that are different from the access issues that are faced by QFs interconnected directly to RTO/ISO facilities.[51] Although we do not believe the record supports any generic findings that QFs interconnected at a distribution level do not have non-discriminatory access to markets, a QF may be able to show, based on its specific circumstances, that it does not have such access to markets as a result of not being able to obtain non-discriminatory access to distribution facilities. Thus, for purposes of the rebuttable presumption that QFs above 20 MWs in the four ISOs/RTOs (ISO–NE, NYISO, PJM and Midwest ISO) have non-discriminatory access to markets, QFs may be able to rebut the presumption by, e.g., demonstrating a denial of actual access to distribution facilities for the purposes of selling power to the wholesale market. Moreover, we note that, for small QFs (many of whom may be connected at distribution level), the utility must also overcome the rebuttable presumption that such small QFs do not have sufficient access to markets to satisfy section 210(m).

90. With respect to the second issue, we find that the imposition of a charge for access to the distribution system does not mean that the QF does not have ''access'' to competitive markets. A QF wishing to access competitive markets is expected to pay the reasonable charges, whether for transmission or distribution facilities, that are associated with such action. There is nothing in section 210(m) that suggests otherwise. Thus, the requirement to pay an interconnection charge, transmission charge, or distribution charge, in and of itself, is not an indication that a QF does not have nondiscriminatory access to a market.

4. Burden of Proof

a. NOPR

91. In the NOPR, the Commission proposed to make generic findings that certain markets satisfy the conditions of section 210(m)(1)(A). In addition, the Commission proposed to create a rebuttable presumption that the Order No. 888 OATT provides nondiscriminatory access to markets.

b. Comments

92. American Chemistry Council, Caithness, American Forest & Paper, CCC, CIBO, Occidental, PIOs, Dow, and ELCON argue that the burden of establishing that the section 210(m) criteria are met is placed squarely on the electric utility seeking relief from the must purchase requirement. Several of these commenters argue that the Commission erred in making generic determinations for section 210(m)(1)(A). All of these commenters argue that section 210(m)(3) shows Congressional intent that electric utilities can be relieved only after careful consideration on a utility-specific service territory basis—not on a broader region-wide basis. ELCON and many others claim that the Commission has a statutory obligation to make facility-specific determinations that nondiscriminatory access to long-term markets truly exists. Industrial Energy Consumers add that the statute requires that the utility make a specific showing, supported by evidence, about the existence of and nondiscriminatory access to long-term markets. ELCON and others contend that the statute does not provide the Commission with the discretion or legal authority to abandon this QF-level analysis in favor of a generic analysis. Granite State is concerned that a generic finding will adversely affect small developers because they would not receive actual notice of the elimination of the mandatory purchase requirement.

93. The CCC argues that section 210(m) requires utilities to make principal showings demonstrating that market conditions justifying removal of the mandatory purchase requirement exist. It states that QFs then have the ability to rebut the utilities' presentations. The CCC states that the NOPR turns this scheme on its head by making initial, unsupported conclusions regarding the existence of market opportunities for QFs without any utility submission or evidence, and then shifting the burden to QFs to rebut the NOPR's conclusions.

94. CIBO argue that placing the burden on industrial QFs is arbitrary, because industrial QFs generally lack the resources and Commission regulatory expertise to participate in litigation before the Commission. In addition, it argues that such a shifting of the burden of proof is contrary to 5 U.S.C. 556(d) and contrary to the structure of section 1253, which envisions that the Commission will act on applications submitted by the utility and supported by a demonstration made by the utility. Finally, the Council argues that it creates a disincentive for its members and other industrial QFs, who generally lack the resources and regulatory expertise to bear that burden.

95. Occidental adds that section 210(m)(3) provides the single mechanism by which an electric utility can eliminate its mandatory purchase requirement. It argues that the statute does not permit the Commission to relieve the applicants' burden to demonstrate the ''factual basis'' of their requested relief by rulemaking.

96. EEI states in its reply comments that it strongly believes the four RTO/ISOs provide nondiscriminatory access to all generators, operate competitive wholesale markets meeting the criteria in section 210(m)(1)(A)(i), and afford opportunities for long-term sales of capacity and energy within the meaning of section 210(m)(1)(A)(ii). EEI states that the Commission is correct to make generic findings regarding these markets. EEI states that to do otherwise would compel the Commission to re-litigate the same issues time and time again to reach the identical determination.

97. EEI states that only QFs will have the evidence necessary to demonstrate that they, in fact, lack access and thereby to rebut the presumption and that the Commission is not reversing the burden of proof, but placing it where it belongs. EEI states that the opportunity to rebut this presumption generally will be available to QFs in their comments to applications for relief filed pursuant to section 210(m)(3).

c. Commission Determination

98. Commenters, in response to the NOPR's proposal to find that the markets of the four RTO/ISOs satisfy section 210(m)(1)(A), raise essentially the same issue from two different perspectives: (1) The Commission's authority to make generic findings; and (2) section 210(m)(3) places the burden

[50] *See, e.g., PJM Interconnection, LLC,* 114 FERC ¶ 61,191, *order on reh'g,* 116 FERC ¶ 61,102 (2006).

[51] The Small Generator Interconnection Procedures (SGIP) and the Small Generator Interconnection Agreement (SGIA) outlined in Orders Nos. 2006 and 2006–A, include separate definitions for ''Transmission System'' and ''Distribution System'' to account for the distinct engineering and cost allocation implications of an interconnection with a Distribution System. Order No. 2006 states that use of the term ''Distribution System'' has nothing to do with whether the facility is under this Commission's jurisdiction; some ''distribution'' facilities are under our jurisdiction and others are ''local distribution facilities'' subject to state jurisdiction. Further Order No. 2006 applies only to interconnections to facilities that are already subject to a jurisdictional OATT at the time the interconnection request is made and that will be used for purposes of jurisdictional wholesale sales. Order No. 2006 explains that because of this limited applicability, and because the majority of small generators interconnect with facilities that are not subject to an OATT, Order No. 2006 will not apply to most small generator interconnections. See Order No. 2006 at P 6, 7 and 8.

of proof on the electric utility, not the QF.

99. We have previously discussed the rebuttable presumptions being adopted herein—in favor of electric utilities with respect to ''large'' QFs in the four organized markets and in favor of ''small'' QFs in all markets. Several parties challenge our ability to make any such determinations on a generic basis in this rulemaking. We disagree. First, we have broad discretion to adopt generic policy or make generic findings through either rulemaking or adjudication.[52] We believe doing so through this rulemaking provides all affected entities—including both utilities and QFs—a reasonable opportunity to be heard on common issues that arise in various market structures and for classes of QFs. It makes little sense to adopt such generic determinations in the first case to present them, thereby effectively denying the vast majority of utilities and QFs the ability to comment on those policies or findings before they are adopted for the first time. To some extent, generic findings about certain aspects of ''Day 2'' markets are inevitable, either by rulemaking or in the first utility specific filing in each ''Day 2'' market. Making generic findings by rulemaking provides affected QFs better notice.

100. Second, we are not persuaded that the issues relevant to the findings and rebuttable presumptions we adopt here vary so significantly in each case that they must be resolved only on a case-by-case basis. For example, the issue of whether the four ''Day 2'' markets satisfy section 210(m)(1)(A) is one that can be resolved generically. We find no merit in the contention that we should relitigate that issue hundreds of times for every QF located in ''Day 2'' organized markets. Our approach here is consistent with the language of the statute. Section 210(m)(1)(B) provides for the submission of ''evidence of transactions within the relevant market.'' Because this language is not included in section 210(m)(1)(A), our approach providing for findings and rebuttable presumptions is consistent with the statute. Finally, we note that, unlike the NOPR, we are only establishing rebuttable presumptions of access to markets, not final determinations. These rebuttable presumptions are not only reasonable because they address common, recurring issues, but also will permit better processing of applications under the compressed 90-day timeframe required by statute.[53]

101. We also note that certain QFs recognize our authority to make generic findings. PIOs implicitly acknowledge the Commission's authority to make generic findings in supplemental comments filed on August 25, 2006. In those comments, PIOs urged the Commission to find that certain classes of QFs should retain the right to require electric utility purchases regardless of the state of the markets on the ground that certain classes of QFs lack access to markets.

102. As noted, while the Commission is making a finding in this rulemaking that four markets satisfy the market criteria of section 210(m)(1)(A) of PURPA, and is establishing a rebuttable presumption that QFs above 20 MWs have nondiscriminatory access to those markets, electric utilities within those markets will nevertheless have to file an application pursuant to our regulations implementing section 210(m)(3) of PURPA, that is pursuant to section 292.310 of the Commission's regulations, for relief from the requirement to enter into new contracts or obligations with QFs. An electric utility member of one of these four RTO/ISOs filing for relief from the obligation to purchase will need to refer to this finding in the Final Rule as part of its application. When it files for relief from the purchase obligation it must also submit information about transmission constraints within its service territory in order to give potentially affected QFs information that may be relevant to rebutting the presumption that they have access to all aspects of the applicable ''Day 2'' market. A QF 20 MW or smaller located within the Midwest ISO, PJM, ISO–NE, and NYISO will be presumed not to have nondiscriminatory access to these wholesale markets.[54] A QF larger than 20 MW located within the Midwest ISO, PJM, ISO–NE, and NYISO will be presumed to have nondiscriminatory access to these wholesale markets. A QF larger than 20 MW may rebut that presumption by showing that it in fact lacks access.

103. A similar process will be used in cases for utilities located in ''Day 1'' or other markets. However, in those markets, other than ERCOT, there will be no presumption that a market that satisfies section 210(m)(1)(B) or (C) criteria for termination of the purchase obligation exists. The utility seeking relief will have to make that showing. In addition to providing evidence that such markets satisfy the criteria of subsections (B) and (C) generally, a utility will have to submit evidence sufficient to overcome the presumption that a QF of 20 MWs net capacity or below does not have nondiscriminatory access to those markets. Further, as indicated, there will be no presumption regarding QFs above 20 MWs for markets covered by sections 210(m)(1)(B) and (C).

104. The result of this procedural process is that, before the Commission relieves an electric utility of its requirement to enter into a new contract or obligation to purchase electric energy from any QF, the Commission will have made a facility-specific determination that the QF has nondiscriminatory access to a section 210(m)(1)(A), (B) or (C) market. It is true that the process utilizes certain rebuttable presumptions. But as discussed above, we believe that there is a reasonable basis for the presumptions we are establishing, and we stress that all of the presumptions being established are rebuttable. We also believe that the use of the presumptions will assist the parties—QFs as well as electric utilities—and the Commission to more readily process applications for termination of the purchase requirement consistent with the statute and within the 90-day timeframe required by section 210(m)(1)(3) of PURPA. Finally, we recognize concerns that QFs may not have access to the level of information that electric utilities have and that some QFs lack the resources and expertise to participate in Commission litigation. The creation of the rebuttable presumption in favor of small QFs, as well as the information requirements we are imposing on electric utilities as part of their applications, should help QFs in this regard. Thus, we believe that the procedures we are creating for processing applications to terminate the requirement that an electric utility purchase electric energy from a QF are consistent with the requirement in section 210(m)(3) of PURPA that: (1) QFs be given sufficient notice; (2) a utility set forth the factual basis on which relief is requested; and (3) a utility describe why the conditions set

[52] *See SEC* v. *Chenery,* 332 U.S. 194, 202–03, *reh'g denied,* 332 U.S. 747 (1947).

[53] We note in this regard that section 210(m) of PURPA requires the Commission to act on an application, within 90 days of such application, ''after notice * * * and an opportunity for comment.'' This contrasts with the requirement of sections 205 and 206 of the FPA that the Commission act after a ''hearing,'' not just after an opportunity to comment. *See* 16 U.S.C. 824d, e.

[54] The electric utility would have to make additional showings if it wished to rebut the presumption that small QFs do not have nondiscriminatory access to its region's Day 2 wholesale markets, and to long term capacity and energy markets.

for in sections 210(m)(1)(A), (B) or (C) have been met.

105. As to the arguments that QFs do not have sufficient notice of the Commission's generic conclusions, we disagree. As indicated above, these parties have it backwards. We are providing greater, not lesser, notice of our conclusions regarding these issues by addressing them in a proposed rulemaking, rather than in individual adjudications. Moreover, every potentially affected QF will be given notice of the proceedings filed under § 292.310 of our regulations and will, in those proceedings, have the opportunity to rebut the generic findings made in this Final Rule.

B. Section 210(m)(1)(A) of PURPA

1. Midwest ISO, PJM, ISO–NE, and NYISO

a. NOPR

106. Section 210(m)(1)(A) of PURPA requires the Commission to terminate an electric utility's obligation to purchase from QFs if QFs have nondiscriminatory access to (i) independently administered, auction-based, day-ahead and real-time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy.

107. In the NOPR, the Commission interpreted section 210(m)(1)(A) to apply in regions in which ISOs and RTOs administer day-ahead and real-time markets, and bilateral long-term contracts for the sale of capacity and electric energy are available to participants/QFs in these markets. These are commonly known as ''Day 2'' RTO/ISOs. The Commission proposed to find that the Midwest ISO, PJM, ISO–NE, and NYISO satisfy the requirements of section 210(m)(1)(A).[55] The Commission stated in the NOPR that these entities are Commission approved ISOs or RTOs that provide nondiscriminatory open access transmission services and independently administer auction-based wholesale markets for day-ahead and real-time energy sales. The Commission stated in the NOPR that additionally, with respect to subparagraph (A)(ii), the existence of bilateral long-term contracts for long-term sales of capacity and energy indicates that there is a market. The Commission stated that it is reasonable to conclude that the second prong of section 210(m)(1)(A) is met because bilateral long-term contracts are available to participants in the footprints of the Midwest ISO, PJM, ISO–NE, and NYISO. Therefore, the Commission proposed to find that electric utilities that are members of the Midwest ISO, PJM, ISO–NE, and NYISO would meet the requirements for relief from the mandatory purchase requirement.[56]

b. Comments

108. The American Chemistry Council, American Energy, American Forest & Paper, CCC, and Midwest Transmission Customers disagree with the Commission's finding and argue that Midwest ISO, PJM, ISO–NE, and NYISO do not meet section 210(m)(1)(A). Several commenters argue that the Commission's proposed findings with respect to the Midwest ISO, PJM, ISO–NE, and NYISO markets are insufficiently supported by record evidence. In addition, the American Chemistry Council and CCC argue that these markets are premature.

109. Wisconsin Industrial Energy Group, Inc. argues that the Commission's proposed findings with respect to Midwest ISO are premature because a viable competive market does not exist in the Midwest ISO footprint and because QF owners and operators do not have nondiscriminatory access to the Midwest ISO market. Midwest Transmission Customers argue that Midwest ISO markets are still not sufficiently mature to justify the Commission terminating the PURPA purchase obligation in Midwest ISO. The American Chemistry Council and CCC argue that there is no evidentiary basis that shows bilateral contracts for long-term sales of capacity are available to QFs on a nondiscriminatory basis or that there is a ''market'' for such contracts. These commenters argue that the NOPR offers no qualitative analysis of the bilateral markets that are presumed to exist. ELCON argues that a QF-specific review would establish that, in many cases, QFs do not have nondiscriminatory access to long-term bilateral markets whether in RTOs or otherwise. ELCON states that considerable evidence establishes that markets either are in their infancy (*e.g.,* Midwest ISO), or are not functioning vis-à-vis long-term sales of capacity or energy. ELCON states that it will be difficult for the Commission to sustain on judicial review a generic finding that ISOs and RTOs offer long-term markets for power when the Commission's own recent rulemaking announcing financial transmission rights (FTRs) is predicated on the need for FTRs to jump start long-term power markets specifically in regions with ISOs and RTOs. ELCON takes issue with the assertion that PJM operates an open, competitive market, citing the State of Delaware as an example. ELCON states that according to a recent report by the Delaware Cabinet Committee on Energy, competitive markets are not working in Delaware.[57]

110. Deere & Company (Deere) states that open access transmission service presumes the existence of bilateral sale and purchase parties separate from the transmitting utility, with the transmitting utility providing the transmission service to either the seller or the buyer. Deere states that that does not mean that there is nondiscriminatory access to the long-term sale and purchase market. Deere states that one buyer for all long-term sellers in a market would mean that there is a monopsony, and through the exercise by the single buyer of its monopsony ''market power,'' manifested in the form of a refusal to deal, a new seller would not have any access to the long-term sale and purchase market.

111. Caithness argues that sections 210(m)(1)(A) and (B) both require that there be markets for long-term wholesale sales of energy and capacity before the must-purchase requirement can be terminated. The American Chemistry Council argues that in trying to make sense of the fact that section 210(m)(1)(B) contains a directive to ''consider evidence of transactions in the relevant market,'' while section 210(m)(1)(A) contains no such directive, the Commission's proposed interpretation effectively reads an essential element of section 210(m)(1)(A)—namely, the existence of ''wholesale markets for long-term sales of capacity and electric energy''—out of the statute. The American Chemistry Council states that for this reason, the Commission's proposed interpretation contravenes the clear language of section 210(m)(1)(A).

112. American Forest & Paper states that bilateral contracts have always existed, but the Commission has never determined that the mere existence of bilateral contracts constituted a market, particularly, where those contracts are mostly between utilities and their affiliates.

[55] In the NOPR the Commission noted that while SPP and the CAISO, respectively are a Commission-approved RTO and ISO, they do not satisfy the requirements of section 210(m)(1)(A) because neither has day-ahead markets. The Commission stated, however, that any utility within SPP and CAISO may file an application with the Commission to seek relief from the mandatory purchase requirement under section 210(m)(1)(B) or (C), on a case-by-case basis.

[56] NOPR at P 22.

[57] ELCON's August 25, 2006 Supplemental Comments at 8–9.

113. The CCC states that the Commission must require an affirmative showing that buyers other than the utility are willing to purchase QF energy and capacity on a short-term and long-term basis, including through long-term purchases of capacity before the purchase obligation is lifted.

114. EEI, PJM, Constellation, Exelon, FirstEnergy, Montana-Dakota, National Grid, PJM Transmission Owners, and PPL support the Commission's preliminary finding that QFs interconnected with utilities that are members of the Midwest ISO, PJM, ISO–NE and NYISO have nondiscriminatory access to those markets and that those markets readily satisfy the section 210(m)(1)(A) criteria for removing the PURPA section 210 purchase obligation. EEI states that additional evidence of the scope of market opportunities for QFs is seen in the increasing number of QFs filing for authority to sell at market-based rates in response to the Commission's recent Order No. 671.[58] EEI states that the QF's argument against the Commission's proposal in essence is that markets must assure QFs will receive the same amount of revenues that they would receive from mandatory utility sales at avoided cost rates before the mandatory purchase requirement may be lifted. Exelon believes that the PJM markets are effective and offer nondiscriminatory opportunities for QFs and small power producers to sell their output to entities other than the interconnecting utility. To facilitate these small generators participating in the RTO markets in the absence of a mandatory purchase requirement, Exelon suggests that the Commission encourage utilities to work with the QFs and small power producers that qualify under state renewable resource programs to develop and implement a voluntary standard offer contract.

115. EEI, PJM, Constellation, Exelon, FirstEnergy, Montana-Dakota, National Grid, PJM Transmission Owners, and PPL also support the NOPR's finding regarding bilateral contracts for long-term sales of energy and capacity. PJM states that the Commission reasonably concludes that the existence of organized and transparent competitive markets for capacity and energy provide a platform for the development of competitive bilateral contracts in satisfaction of section 210(m)(1)A(ii) of EPAct 2005. EEI states that the test of section 210(m)(1)(A)(ii) can be and is met by markets that provide opportunities for long term sales pursuant to bilateral transactions—markets which flourish in all the ''Day 2'' RTOs.

c. Commission Determination

116. Under section 210(m)(1)(A), the Commission must terminate the requirement that an electric utility enter a new contract or obligation to purchase electric energy from a QF if the QF has nondiscriminatory access to (i) independently administered, auction-based day-ahead and real-time wholesale markets for the sale of electric energy; and (ii) wholesale markets for long-term sales of capacity and electric energy.

117. We find that the Midwest ISO, PJM, ISO–NE, and NYISO satisfy section 210(m)(1)(A)(i) because the markets administered by these RTO/ISOs are, as required by subparagraph (A)(i), independently administered, auction-based day-ahead and real-time wholesale markets for the sale of electric energy. With respect to section 210(m)(1)(A)(ii) and the requirement for wholesale markets for long-term sales of capacity and electric energy, we find that, as proposed in the NOPR, the existence of bilateral long-term contracts for long-term sales of capacity and energy is a sufficient indication of a market. As the Commission explained in the NOPR, it is reasonable to conclude that subparagraph (A)(ii) is met because bilateral long-term contracts are available to participants in the footprints of the Midwest ISO, PJM, ISO–NE, and NYISO. Although there is no formalized market for such long-term contracts, nothing in the statute requires such an organized market. Rather, the only requirement for organized markets relates to subparagraph A(i), and the requirement that there be auction-based day-ahead and real-time markets.

118. We disagree with those who argue that because these markets are premature or in their infancy, the Commission cannot relieve utilities of the purchase obligations. The relevant issue under the statute is whether these markets satisfy the requirements enumerated above, not whether they are ''perfect'' today or are undergoing reforms as they develop. Again, nothing in the statutory language suggests such a test, nor have its proponents provided us with any clear demarcation to determine when such a market is too ''premature'' to qualify under section 210(m)(A). Further, we note that the Midwest ISO has been an RTO since 2001 and began ''Day 2'' operations (*i.e.,* auction-based, day-ahead markets) in 2005. PJM has been an RTO since 2001 and began ''Day 2'' operations in 2000. ISO–NE has been an RTO since 2004 and began ''Day 2'' operations in 2003. NYISO has been an ISO since 1998 and began ''Day 2'' operations in 1999. These RTOs and ISOs are established and operate ''Day 2'' wholesale markets, as required by subparagraph (A)(i), in their respective regions.

119. CCC and the American Chemistry Council argue that the Commission's proposed findings with respect to the Midwest ISO, PJM, ISO–NE, and NYISO markets are insufficiently supported by record evidence. We find this argument without merit. The day ahead and real time markets are precisely those contemplated by the words of section 210(m)(A)(i) and, indeed, there is no real dispute that they are Commission approved independently administered entities,[59] and that they operate auction-based day-ahead and real-time wholesale markets for the sale of electric energy as represented pursuant to their respective, Commission approved, tariffs.[60]

120. With respect to bilateral markets in these ISOs/RTOs, *i.e.,* section 210(m)(A)(ii), no party argues that long-term contracts do not exist in these markets or that QFs are precluded from entering into them with willing buyers.[61] The transmission access offered by RTOs allows suppliers (including QFs) the opportunity to enter into long-term bilateral contracts in a competitive wholesale market. RTOs have no incentive to favor one set of suppliers over others in providing transmission access. RTO footprints encompass many different wholesale buyers, thus proving significant opportunity for sellers to reach many different wholesale buyers. In addition, the organized markets operated by RTOs facilitate long-term bilateral contracts between sellers (including qualifying

[58] *Supra* note 15.

[59] *See Midwest Independent Transmission System Operator, Inc.,* 97 FERC ¶ 61,326 (2001) *order on reh'g,* 103 FERC ¶ 61,169 (2003); *PJM Interconnection, L.L.C.,* 96 FERC ¶ 61,061 (2001). On December 20, 2002, in *PJM Interconnection, L.L.C.,* 101 FERC ¶ 61,345 (2002), PJM was granted full, rather than provisional, RTO status. Independence was one of the matters considered in the 2002 Order; *ISO New England, Inc.,* 106 FERC ¶ 61,280 (2004); *Central Hudson Gas & Electric Co.,* 83 FERC ¶ 61,352 (1998), *order on reh'g,* 87 FERC ¶ 61,135 (1999).

[60] *See Midwest Independent Transmission System Operator, Inc.,* 108 FERC ¶ 61,163 (Midwest ISO, FERC Electric Tariff, Third Revised Volume No. 1, Module C), *order on reh'g,* 109 FERC ¶ 61,157 (2004), *order on reh'g,* 111 FERC ¶ 61,043 (2005), PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1; New York Independent System Operator, Inc., FERC Electric Tariff Original Volume No. 2.

[61] We also know from electric quarterly report (EQR) filings by public utilities that there are long-term contracts for long-term sales of capacity and energy in each of the markets; those data are available on the Commissions Web site. *http://www.ferc.gov/docs-filing/eqr/data.asp.*

facilities) and wholesale buyers. First, organized markets provide transparent spot energy prices that can serve as a reference in negotiating longer term contract prices. Second, organized markets reduce the costs to suppliers of making long-term bilateral supply commitments. That is because whenever a supplier is unable to produce the energy required under the bilateral contract (for example, because of an outage), the supplier can easily acquire replacement energy from the organized market at a transparent and competitive price. Moreover, even when the supplier is physically capable of producing its contractually-required energy, the supplier can acquire the energy from the RTO's market whenever it is cheaper to do so. Both of these factors reduce the cost to a supplier of entering into a long-term bilateral contract. Furthermore, our approach is consistent with the language of section 210(m)(1)(A)(ii). As discussed above, section 210(m)(1)(B) provides for the submission of ''evidence of transactions within the relevant market.'' Because this language is not included in section 210(m)(1)(A), our finding with respect to section 210(m)(1)(A)(ii) is consistent with the statute. We, therefore, find it reasonable to conclude that Day 2 markets provide an opportunity to make long-term sales of capacity and electric energy and meet the criteria of section 210(m)(1)(A)(ii) as well as section 210(m)(1)(A)(i).

121. As to ELCON's citation to a study by the State of Delaware finding that competitive electric energy markets are not working well in Delaware, we find it inapposite. The issue under the statute is not whether these organized markets are perfect or, alternatively, could be improved. As we stated above, all that is required by section 210(m)(A)(ii) is the presence of ''wholesale markets for long-term sales of capacity and electric energy.'' The Delaware report does not demonstrate that such a market does not exist.

2. Whether Membership in an RTO/ISO Is Necessary To Invoke the Rebuttable Presumption of Access to ''Day 2'' Markets

a. NOPR

122. In the NOPR, the Commission concluded that QFs interconnected with electric utilities that are *members* of Midwest ISO, PJM, ISO–NE, and NYISO have nondiscriminatory access to markets described in section 210(m)(1)(A).

b. Comments

123. Missouri River Energy Services (MRES), a municipal, and the NRECA seek clarification as to which entities are eligible for the exemption from the mandatory purchase requirement. For example, MRES states that not all entities within the Midwest ISO footprint are transmission-owning electric utility members of Midwest ISO. MRES states that it is currently a market participant in the Midwest ISO, but not a member. MRES states that in addition, MRES has assumed the section 210 mandatory purchase requirement on behalf of its members, many of which are located within the Midwest ISO footprint.

124. Progress states that while a case-by-case analysis may be appropriate, it believes that utilities such as CP&L, that have Commission-approved OATTs and are adjacent to and directly connected with a ''Day 2'' RTO (such as PJM), should obtain a rebuttable presumption that the second prong of the test is met. Progress states that there is no difference between a QF located within PJM and a QF located within CP&L's service territory with respect to access to short-term and long-term capacity and energy wholesale markets.

c. Commission Determination

125. The statute is clear that the obligation to purchase and thus relief of the obligation resides with the electric utility. For purposes of establishing a rebuttable presumption that QFs interconnected with certain utilities have access to ''Day 2'' markets, we think that a reasonable line to draw is with the member utilities of the ''Day 2'' RTO/ISOs. These utilities have turned over the operation of their transmission facilities to an independent entity that has no stake in the marketplace and will ensure that all users of the transmission system are treated on a nondiscriminatory basis and are provided access to markets. We recognize that other electric utilities may provide nondiscriminatory access to the ''Day 2'' markets. But for purposes of applying a rebuttable presumption that QFs have nondiscriminatory access to the ''Day 2'' markets, we believe that it is reasonable to draw the line with members of the Midwest ISO, PJM, ISO-NE, or NYISO. Nevertheless, entities that are not members of the Midwest ISO, PJM, ISO-NE, or NYISO may seek relief from the purchase obligation pursuant to either section 210(m)(1)(B) or (C) pursuant to the procedures contained in § 292.310 of the Commission's regulations. Such applications will be reviewed on an electric utility-by-electric utility basis pursuant to the procedures contained in § 292.310 of the Commission's regulations. A utility making such an application will have the burden of showing that all elements necessary for granting relief exist.

3. Compliance Filing

a. NOPR

126. The Commission proposed that to claim relief from the purchase obligation, electric utilities that are members of Midwest ISO, PJM, ISO-NE, and NYISO will need to make compliance filings pursuant to section 210(m)(3).

b. Comments

127. AEP and PJM Transmission Owners argue that the Commission should remove the obligation to require a compliance filing for utilities located in one of the exempted RTO/ISOs. PJM Transmission Owners argue that it is not apparent that Congress intended the Commission only to grant relief from such mandatory purchase requirements upon receipt of an application. AEP and PJM Transmission Owners contend there is nothing prohibiting the Commission from granting blanket relief for all electric utilities in a particular RTO/ISO that meets the requirements of section 210(m). PJM Transmission Owners request, if compliance filings are ultimately required, to be allowed to make one filing on behalf of all the electric utilities in PJM.

128. EEI states that, instead of compliance filings by utilities located within the four ''Day 2'' markets, the Commission may wish to require utilities to apply for relief from the mandatory purchase requirement, in accordance with section 210(m)(3) of PURPA. EEI states that utilities applying for relief would be entitled to rely on generic Commission findings (as the Commission has proposed in the NOPR) that the four ''Day 2'' markets meet the tests established in section 210(m)(1)(A) and that a Commission-approved OATT is evidence of nondiscriminatory access to these markets under section 210(m)(1).

c. Commission Determination

129. In light of the comments filed, we conclude that utilities in ''Day 2'' RTO/ISO markets should file applications pursuant to section 210(m)(3), instead of the ''compliance filings'' proposed in the NOPR. We believe that this will be more consistent with the statute than the compliance filings proposed in the NOPR. In the section 210(m)(3) application, a utility within a ''Day 2'' RTO/ISO will be required to: (a) Show that it is a member of a ''Day 2'' RTO; (b) provide information to enable QFs larger than 20 MW to seek to rebut the presumption

that they have nondiscriminatory access to the market; such information will be a description of transmission constraints not otherwise publicly available, and if publicly available, provide a specific link to such information; and (c) provide a list of affected interconnected QFs. With respect to the section 210(m)(A) ''Day 2'' RTO/ISO markets, these applications, in conjunction with the generic findings and rebuttable presumptions adopted in this Final Rule and discussed elsewhere, will allow us to timely and fairly process applications within the 90-day time period intended by Congress.

C. Section 210(m)(1)(B)

1. Definition of ''Regional'' for Purposes of Section 210(m)(1)(B)(i)

a. NOPR

130. Section 210(m)(1)(B) requires the Commission to make a finding, among other things, that a QF has nondiscriminatory access to transmission and interconnection services provided by a Commission-approved ''regional transmission entity.'' In the NOPR, the Commission noted that amended section 210 does not contain any express definition of ''regional transmission entity.'' The Commission therefore explained in the NOPR that we have discretion in interpreting section 210(m)(1)(B)(i) to deem an entity to be ''regional.'' The Commission listed factors, such as sufficient regional scope or configuration of the multiple discrete transmission systems the regional transmission entity controls, to be considered when determining a ''regional transmission entity.''[62]

b. Comments

131. American Forest & Paper, LEUG, and NISCO offer suggestions as to how the Commission should define ''regional'' as it is used in section 210(m)(1)(B). LEUG suggests that the Commission should use a similar standard in defining the term ''regional'' as it's used in Order No. 2000. American Forest & Paper believes that the Commission should exercise the discretion it has under section 210 in conformance with its observations, concerns and findings regarding the scope and independence of RTOs and ISOs necessary to assure nondiscriminatory access and independence. American Forest & Paper states that the Commission has extensive jurisprudence regarding its concerns surrounding the scope and the level of independence necessary to assure nondiscriminatory and independent administration, and should rely on this existing body of precedent when making determinations pursuant to newly enacted section 210(m). Occidental argued that the NOPR incorrectly suggests that the Commission has discretion to deem an entity to be a ''Commission-approved regional transmission entity'' solely in the context of a determination that the QF is provided nondiscriminatory access in accordance with section 210(m)(1)(B)(i). It requests the Commission to clarify, at a minimum, that ''Commission-approved regional transmission entity'' does not include stand-alone electric utilities or Entergy's ICT.

c. Commission Determination

132. In determining whether a transmission entity is ''regional,'' we will not rely solely on the ''scope and regional configuration'' standard as discussed in Order No. 2000 as one commenter suggests. Section 210(m)(1)(B) does not tie ''regional'' to Order No. 2000 but rather leaves to the Commission's discretion whether to deem an entity ''regional'' and we will make that determination on a case-by-case basis in response to applications filed by electric utilities pursuant to § 292.310 of the Commission's regulations. Accordingly, we will not make a finding that Entergy's ICT or a stand-alone electric utility would not be deemed a ''regional transmission entity'' at this time. The NOPR laid out some of the factors the Commission may consider in its determination, such as sufficient regional scope or configuration or the multiple discrete transmission systems and electric utility controls. In this Final Rule, an electric utility claiming relief pursuant to section 210(m)(1)(B) must set forth the reasons that it meets the requirements of section 210(m)(1)(B)(i) in an application made pursuant to § 292.310 of the Commission's regulations.

2. Section 210(m)(1)(B)(ii)

a. NOPR

133. Section 210(m)(1)(B)(ii) requires QFs to have access to competitive wholesale markets that provide a meaningful opportunity to sell capacity and energy on both a short- and long-term basis and energy on a real-time basis to a buyer other than the utility to which the QF is interconnected. The Commission is to consider, among other factors, evidence of transactions within the relevant market in determining ''meaningful opportunity.'' The Commission stated that, taken together, the terms ''competitive,'' ''meaningful opportunity,'' and ''evidence of transactions'' suggest that Congress intended waiver to occur in a non-auction based market only if it could be established that QFs had the opportunity to sell their output into competitive wholesale markets to buyers other than the utility to which the QF is interconnected. In the NOPR, the Commission sought comment on ways that section 210(m)(1)(B)(ii) could be satisfied. The Commission asked if a demonstration that an organized power procurement process exists in which QFs can participate would satisfy.

b. Comments

134. AES Shady Point, Deere, Energy Producers of California, Utah Association of Energy Users (UAE), and Solid Waste of Palm Beach believe that the existence of an organized power procurement process does not indicate the presence of a competitive wholesale market. Occidental argues that the Commission's reference to a generic ''organized procurement process'' lacks the specificity required in order to analyze whether it would satisfy any element of section 210(m)(1)(B)(ii) and omits the statutory requirement that QFs have a meaningful opportunity to sell to ''buyers other than the utility to which the qualifying facility is interconnected.'' ELCON states that the critical question is whether potential suppliers have access to other potential buyers apart from the monopsony buyer holding the request for proposals (RFP). ELCON states that the Commission should seek a demonstration of contractual sales of capacity or energy to utilities other than the interconnected utility in response to RFPs. The UAE argues that an organized procurement process does not ensure fairness since utilities often control their own procurement processes and can affect the outcome. The lack of an independently administered market makes it easy for a utility to select its own resource or a resource that it prefers. UAE also states that QF resources are likely to be eliminated in early rounds of the procurement process by unreasonably stringent credit requirements.

135. Entergy and EEI contend that a procurement process should constitute ample evidence that QFs have access to competitive wholesale energy markets. EEI states that the Commission would be correct in finding that QFs with opportunities to participate in organized power procurement processes have access to short-term and long-term markets for the sale of energy and capacity. EEI states that roughly

[62] NOPR at P 16.

nineteen states already require some form of competitive power procurement process.[63] EEI states that QF commenters have submitted no evidence to disprove their ability to participate in these state-overseen processes. EEI states that competitive procurements also are a feature of retail access programs and state renewable or resource portfolio programs.

136. Pacific Gas and Electric Company (PG&E) suggests the Commission should adopt a rebuttable presumption of a ''competitive wholesale market'' in which an organized power procurement process exists in which QFs can participate. PG&E notes that the California legislature established a comprehensive procurement process to be administered and overseen by the California Public Utilities Commission (CPUC). PG&E states that load serving entities must prepare a procurement plan which contains a process for utility procurement and CPUC approval of procurement strategies. PG&E claims that California's procurement process ensures QFs have fair access to this process. SCE argues that QFs have robust opportunities to compete in competitive solicitations issued by IOUs. SCE notes that its power procurement solicitations that are conducted pursuant to California's Renewable Portfolio Standard are open to generators as small as one megawatt.

137. SCE suggests the Commission should make a generic finding that if the Commission has authorized market-based rate authority for any seller in a market then that market should be competitive enough to satisfy subparagraph (B)(ii). Several commenters oppose SCE's market-based rate proposal and request that the Commission reject it. The CCC argues that SCE's arguments focus solely on the issue of whether sellers in a given market are able to exercise market power and fails to address the extent to which utilities are able to exercise monopsony buying power given their role as the only load serving entities (LSEs) with the ability and potential willingness to buy power on a long-term basis or in significant quantities. Deere contends that market-based rate authority is focused on the seller and its attributes, whereas section 210(m) is focused on the QF and its ability to access a market. Occidental adds that such a finding would render the distinction between ''competitive wholesale markets,'' as used in subparagraph (B)(ii), and ''wholesale markets,'' as used in subparagraphs (B) and (C), meaningless because the Commission has authorized market-based sales in every region of the continental United States.

c. Commission Determination

138. The Commission in the NOPR set forth its interpretation of the statute and sought comments on ways section 210(m)(1)(B)(ii) could be satisfied. Specifically, the Commission asked if an organized procurement process would meet the requirements of section 210(m)(1)(B)(ii). After reviewing the comments received, we have decided not to make any generic findings concerning whether procurement processes might satisfy section 210(m)(1(B)(ii). Reflecting on parties' comments and the Commission's own experience with utilities' procurement processes leads us to conclude that the processes are complex and not uniform. Thus, we cannot find that simply requiring an organized procurement process without elaboration would meet the requirements of the statute. Accordingly, we will not make a generic finding nor establish a rebuttable presumption, as PG&E and SCE suggest. As discussed in a later section, the Commission will entertain applications for relief of the mandatory purchase requirement pursuant to section 210(m)(1)(B) on a case-by-case basis pursuant to the procedures specified in section 292.310 of the Commission's regulations. The only rebuttable presumption that will apply in the context of applications under section 210(m)(1)(B) (as well as (C)) is the presumption that QFs 20 MWs or below do not have nondiscriminatory access to the relevant markets.

139. The Commission, however, will not rule out the possibility of an organized procurement process satisfying some or all of the requirements of section 210(m)(1)(B)(ii). Should an electric utility seek such a finding in its application, it is incumbent upon the utility to fully demonstrate that the procurement process satisfies one or all of the elements of section 210(m)(1)(B)(ii).[64] The utility must support its application with a detailed description of how the procurement process is designed, how winning bids are selected, evidence of past solicitations and winning bids,[65] solicitation characteristics,[66] and any other information about the procurement process. This list is not meant to be exhaustive, but rather provides examples of the type of information the Commission needs in order to make a finding.

140. SCE argues that the ''competitive'' element of section 210(m)(1)(B)(ii) could be met if the Commission has authorized market-based rate authority to the utility seeking relief from the mandatory purchase requirement. We will not make a generic finding as suggested by SCE. When the Commission grants an applicant market-based rate authority, it examines an applicant's generation market power potential. The competitive element of section 210(m)(1)(B)(ii) is not concerned with how much generation a utility owns or its ability to exercise generation seller market power, but rather, whether the wholesale market provides a meaningful opportunity for a QF to sell its capacity and energy to a buyer other than the utility to which the QF is interconnected.

3. Case-by-Case Determinations for Subparagraphs (B) and (C)

a. NOPR

141. In the NOPR, the Commission proposed to determine on a case-by-case basis, rather than generically, whether a utility has met the requirements of sections 210(m)(1)(B) and 210(m)(1)(C) for relief from its mandatory purchase requirement. The Commission also proposed to allow joint applications to be filed by several utilities in a region if the applications for relief present common issue of law and fact. The NOPR concluded that utilities would be required to file such applications for relief with the Commission pursuant to section 210(m)(3), which the Commission proposed to implement in section 292.310 of its regulations.

b. Comments

142. No comments were filed opposing the NOPR's proposal. Constellation seeks clarification as to how the Commission will treat current Day 1 or non-RTO markets which may, in the future, become ''Day 2'' markets. Constellation wants any future ''Day 2'' market to be analyzed on a case-by-case basis pursuant to section 210(m)(3).

143. EPSA supports a case-by-case approach for subparagraphs (B) and (C) provided that an individual QF can

[63] EEI Initial Comments at 44.

[64] All the elements of section 210(m)(1)(B)(ii) must be satisfied whether it is through an organized procurement process or by some other means or a combination.

[65] The Commission would be particularly interested in whether QFs have participated in the solicitations and whether QFs have been selected as a winning bidder.

[66] Solicitation characteristics refers to the contract term, type of service requested, dispatchability, the power terms and conditions, the non-power terms and conditions, etc.

rebut utility's application. EPSA also argues that utilities should be required to file specific contract information that would support the premise that there are ''competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term, short-term and real-time sales to buyers other than the utility to which the qualifying facility is interconnected.''

144. LEUG, NISCO, and Occidental seek clarification in the Final Rule that Entergy's ICT does not satisfy the requirements of section 210(m)(1)(B). These commenters state that access to section 210(m)(1)(B) markets does not exist in Louisiana today, and will not result from Entergy's ICT and weekly procurement process proposals. The commenters state that an ICT can not satisfy section 210(m)(1)(B)(i) because Entergy's ICT proposal calls for Entergy to remain the owner and operator of the transmission system and continue to have ultimate responsibility for providing transmission service.

c. Commission Determination

145. The Commission adopts the NOPR's proposal to determine on a case-by-case basis in response to applications filed pursuant to section 292.310 of the Commission's regulations whether an electric utility has met the requirements of sections 210(m)(1)(B) and 210(m)(1)(C) for relief from its mandatory purchase requirement. We clarify for EPSA that individual QFs may file comments opposing a utility's section 210(m)(3) application for relief pursuant to subparagraphs (B) and (C).[67] We will also clarify for Constellation that any current ''Day 1'' market or non-RTO market that becomes a ''Day 2'' market after issuance of this Final Rule will not be addressed generically in a rulemaking but will be addressed on a case-by-case basis. This is consistent with what the Commission proposed in the NOPR. The Commission proposed, and we adopt here, that all issues relating to non-RTO/ISOs and RTO/ISOs that do not have both auction-based real-time and day-ahead markets will be addressed on a case-by-case basis, pursuant to section 210(m)(3) as implemented by the Commission in § 292.310 of the Commission's regulations. The only generic finding in this Final Rule that will apply to case-by-case determinations are the rebuttable presumptions that the OATT and interconnection rules provide nondiscriminatory access to markets, and that QFs 20 MWs or below do not have nondiscriminatory access to markets.

146. While we will not institute another rulemaking to address whether a new ''Day 2'' RTO/ISO satisfies the statutory criteria for a utility to claim relief from the requirement that it enter into new contracts or obligations with QFs within the markets, we note that the 90-day proceedings provided for in section 210(m)(3) of PURPA and § 292.310 of our regulations, provide a very compressed period for making the complex determinations that a regional market satisfies the statutory criteria. Accordingly, for utilities that wish to obtain a regional generic determination that a market satisfies the criteria of section 210(m)(1)(A), we will entertain declaratory orders to make such determinations. If a generic determination is made in a declaratory order context, the utility members of the market would then be obligated to file for relief from the requirement that they purchase from QFs on a utility specific basis pursuant to section 292.310 of our regulations before the Commission would terminate the requirement that the electric utility purchase electric energy from QFs.

147. For purposes of obtaining regulatory certainty earlier rather than later, it is also possible that a QF may want to seek a declaratory order that, based on its specific circumstances, it does not have nondiscriminatory access to markets. We will entertain such declaratory order requests. If a QF obtains such an advance declaratory order, it may file the order in response to a utility's application to be relieved of the mandatory purchase obligation under section 292.310 of the Commission's regulations.

148. We will not grant the three commenters' request that we clarify in the Final Rule that Entergy's ICT does not satisfy the requirements of section 210(m)(1)(B). Rather, consistent with the approach adopted herein, we will consider Entergy's ICT on a case-by-case basis should Entergy decide to file an application for relief pursuant to section 210(m)(3) and § 292.310 of the Commission's regulations.

D. Section 210(m)(1)(C)—Nonpublic Utilities

1. NOPR

149. The NOPR proposed that there be a rebuttable presumption that a utility provides nondiscriminatory access if it has an Order No. 888 OATT on file with the Commission or a Commission-approved reciprocity tariff.

2. Comments

150. NRECA states that some non-public utility cooperatives do not have reciprocity tariffs however, a number of these non-public electric utilities have adopted OATTs based on the Commission's *pro forma* OATT, and have provided nondiscriminatory access to third parties for years. NRECA states that they too should be deemed to provide nondiscriminatory access on a case-by-case basis, or they should at least be accorded a rebuttable presumption that they provide such service.

3. Commission Determination

151. We decline to establish a rebuttable presumption of nondiscriminatory access here for non-public utilities which may have adopted transmission tariffs that are based on the Commission's *pro forma* OATT but are not on file with the Commission. The statute clearly states that the Commission must find that the QF has nondiscriminatory access to specific markets before the purchase obligation may be lifted. While the Commission appreciates that some non-public cooperatives have adopted OATTs based on the Commission's *pro forma* OATT, the Commission has not had opportunity to review these nor has the public, including any affected QF. We therefore believe that it is more appropriate for the Commission to evaluate whether QFs interconnected with such utilities have nondiscriminatory access to a market defined by section 210(m)(1)(A), (B), or (C) on a case-by-case basis. Non-public utilities seeking relief from the mandatory purchase requirement may file an application pursuant to § 292.310 of the Commission's regulation and may include their tariffs in support of their applications.

E. California Independent System Operator Corporation

1. NOPR

152. In the NOPR, the Commission did not make a preliminary finding that the California region operated by the CAISO met the requirements of PURPA section 210(m)(1). The Commission did recognize that the CAISO is a Commission-approved ISO, but that the requirements of section 210(m)(1)(A) have not been satisfied because the CAISO does not have a day-ahead market. The Commission noted that any utility within the CAISO footprint may file an application with the Commission to seek relief from the mandatory purchase requirement pursuant to sections 210(m)(1)(B) or (C).

[67] This also applies to section 210(m)(3) applications for relief pursuant to section 210(m)(1)(A), which is discussed in another part of the Final Rule.

2. Comments

153. SCE and PG&E submitted comments requesting that the Commission find that the CAISO will meet the requirements of section 210(m)(1)(A) once the CAISO's Market Redesign and Technology Upgrade Tariff (MRTU Tariff) is effective.[68] SCE and PG&E note that the MRTU Tariff filing demonstrates that the CAISO region will have the requisite features to satisfy section 210(m)(1)(A)(i), specifically a day-ahead market. SCE argues that the features described in the MRTU Tariff compare with those of other regions for which the Commission is prepared to make generic findings. SCE also states there are bilateral long-term contracts in the CAISO region today. Therefore, the CAISO region meets section 210(m)(1)(A)(ii). The California Public Utilities Commission (CPUC) and PG&E also request a finding that once the Commission has determined that CAISO has met the requirements of section 210(m)(1)(A), utilities participating in CAISO need only make a ministerial filing to be granted a waiver by the Commission.

154. PG&E, SCE and the EEI request a generic finding that the CAISO satisfies section 210(m)(1)(B)(i), and thus, a utility interconnected to the CAISO meets section 210(m)(1)(B)(i). EEI notes that the Commission has ruled that the CAISO Tariff provides nondiscriminatory access to the ISO controlled grid.

155. The CCC objects to the NOPR's suggestion that California could qualify for termination of the PURPA purchase obligation once a day-ahead market starts operating. It argues that such a suggestion ignores the realities of the California market. CCC contends that QFs continue to have difficulty finding meaningful opportunities to sell their output in California due to utilities' general reluctance to execute contracts with QFs and a lack of viable alternatives to the utility purchaser. It states that merely adding an organized day-ahead market will not resolve these problems. The CCC points to a California Energy Commission's 2005 *Integration Energy Policy Report* (Energy Report) as support for the position that QFs do not have meaningful opportunities to sell their power in California. According to CCC, the Energy Report finds that cogenerators have few opportunities to sell their power in the existing wholesale markets and a lack of a robust, functioning wholesale market in California discourages cogenerators from installing new generation. SCE disputes CCC's representation of the Energy Report.

156. Independent Energy Producers Association of California (Independent Energy Producers) states that the MRTU has yet to be implemented let alone analyzed to ensure it is operating as designed and in a manner that the CAISO itself has determined sufficient to remedy the market deficiencies it has identified. Independent Energy Producers also notes that the California market cannot provide the nondiscriminatory access required because projects smaller than 1 MW are excluded by rule from participation. Independent Energy Producers further notes CAISO's intent to subject existing QFs with existing interconnections to renewed interconnection studies.

3. Commission Determination

157. Certain commenters request that the Commission make a generic finding that the CAISO will meet the requirements of section 210(m)(1)(A) once the CAISO's MRTU Tariff filing becomes effective. According to the CAISO, the MRTU Tariff provides for operation of a day-ahead market, which is the missing element in meeting the requirements of section 210(m)(1)(A). It would be premature for the Commission to make such a generic finding in this rulemaking proceeding. The CAISO filed its proposed MRTU Tariff on February 9, 2006, in Docket No. ER06–615–000, and requested an effective date of November 1, 2007. While the Commission conditionally approved CAISO's MRTU Tariff on September 21, 2006,[69] the tariff will not become effective until November 1, 2007, as requested. Until there is a functioning ''Day 2'' RTO/ISO in California, the Commission is unable to make the findings required by section 210(m)(1)(A) for termination of the mandatory purchase requirement. However, for utilities that wish to obtain a regional generic determination that a market satisfies the criteria of section 210(m)(1)(A), we will entertain requests for declaratory orders to make such determinations.

158. Certain commenters request that the Commission make a finding that the CAISO satisfies section 210(m)(1)(B)(i). Section 210(m)(1)(B)(i) requires a QF to have nondiscriminatory access to transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers. In the NOPR, the Commission interpreted section 210(m)(1)(B)(i) to mean that QFs must have access to transmission and interconnection service pursuant to a Commission-approved OATT and interconnection rules and provided by an entity that is regional in scope.[70] The CAISO has a Commission-approved OATT that has been amended to incorporate the interconnection requirements of Order No. 2003. Thus, in order to make a finding that the CAISO satisfies section 210(m)(1)(B)(i), the Commission would have to find that the CAISO is a ''regional transmission entity.'' We noted in the NOPR that amended PURPA section 210 does not define ''regional transmission entity,'' and therefore, the Commission has discretion to deem an entity to be ''regional'' based on factors such as sufficient regional scope or configuration of the multiple discrete transmission systems it controls. The CAISO offers transmission and interconnection services throughout the state of California over the transmission systems of several electric utilities. We find that California is large enough in size and configures several discrete transmission systems for the CAISO to be considered a ''regional transmission entity.'' Accordingly, the Commission finds that the CAISO satisfies section 210(m)(1)(B)(i). A member electric utility of the CAISO may rely on this finding in its application to be relieved of the obligation to enter into new contracts to purchase QF electric energy. We will not, however, make any findings with regard to section 210(m)(1)(B)(ii). Thus, electric utilities that are members of the CAISO seeking relief from the mandatory purchase requirement will need to file an application pursuant to section 210(m)(3) and § 292.310 of the Commission's regulations with the Commission and make the showings required by section 210(m)(1)(B)(ii) in order to be relieved of the PURPA purchase obligation. The presumption that QFs 20 MWs or below do not have nondiscriminatory access to markets will apply.

F. Southwest Power Pool

1. NOPR

159. In the NOPR, the Commission did not make a preliminary finding that the region operated by the SPP meets the requirements of PURPA section

[68] The CAISO filed its proposed MRTU Tariff on February 9, 2006, in Docket No. ER06–615–000, and requested an effective date of November 1, 2007. The Commission conditionally accepted MRTU on September 21, 2006. *California Independent System Operator Corporation*, 116 FERC ¶ 61,274 (2006).

[69] *Supra* note 67.

[70] NOPR at P 16.

210(m)(1). The Commission did recognize that the SPP is a Commission-approved RTO, but that the requirements of section 210(m)(1)(A) have not been satisfied because the SPP does not operate a day-ahead market. The Commission noted that any utility within the SPP footprint may file an application with the Commission to seek relief from the mandatory purchase requirement pursuant to sections 210(m)(1)(B) or (C).

2. Comments

160. OG&E requests the Commission find that utilities located in the SPP satisfy section 210(m)(1)(A). OG&E notes that the SPP filed revisions to its OATT to implement a real-time imbalance market (EIS Market). The EIS Market will enable market participants to undertake both day-ahead and real-time transactions.

161. OG&E and AEP also request the Commission find that SPP utilities satisfy section 210(m)(1)(B). The SPP is a Commission-approved RTO and the SPP OATT affords all customers with nondiscriminatory treatment and complies with all currently-effective Commission policies and regulations as they apply to the development of an OATT. Therefore, OG&E and AEP ask the Commission to find that the SPP OATT satisfies the criteria of section 210(m)(1)(B)(i). OG&E states that section 210(m)(1)(B)(ii) is satisfied because load serving entities in SPP actively solicit power supplies using competitive bidding procedures. OG&E notes that the Oklahoma Corporation Commission requires electric public utilities providing retail service in Oklahoma to procure long-term electric generation through competitive bidding. AEP notes that Louisiana established competitive bidding rules that require a utility to follow a formal RFP process for the acquisition of generation resources and for purchases of capacity and/or energy of more than one year in duration. Based on these aspects, OG&E and AEP argue that the SPP region satisfies section 210(m)(1)(B).

162. Deere disagrees with OG&E and AEP and argues that the SPP market has not yet satisfied the criteria for relief from the PURPA mandatory purchase requirement. Deere notes that SPP's EIS Market implementation has been delayed until at least October 2006, and therefore, it has not been ''road tested.''

3. Commission Determination

163. Similar to the determination we made for the CAISO, the Commission will not make the findings required by section 210(m)(1)(A) for termination until there is a functioning ''Day 2'' market. The Commission, on September 26, 2006, acted on rehearing requests concerning SPP's proposed tariff revisions to implement an imbalance market,[71] which will not be functional until December 1, 2006, at the earliest. Thus, it would be premature for the Commission to make such a finding in this rulemaking proceeding. Once SPP's market is operational, electric utilities who are members of SPP may file, individually or jointly, an application for relief of the PURPA purchase obligation pursuant to section 210(m)(3) and section 292.310 of the Commission's regulations.

164. OG&E and AEP also request the Commission to make a determination that electric utilities operating in the SPP satisfy section 210(m)(1)(B). These commenters also request a finding that the SPP OATT satisfies the requirements of section 210(m)(1)(B)(i). With regard to the latter request, section 210(m)(1)(B)(i) requires a QF to have nondiscriminatory access to transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an OATT that affords nondiscriminatory treatment to all customers. In the NOPR, the Commission interpreted section 210(m)(1)(B)(i) to mean that QFs must have access to transmission and interconnection service pursuant to a Commission-approved OATT and interconnection rules provided by an entity that is regional in scope.[72] SPP provides transmission and interconnection service pursuant to a Commission-approved OATT that has been amended to incorporate the interconnection requirements of Order No. 2003. As noted above, SPP is a Commission-approved RTO, and, therefore, SPP satisfies the ''regional transmission entity'' requirement of section 210(m)(1)(B)(i). Accordingly, the Commission finds that SPP meets the criteria of section 210(m)(1)(B)(i). A member electric utility of the SPP may rely on this finding in its application to be relieved of the obligation to enter into new contracts to purchase QF electric energy.

165. Turning our attention to whether electric utilities operating in the SPP market satisfy section 210(m)(1)(B), we decline to make such a finding in this rulemaking proceeding. As an initial matter, the Commission does not have the evidence of transactions, as required by the statute, to make the requisite finding that QFs in the SPP market have nondiscriminatory access to ''competitive'' wholesale markets that provide a ''meaningful opportunity'' to make sales to buyers other than the electric utility to which the QFs are interconnected.

166. Moreover, as discussed above, the Commission will make determinations on a case-by-case basis, rather than generically, for utilities seeking relief from the mandatory purchase requirement pursuant to sections 210(m)(1)(B) and (C). Accordingly, OG&E, AEP, or any other electric utility may file with the Commission an application for relief pursuant to section 210(m)(3) of PURPA and § 292.310 of the Commission's regulations and make the showings required by section 210(m)(1)(B)(ii) in order to be relieved of the PURPA purchase obligation. The rebuttable presumption that QFs 20MW or below do not have nondiscriminatory access to markets will apply.

G. ERCOT

1. Comments

167. Reliant, TXU Energy, Power and Wholesale Companies (TXU) and the Public Utility Commission of Texas (PUCT) request that the Commission extend its preliminary finding regarding approved RTO/ISOs to include ERCOT through a generic finding under section 210(m)(1)(C) of section 210(m) rather than requiring case-by-case review. Direct Energy filed reply comments in support of this request.

168. Reliant explains that, while the ERCOT ISO does not meet all the criteria under section 210(m)(1)(A), the region is competitive in compliance with Texas law under the Public Utility Regulatory Act (PURA) and was certified as an ISO by the Public Utilities Commission of Texas. PURA provided for the creation of a regional independent organization to perform key functions to facilitate wholesale and retail competition similar to those the Commission prescribed for RTOs in Order No. 2000.

169. Reliant describes the features of the ERCOT market without explicitly suggesting that it meets the criteria of section 210(m)(1)(A). Reliant notes that ERCOT is independently administered. While it does not administer a centralized day-ahead market or forward market, ERCOT has a real-time market sufficient to support a robust market-based day-ahead market for sales of electricity. The ERCOT ISO supports the scheduling of bilateral capacity and energy contracts (both short- and long-term) by qualified scheduling entities

[71] *Southwest Power Pool, Inc.,* 116 FERC ¶ 61,289 (September 26, 2006).

[72] NOPR at P 16.

and conducts day-ahead auctions for ancillary services.

170. Reliant asserts that the ERCOT region meets the criteria for electric utility relief from the purchase obligation under 210(m)(1)(C) because access to a sufficiently competitive market for QFs to sell their power currently exists in ERCOT and has been affirmed by the PUCT. Reliant contends that this access parallels the nondiscriminatory access to competitive markets in Commission-approved RTOs and ISOs. It believes that the PUCT's certification of ERCOT as a competitive market and the ''operational reality'' of a robust wholesale and retail market in ERCOT further support this conclusion.

171. Reliant argues that the most administratively efficient application of section 210(m)(1) would be to extend the Commission's preliminary finding regarding its approved RTOs or ISOs to the ERCOT region through a generic finding under section 210(m)(1)(C). This would allow ERCOT entities to submit ministerial applications under this section and to have the application treated as a compliance filing under § 292.310(a) of the proposed rule. It would allow the Commission to avoid the filing of separate applications from electric utilities located in a region that has robust wholesale and retail competition. Reliant states that extension of the Commission's finding is appropriately based on the demonstrated competitive market conditions existing in the ERCOT region, in which QFs have the opportunity to sell energy and capacity to buyers other than the utilities to which they are interconnected. TXU supports Reliant's positions for the same reasons.

172. The PUCT adds that wholesale competition has been in effect in ERCOT under open-access rules prescribed by the PUCT since 1996. It states that, on January 1, 2002, retail competition in the electric market began for all customers of investor-owned utilities in the ERCOT region. The PUCT also states that, as of October 2004, there were 85 retail electric providers certified by the PUCT, with 55 of those actively serving customers.

2. Commission Determination

173. The information Reliant provides with regard to ERCOT supports a finding that QFs have access to the transmission and distribution systems so that they have access to markets in ERCOT; the information also supports a finding that the markets in ERCOT satisfy the criteria of section 210(m)(1)(C) in that they are of comparable competitive quality as the markets described in section 210(m)(1)(A).

174. The PUCT states that wholesale competition has been in effect in ERCOT under open-access rules prescribed by the PUCT since 1996. According to the PUCT, these open access rules ensure access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms. PUCT states that the ERCOT system is administered independently of any individual market participant. Utility and non-utility sellers have nondiscriminatory access to wholesale transmission service. Scheduling protocols afford non-discriminatory access to all customers. In ERCOT, there is no ''native load preference,'' and thus QFs receive the same quality of access to ERCOT markets as all other market participants. In addition, ERCOT uses a market-based congestion management system. ERCOT's zonal model uplifts local congestion costs system-wide, while directly assigning the cost of relieving inter-zonal congestion. ERCOT conducts auctions that allow market participants to hedge their risk by buying financial transmission rights on commercially significant flowgates.

175. On January 1, 2002, retail competition in the electric market began for all customers of investor-owned utilities (IOU) in the ERCOT region. As of October 2004, there were 85 retail electric providers (REPs) certified by the PUCT. The PUCT states that with the numerous REPs in the ERCOT market-place QFs have ample opportunity, equal to that of all other generators in the marketplace, to competitively procure contracts for the output of their facilities.

176. According to the PUCT, QFs in ERCOT have ample opportunity to sell both firm and non-firm power. Power is sold to REPs in the ERCOT market primarily through bilateral contracts of varying lengths of time. While ERCOT operates a real-time balancing energy market, bilateral transactions permit a buyer and seller to come to mutually agreed to terms with a greater degree of price certainty than in the balancing market and the majority of transactions in ERCOT take place pursuant to bilateral transactions.

177. In ERCOT, QFs have the opportunity to sell in an organized energy market. ERCOT's balancing energy market is an independently administered, aution-based, real time market and provides cogeneration QFs an opportunity to sell in the electric market while fulfilling contractual obligations to provide steam to their thermal hosts. QFs, as well as others, may use the balancing energy market to sell energy in the real-time at the market clearing price of energy. In addition, ERCOT operates a day-ahead and real-time market for ancillary services. ERCOT does not administer a centralized day-ahead market for energy, but Reliant submitted testimony that ERCOT's real-time market has been sufficient to support a robust market-based (as opposed to administratively-created) day-ahead market for sale of electricity.

178. As part of its filing, Reliant submitted the ERCOT protocols to support its claim that QFs have nondiscminatory access to markets that are of equal competitive quality to section 210(m)(1)(A) markets. These protocols are not a FERC tariff. They are, however, approved by the PUCT.[73] In its comments, the PUCT states that the market that has developed in ERCOT is sufficiently robust that QFs operating within ERCOT now rely on the market to make sales and no longer rely on the PURPA purchase obligation to make sales.

179. As noted above, Reliant, TXU and the PUCT have asked that the Commission make a generic finding that QFs in ERCOT have nondiscriminatory access to markets that satisfy section 210(m)(1)(C). No commenters have opposed this request. Based on our review of the ERCOT protocols, the support of the PUCT for termination of the purchase obligation in ERCOT, and the lack of opposition to our making a generic finding, the Commission finds that: (1) there is a rebuttable presumption that QFs larger than 20 MW operating in ERCOT have nondiscriminatory access to markets,[74] and (2) the markets in ERCOT satisfy the criteria of section 210(m)(1)(C) in that they are markets of comparative

[73] Texas State law requires states: ''The commission shall ensure that an electric utility or transmission and distribution utility provides nondiscriminatory access to wholesale transmission service for qualifying facilities, exempt wholesale generators, power marketers, power generation companies, retail electric providers, and other utilities or transmission and distribution utilities.'' Public Utility Regulatory Act, TEX. UTIL. CODE ANN. 35.0004 (PURA).

[74] QFs may rebut this presumption by making a demonstration by making a demonstration that: (i) The QF has certain operational characteristics that effectively prevent the QF's participation in a market; or (ii) a QF lacks access to markets due to transmission constraints. An existing QF can show that it is located in an area where persistent transmission constraints in effect cause the QF to have neither physical nor financial access to markets outside a persistently congested area and there is not a sufficient opportunity to redispatch around the constraint or to sell the QF output or capacity within the area on a short-term and/or long-term basis because of the constraint.

competitive quality to markets described in section 210(m)(1)(A).

180. Electric utilities operating within ERCOT may make a filing to be relieved of the purchase obligation pursuant to section 292.310 of the regulations. The rebuttable presumption that QFs 20 MW or smaller lack nondiscriminatory access shall be applicable to QFs in ERCOT. Electric utilities may rebut that presumption on the same grounds as electric utilities in other markets rebut the presumption.

H. Section 210(m)(2)—Revised Purchase and Sale Obligation for New Cogeneration Facilities

181. Section 210(m)(2)(A) reads:

REVISED PURCHASE AND SALE OBLIGATIONS FOR NEW FACILITIES—(A) After the date of enactment of this subsection, no electric utility shall be required pursuant to this section to enter into a new contract or obligation to purchase from or sell electric energy to a facility that is not an existing qualifying cogeneration facility unless the facility meets the criteria for qualifying cogeneration facilities established by the Commission pursuant to the rulemaking required by subsection (n).

182. In the NOPR the Commission stated that this provision reinforces the requirement that new qualifying cogeneration facilities must satisfy the section 210(n) criteria for new qualifying cogeneration facilities. The Commission proposed to include this language in § 292.309(d) of the proposed regulations. There were no comments objecting to this proposal, and the Commission will adopt the NOPR's proposal. The language proposed by the Commission is adopted in this Final Rule as § 292.309(h) of the Commission's regulations.

183. Section 210(m)(1)(B) defines the term ''existing qualifying cogeneration facility.'' The Commission proposed a definition of ''existing qualifying cogeneration'' in § 292.309(b)(1) of the proposed regulations. There were no comments objecting to the proposal. The proposed language is adopted in this Final Rule as § 292.309(i).

I. Section 210(m)(3)—Commission Review

1. Sufficient Notice

a. NOPR

184. Section 210(m)(3) states, in relevant part, that ''after *notice, including sufficient notice to potentially affected [QFs],* and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in subparagraph (A), (B), or (C) of paragraph (1) have been met.'' [75] Prior to the issuance of the NOPR, the Commission dealt with two section 210(m)(3) applications.[76] In Alliant, the Commission explained its interpretation and application of ''notice, including sufficient notice to potentially affected [QFs].'' The Commission clarified that an applicant would be required to identify all potentially affected QFs in any section 210(m)(3) application. The Commission also listed five categories of facilities that would constitute ''all potentially affected QFs.'' In the NOPR, the Commission proposed to incorporate this interpretation of ''sufficient notice'' and ''all potentially affected QFs'' in new § 292.310(b) and (c) of the Commission's regulation.

b. Comments

185. PSNM is concerned with requiring notice by applicants seeking relief from the purchase obligation to developers of facilities that have pending state avoided cost proceedings and any other QFs that the applicant reasonably believes to be affected by its petition. Specifically, it states that the applicant seeking relief may not necessarily be aware of all of the entities falling within these classifications. PSNM recommends that the Commission revise the proposed § 292.310(c)(4) to state: ''developers of facilities that have pending state avoided cost proceedings involving the applicant.''

186. SCE is concerned with proposed § 292.310(b), (c)(2) and (c)(5). It states that these categories may capture too broad a category of entities and thus lead to needless debates over the scope of notice provided. It states that in any case uncertified QFs and certified QFs not in the service territory of the applicant, as well as all other interested parties, will receive sufficient notice through the **Federal Register** notice process. SCE argues that the relevant statute requires sufficient notice, not actual notice.

c. Commission Determination

187. The Commission will adopt the NOPR's proposal to incorporate its interpretation of ''sufficient notice'' and ''all potentially affected QFs'' as described in *Alliant* with one modification. PSNM points out that an applicant may not be aware of state avoided cost proceedings that do not involve the applicant and recommends adding ''involving the applicant'' to proposed § 292.310(c)(4). We agree that an applicant would not necessarily know about QF developers that have initiated state avoided cost proceedings that do not involve the applicant. Nor did we intend for applicants in this situation to identify such QF developers. We find PSNM's proposed revision adds clarity to § 292.310(c)(4) and it is consistent with the Commission's interpretation of ''all potentially affected QFs.'' Accordingly, we will modify § 292.310(c)(4) to state: ''(4) The developers of facilities that have pending state avoided cost proceedings involving the applicant; and''.

188. We disagree with SCE's notion that ''all potentially affected QFs'' will receive sufficient notice through the **Federal Register** notice process. While the statutory language does not explicitly state that the ''notice, including sufficient notice'' shall be actual notice, the Commission nonetheless believes its statutory requirement is best met by providing all potentially affected QFs, many of which are small entities that do not regularly read the **Federal Register**, with actual notice.

2. Filing Fee

a. NOPR

189. Section 210(m)(3) states, in relevant part, that any electric utility may file an application for relief from the mandatory purchase requirement. In the NOPR, the Commission proposed that utilities seeking relief from the mandatory purchase requirement would need to file an application pursuant to section 210(m)(3).

b. Comments

190. SCE seeks confirmation that an application filed pursuant to section 210(m)(3) is not subject to Rule 207.[77] SCE argues that the statute indicates that the filing is an ''application'' and thus should be subject to Rule 204,[78] which does not require the payment of a fee.

c. Commission Determination

191. SCE is the only commenter to seek clarification on whether or not a filing fee is associated with a section 210(m)(3) application. We find that no filing fee shall apply to section 210(m)(3) applications.

J. Section 210(m)(4)—Reinstatement of Obligation to Purchase

192. In the NOPR, the Commission proposed § 292.311 to the Commission's

[75] 16 U.S.C. 824a–3(m)(3) (emphasis added).

[76] *See Alliant Energy Corporate Services, Inc.*, 113 FERC ¶ 61,024 (2005) *(Alliant); Montana-Dakota Utilities Co.,* 113 FERC ¶ 61,045 (2005) (*Montana-Dakota*).

[77] 18 CFR 385.207.

[78] 18 CFR 385.204.

regulations which is identical to statutory language of section 210(m)(4). The Commission viewed section 210(m)(4) as an opportunity for a QF, a state agency, or any affected person to seek to reinstate the purchase obligation should there be a material change in the circumstances under which the Commission granted relief. The Commission noted that the applicant bears the burden to ''set forth the factual basis'' upon which the application is based. The Commission further stated that the requirement for a ''factual basis'' indicates that allegations of a change in the conditions upon which relief was granted must be supported with evidence. The Commission proposed to consider these applications on a case-by-case basis.[79]

193. No adverse comments were filed in response to the Commission's proposal. Therefore, the Commission will adopt § 292.311 to the Commission's regulations, as proposed.

K. Section 210(m)(5)—Obligation to Sell

1. NOPR

194. Section 210(m)(5) of PURPA removes the requirement that an electric utility sell electric energy to any QF if the Commission finds that: ''competing retail electric suppliers are willing and able to sell and deliver electric energy to the qualifying cogeneration facility or qualifying small power production facility; and the electric utility is not required by State law to sell electric energy in its service territory.'' In the NOPR, the Commission proposed to incorporate the statutory language into its regulations.

2. Comments

195. ACC, American Iron and Steel Institute, ELCON and Midwest ISO Transmission Customers argue that by simply importing into its regulations the statutory standard in section 210(m)(5), the Commission provides no assurance that it will continue to protect the rights of QFs to receive standby and backup power at just, reasonable, and nondiscriminatory rates. They argue that no such finding can be made unless the Commission conducts an investigation to assure itself that there is sufficient competition among suppliers that market power will not be exercised in the sale of power. For instance, ELCON and American Forest & Paper suggest that the Commission require QFs have available at least two competing suppliers who are not affiliated with the utility before relieving the utility of its sales obligations under section 210(m)(5). They assert that this is required by the statutory language referring to ''competing retail electric providers'' in the plural. Moreover, the Coalition of CIBO argue that the utility be required to demonstrate that all of the services are competitively available.

196. In addition, CCC, EPSA, Florida Industrial, Energy Consumers, Solid Waste Authority request that the Commission clarify that lifting of the PURPA obligation to purchase QF electricity for a particular utility does not relieve such utility of its obligation to sell supplemental, backup, standby and maintenance power to the QF at fair, reasonable and nondiscriminatory rates.

197. Also, the CCC argues that the statute requires that the competing supplier must be able to ''deliver'' as well as ''sell'' the backup and standby power and that the Commission must make certain that the utility cannot use its monopoly over retail delivery (*i.e.*, distribution) service to impede the development of QF projects.

198. Further, the CCC states that the Commission should recognize that in addition to a showing of an alternative retail supplier of electricity, the statute requires a second showing that the utility no longer has any state law obligation to serve retail customers in its service territory. ELCON and American Forest & Paper add that the Commission should interpret this second prong to require any utility that has an obligation to provide Standard Offer or Default service is ''required by state law to sell electric energy in its service territory.'' They state that typically the state has imposed such obligations where necessary to achieve just and reasonable rates or adequate, reliable service. ELCON and American Forest & Paper state that QFs should not be deprived of any benefit that the state has determined to be appropriate for retail customers.

199. In response to the arguments for the Commission to retain a utility obligation to supply backup power at just and reasonable rates, EEI argues that as backup power is a retail electric service, it is beyond the Commission's jurisdiction to determine the justness and reasonableness of such retail rates. It argues that the most the Commission can find, as the statute makes clear, is that competing retail suppliers are willing and able to sell to the QF, and that there is no applicable state obligation to serve.

3. Commission Determination

200. We clarify that lifting of the PURPA obligation to purchase QF electricity for a particular utility does not relieve such utility of its obligation to sell supplemental, backup, standby and maintenance power to the QF. Any finding under section 210(m)(5) which would relieve the utility from selling to a QF would be made under a separate standard and in a separate proceeding pursuant to § 292.312 of the Commission's regulations. We agree, with EEI, however, that it is beyond the Commission's jurisdiction to determine the justness and reasonableness of retail rates.

201. Also, we agree with ELCON and American Forest & Paper that the language in section 210(m)(5), ''competing retail electric providers,'' requires that QFs have available at least two competing suppliers who are not affiliated with the utility before relieving the utility of its sales obligations under section 210(m)(5). We emphasize that during a section 210(m)(5) proceeding, the Commission will strictly interpret the statutory language. We note that the Commission's regulations provide that a utility must interconnect with a QF, and nothing in section 210(m) of PURPA terminates that obligation.

202. As to the CCC's argument that section 210(m)(5) has an additional state law prong that has to be met, we agree. Whether a utility that has an obligation to provide Standard Offer or Default service is ''required by state law to sell electric energy in its service territory'' is an issue that invokes consideration of particular state laws or state regulatory authority actions. Accordingly, the Commission believes that the issue is more appropriately addressed on a case-by-case basis in proceedings under § 292.312 of the Commission's regulations rather than generically in this rulemaking.

L. Section 210(m)(6)—No Effect on Existing Rights and Remedies

1. NOPR

203. Section 210(m)(6) protects the right and remedies under a contract or obligation in effect or pending approval before the state regulatory authority. In the NOPR, the Commission clarified that the protections provided for in section 210(m)(6) are triggered regardless of the stage of construction of a facility that may be the subject of the contract or obligation. The Commission proposed to adopt the language of the statute and solicited comments on whether further or different language and/or clarifications other than those

[79] In the NOPR, the Commission also stated that, consistent with our interpretation of ''notice'' under section 210(m)(3), the Commission will require an applicant to identify all potentially affected utilities in the application so that the Commission will be able to meet its statutory requirement to provide sufficient notice and an opportunity for comment.

proposed should be incorporated into our regulations.

2. Comments

204. Most of the comments received regarding the Commission's interpretation of section 210(m)(6) were focused on the terms ''contract'' and ''obligation.'' EEI and PG&E argue that the terms ''contract'' and ''obligation'' are synonymous and that an ''obligation'' within the meaning of PURPA section 210(m)(6) thus refers to a specific legal arrangement between specific parties that establishes all the relevant and material rates, terms and conditions under which power will be bought and sold. They contend that ''obligation'' must provide the same level of certainty as a contract, even though a contract *per se* may not actually be formed until regulatory approval is obtained. They further argue that the only obligations that were preserved under the savings clause were those obligations that (1) contain the mutual commitments of specific buyers and sellers of QF-generated electricity; (2) define all the relevant and material rates, terms and conditions of the sales; and (3) were in effect or pending regulatory approval on August 8, 2005.

205. SCE supports EEI and argues that ''obligation'' should refer only to mutual arrangements that were sufficiently developed to include all relevant terms and mutual commitments of the parties and were in effect, or awaiting state commission approval, as of August 8, 2005.

206. Midwest Renewable Energy Products argues that the Commission should clarify that any QF that was certified under 18 CFR 292.206 and made a filing with the relevant state regulatory authority before August 8, 2005 (to implement the mandatory purchase requirement) falls under the protection of the savings clause in section 210(m)(6), as having an ''obligation'' in effect as of August 8, 2005.

207. Deere argues that EEI and SCE ignore that there can be non-contractual legally enforceable obligations, created pursuant to a state's PURPA implementing scheme, which do not necessarily involve a single writing completely containing all material terms. Deere also argues that they ignore the new act's express mention of ''contracts'' separate from ''obligations,'' using the disjunctive ''or.'' It states that equating ''obligations'' to contracts would make it superfluous, contrary to the rules of statutory construction. Deere also states that Congress recognized that PURPA's purchase obligation is effectuated not only through contracts, but through obligations created by non-contractual mechanisms, such as a state regulatory process.

208. ELCON and American Forest & Paper state that the Commission should emphasize that even where mandatory purchase requirements are terminated as to new contracts, existing contracts and obligations may not be reopened.

3. Commission Determination

209. The Commission will adopt the statutory language of section 210(m)(6) into its regulations. Based on the comments received, it is evident that the term ''obligation'' as it is used in section 210(m)(6) and section 210(m)(1) needs to be clarified. Section 210(m)(6) reads, in relevant part, that ''Nothing in this subsection affects the rights and remedies of any party under any contract or *obligation*, in effect or pending approval before the appropriate State regulatory authority * * *.''[80] Section 210(m)(1) states, in relevant part, that ''no electric utility shall be required to enter into a new contract or *obligation* to purchase electric energy * * *.''[81] Because the term ''obligation'' appears in two distinct subsections of amended section 210(m), we believe it necessary to clarify how the Commission will interpret the term ''obligation.''

210. The Commission has previously addressed the meaning of section 210(m)(6) in *Midwest Renewable Energy Projects, LLC.*[82] In *Midwest Renewable*, we rejected the notion offered here by EEI and PG&E that ''contract'' and ''obligation'' are synonymous terms. We stated that such an interpretation would render the term ''obligation'' superfluous because then section 210(m)(6) would only apply to existing contracts. Had Congress intended section 210(m)(6) to apply to only existing contracts, it would not have included the term ''obligation.'' Thus, we found Congress intended there to be a distinction between ''contract'' and ''obligation.''

211. In *Midwest Renewable*, we also disagreed with the theory offered by EEI and PG&E in this proceeding that an ''obligation'' within the meaning of PURPA section 210(m)(6) refers to a specific legal arrangement between specific parties that establishes all the relevant and material rates, terms and conditions under which power will be bought and sold. As we stated in *Midwest Renewable*:

> While there appears to be some ambiguity surrounding the term ''obligation'' in 210(m)(6), we find that the reading favored by protestors would eliminate the term ''or pending approval'' from the statutory language, and would be contrary to the well-established rule of statutory construction that every clause and word of a statute be given effect and that no clause or word be interpreted so as to render it superfluous, redundant, void or insignificant. To the contrary, we find the phrase ''or pending approval'' to be quite significant, as it ensures that contracts or obligations that had not yet been entered into but were being pursued in the context of the state commission proceedings that were pending on the date of enactment of EPAct 2005 will fall within savings clause.[83]

212. When a utility refuses to enter into a contract with a QF and the QF seeks state regulatory authority help to enforce its PURPA regulations, a non-contractual legally enforceable obligation may be created pursuant to the state's implementation of PURPA. Such obligations do not necessarily involve a single writing completely containing all material terms. How QFs initiate the PURPA process varies from state to state. Thus, to narrowly define ''obligation'' to encompasses only a specific legal arrangement with all the relevant and material rates, terms and conditions established may be at odds with a state's implementation of PURPA. Accordingly, the Commission views the term ''obligation'' as a ''legally enforceable obligation'' which is established through a state's implementation of PURPA. A QF that had initiated, prior to August 8, 2005, a state PURPA proceeding that may result in a contract or legally enforceable obligation would be considered to have triggered an ''obligation'' with the electric utility regarding section 210(m)(6).

213. With regard to section 210(m)(1), ''obligation'' will be viewed as a ''legally enforceable obligation'' and a QF that has initiated a state's PURPA proceeding that may result in a legally enforceable contract or obligation prior to the applicable electric utility filing its petition for relief pursuant to § 292.310 of the Commission's regulations will be considered to have triggered an ''obligation'' with the electric utility. Whether or not the utility's date of filing a petition for relief pursuant to § 292.310 of the Commission's regulations becomes the end date for the mandatory purchase requirement depends on whether the Commission makes a final determination that the criteria for granting relief have been satisfied, and the Commission

[80] 16 U.S.C. 824a–3(m)(3) (emphasis added).

[81] 16 U.S.C. 824a–3(m)(6) (emphasis added).

[82] *Midwest Renewable Energy Projects, LLC,* 116 FERC ¶ 61,017 (2006) (*Midwest Renewable*).

[83] *Midwest Renewable* at P 14.

terminates the mandatory purchase requirement.

M. Section 210(m)(7)—Recovery of Costs

1. NOPR

214. In the NOPR the Commission stated that it did not believe that regulations are necessary at this time to ensure that an electric utility that purchases electric energy or capacity from a QF recovers all prudently incurred costs associated with the purchase as described in section 210(m)(7). Nonetheless, the Commission requested comments on whether there is a need for the Commission to consider such a regulation.

2. Comments

215. EEI, Allegheny, Alliant, Montana-Dakota, PSNM and TNMP state that the Commission should adopt the statutory language in section 210(m)(7) into its regulations and provide for case-by-case relief where required. Central Vermont and Progress Energy argue that the Commission should establish wholesale and retail riders to permit consistent, complete and timely recovery of the utility's prudently-incurred QF purchase costs. They state that the states and the Commission often use different methodologies for allocating costs between the jurisdictions and the fact that utilities do not traditionally have general rate cases before the Commission and the state commissions every year. Therefore, when a QF purchase is made in a year without a general rate case at wholesale and retail, those costs are not recovered via the utility's retail or wholesale rates.

3. Commission Determination

216. We adopt our proposal in the NOPR. We do not find Central Vermont and Progress Energy's argument persuasive. No evidence has been presented that utilities will not be able to recover costs associated with purchases of electric energy or capacity from a QF. Until such time, we are reluctant to review an issue that should be handled by the states in the first instance. Therefore, we see no reason to act now.

N. Other Issues

1. Contract Termination

a. NOPR

217. In the NOPR, the Commission proposed to find that when a contract terminates by its own accord, an electric utility is not compelled to enter into a new, successor contract with the QF if the Commission has made a finding that section 210(m)(1) has been satisfied. The Commission further clarified that QF status does not mean that an electric utility has an ''obligation'' to purchase from the QF in perpetuity, or that a QF has the right to demand that the utility purchase at avoided-cost rates in perpetuity.

b. Comments

218. AEP, Deere, EEI, Entergy, Occidental, PPL, and PSNM agree with the NOPR's position. AEP and Occidental seek clarification or expansion of the NOPR's position. AEP believes that ''terminates by its own accord'' should also include the fact that a contract may terminate mutually between the parties and the electric utility would not be compelled to enter into another contract with that QF. Occidental seeks clarification that the proposed rules do not abrogate existing contracts. As such, Occidental wants the terms ''terminates by its own accord'' clarified to mean ''expires by its own terms.''

c. Commission Determination

219. The Commission will adopt the NOPR's proposal regarding contract termination in the context of finding made pursuant to section 210(m)(1). Two commenters, AEP and Occidental, seek clarification of the phrase ''terminates by its own accord.'' AEP points out that some contracts may be terminated by mutual agreement between the parties to the contract and believes this type of contract termination should also be included in the Commission's interpretation of ''terminates by its own accord.'' As long as there is mutual agreement between a QF and the electric utility to terminate a contract, then the Commission finds that the electric utility is not compelled to enter into a new, successor contract with the QF. Occidental requests clarification that the NOPR does not abrogate existing contracts and thus wants the phrase ''terminates by its own accord'' to be clarified to mean ''expires by its own terms.'' We will also clarify that the proposed rules adopted in this Final Rule do not abrogate existing contracts. Thus, under the Final Rule, a QF contract is to remain in effect until it terminates by mutual agreement or by its own terms. We note, however, that there may be contracts that contain provisions that legislation, such as EPAct 2005, or a Final Rule, such as this one, trigger a termination clause in the contract. To the extent that the parties to a contract cannot agree whether a termination clause has been triggered, the issue will be best determined in an individual case-specific proceeding in which the particulars of the contract can be examined.

2. Effective Date of Contracts

a. NOPR

220. In the NOPR, the Commission proposed to find that if a contract is entered into after August 8, 2005, the date of EPAct 2005 enactment, but before the Commission has determined that an electric utility is entitled to relief from the mandatory purchase requirement, the contract already entered into will be treated as though it was in effect on August 8, 2005 for purposes of section 210(m)(1).

b. Comments

221. EEI, SCE, and PG&E disagree with the Commission's proposed statutory construction. They argue that once a utility is granted relief from the PURPA purchase obligation, it should not be required to honor any QF contracts entered into after August 8, 2005. EEI, SCE, and PG&E argue that this is the only determination that is consistent with the clear intent and express language of EPAct 2005, setting August 8, 2005 as the end date of the PURPA purchase obligation for utilities in appropriate markets. They state that this finding is also critical to preventing a QF ''gold rush,'' *i.e.*, QFs with expiring contracts and/or new QFs may seek to obtain a contract prior to the Commission making the requisite finding under section 210(m)(1) that would relieve electric utilities like SCE and PG&E from the mandatory purchase requirement.

222. In the alternative, SCE and PG&E state that if the Commission believes that some contracts entered into after August 8, 2005 must be honored, it should adopt a rule that ensures that electric utilities either: (1) are not compelled by their state commissions to enter into new contracts or extend existing contracts after a petition for relief is filed pursuant to section 210(m) (PURPA Petition) until and unless the PURPA Petition is denied; or (2) are not required to honor contracts (or contract extensions) entered into after a PURPA Petition is filed, if the PURPA Petition is subsequently granted. Under this approach, contracts entered into between August 8, 2005, and the filing of a PURPA Petition would be honored, but there would be no ''gold rush'' incentive created by the filing of the utility's PURPA Petition.

223. OG&E proposes that when a QF attempts to establish a contract or obligation after August 8, 2005, a utility should have a reasonable opportunity to demonstrate in a filing at the

Commission that the utility satisfies one of the tests set forth in section 210(m)(1). A QF attempting to establish a new obligation would be required to provide the utility with formal notice. Within 60 days of such notice, the utility could file a PURPA Petition if it believed the requisite market conditions existed.

224. The CCC, and the APPA and LPPC argue that the language is clear that the ability of a utility to have its mandatory purchase requirement terminated is dependent on a Commission determination that a nondiscriminatory market satisfying the statutory conditions exists. Until this determination is made, the mandatory purchase requirement remains in effect. Deere adds that generation project financing is long-term in nature, and contractual and non-contractual legally enforceable obligations are typically for up to 20 years or longer so as to support the long-term financing. The possibility of a new QF contract or obligation being negated, either *ab initio* or at the time of a section 210(m) order, would leave the remaining term of the financing arrangements unsupported.

225. The CPUC states that should the Commission adopt a rule as suggested by SCE and PG&E, the rule should affirm that state commissions retain oversight of such terminable contracts to ensure utilities afford equal treatment of all QF contracts.

c. Commission Determination

226. Section 210(m)(1) states, in relevant part, that, after August 8, 2005, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from QFs if the Commission finds that the QF has nondiscriminatory access to either section 210(m)(1)(A), (B), or (C). The Commission's interpretation of this statutory language, as expressed in the NOPR, was to treat new contracts or obligations entered into after August 8, 2006, but before the Commission makes a finding, as contracts or obligations in effect prior to August 8, 2005. This interpretation is consistent with the Commission's policy of not abrogating contracts. Moreover, this is consistent with the statute. Under the statue, the purchase obligation is not terminated on August 8, 2005, but only when the Commission terminates the obligation, after an electric utility filing. Until an electric utility makes a filing pursuant to the regulations, and the Commission makes the required findings, the purchase obligations remains in effect. A different statutory interpretation, such as the one advocated by EEI, would lead to QF contracts being abrogated potentially several years after execution. We believe Congress did not intend for this after-the-fact abrogation of contracts to occur. Thus, we believe the NOPR's interpretation of this statutory language is reasonable.

227. Nonetheless, some of EEI, SCE, and PG&E's arguments are compelling. The Commission's interpretation could potentially lead to what these commenters describe as a ''gold rush'' of QFs seeking contracts once an electric utility files for relief. Since the Commission has 90 days in which to render a finding, QFs would be able to seek new contracts or obligations from the electric utility upon learning of the electric utility's relief application until the Commission makes a finding, and the electric utility would be subject to the mandatory purchase requirement even if the Commission eventually made a finding removing the mandatory purchase requirement. We believe this possibility would undermine and circumvent the intent of section 210(m)(1).

228. In order to prevent the possibility of a ''gold rush,'' the Commission will modify its proposed interpretation. Rather than treat new contracts and obligations entered into after a PURPA petition is filed but before the Commission renders a finding as in effect prior to August 8, 2005, the Commission will temporarily suspend an electric utility's obligation to enter into new contracts and obligations upon the filing of its PURPA petition. When an electric utility files its PURPA petition, that electric utility will not be obligated to enter into new contracts or obligations with QFs as of the date its PURPA petition is filed. If the Commission finds that section 210(m)(1) has been met, then the mandatory purchase requirement for that electric utility ends as of the date of the PURPA petition. However, if the Commission finds that the requirements of section 210(m)(1) have not been met, then the electric utility's obligation to enter into new contracts or obligations is reinstated as of the date of a Commission order and a QF seeking a new contract or obligation shall not be denied. As such, a new contract or obligation in this situation will be treated as in effect prior to August 8, 2005. We believe this modification will remove any ''gold rush'' incentive QFs may have and preserves the integrity of the mandatory purchase requirement and contracts entered into between QFs and electric utilities. We note, however, that to the extent that a QF had a contract or obligation pending approval before an appropriate state regulatory authority, or non-regulated utility on August 8, 2005, a finding by that state regulatory authority or non-regulated utility that an electric utility has an obligation to purchase or must enter into a contract is binding.

229. The Commission recognizes that there is a possibility of electric utilities filing PURPA Petitions one right after another in order to invoke the temporary suspension period of the mandatory purchase requirement. Repeated section 210(m)(3) applications by utilities intended will not be tolerated and the Commission will take appropriate action if utilities abuse the process.

V. Information Collection Statement

The following collections of information referenced in this Final Rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[84] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[85] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this Final 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 or the Commission had provided a justification as why the control number should be displayed.

In the NOPR the Commission provided the following burden estimates for complying with the rule as follows:

Data collection FERC–556	Number of respondents	Number of responses	Hours per response	Total annual hours
§ 292.310	230	1	2	460
§ 292.312	230	1	2	460

[84] *See* 44 U.S.C. 3507(d).

[85] 5 CFR 1320.11.

Data collection FERC–556	Number of respondents	Number of responses	Hours per response	Total annual hours
§ 292.313	630	1	3	1,890
Totals	860	1		2,810

Information Collection Costs: Because of the regional differences and the various staffing levels that have been involved in preparing the documentation (legal, technical and support) the Commission is using the 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 anticipated to be $421,500.

In response to the NOPR, the Commission received no comments concerning its estimates for burden and costs and will use those estimates here in the final rule. Where commenters believed that a disproportionate amount of burden had been placed on certain entities in order to meet statutory criteria, the Commission has addressed this issue elsewhere in the rule and will not repeat its responses here. The actions taken in the Final Rule should ameliorate their concerns of a significant shift in the burden.

Title: FERC–556 ''Small Power Production and Cogeneration Facilities''.

Action: Proposed collections.

OMB Control Nos.: 1902–0075.

Respondents: Businesses or other for profit.

Frequency of responses: Annually and on occasion.

Necessity of the Information: The Commission amends its regulations to implement Section 210(m) of PURPA which was enacted in Section 1253 of the EPACT 2005 to implement a process by which electric utilities may apply for removal of the requirement that they enter into new contracts or obligations for the purchase of electric energy from qualifying facilities (QFs) after August 8, 2005. The Final Rule is in response to a Congressional mandate that addresses complaints of electric utilities of having to pay contractually high prices for power they did not need. In adding Section 210, Congress described a standard of relief for the requirement that electric utilities enter into new obligations to purchase electric power from QFs.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone (202)502–8415, fax: (202)273–0873, e-mail: *michael.miller@ferc.gov*] For submitting comments concerning the collection of information(s) and the associated burden estimates, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission; Phone: (202) 395–4650, fax: (202) 395–7285.

VI. Environmental Analysis

230. 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. The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. As explained above, this rule is clarifying in nature. It interprets several amendments made to PURPA by EPAct 2005, and clarifies the applicability of these amendments to electric utilities and QFs; it does not substantially change the effect of the legislation. Accordingly, no environmental consideration is necessary.

VII. Regulatory Flexibility Act Certification

231. The Regulatory Flexibility Act of 1980 (RFA)[86] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities and where notice and comment rulemaking is required. Certain rules are exempt from notice and comment from the RFA requirements; exempt rules include interpretative rules, general statements of policy, or rules of agency organization procedure or practice.[87] Interpretative rules ''generally interpret the intent expressed by Congress, where an agency does not insert its own judgments or interpretations in implementing a rule and simply regurgitates statutory language.''[88] The rule we are proposing in this docket is mostly an interpretative rule and thus, does not require a regulatory flexibility analysis. The exception, however, is the Commission's establishment of a rebuttable presumption that small QFs, with a net capacity no greater than 20 MW, do not have nondiscriminatory access to wholesale markets described in section 210(m)(1)(A), (B), or (C). Unless an electric utility seeking the right to terminate its requirement to purchase small QF power specifically rebuts this small QF presumption, and that electric utility's request is granted by the Commission, a small QF would continue to be eligible to require the electric utility to purchase its electric energy. With this 20 MW rebuttable presumption the Commission reduces the burden, *i.e.*, the cost of participating in termination proceedings, of small QFs to participate in the section 210(m)(3) proceedings. In fact, the Commission is being generous in allowing small QFs up to 20 MWs to have a rebuttable presumption given that the Small Business Administration considers ''small'' to mean 4 MW or less.

VIII. Document Availability

232. 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/or 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.

233. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

234. User assistance is available for eLibrary and the FERC's Web site during

[86] 5 U.S.C. 601–12.

[87] 5 U.S.C. 553(b)(A).

[88] ''How to Comply with the Regulatory Flexibility Act: A Guide for Government Agencies'', Small Business Administration, Office of Advocacy, P.5, May 2003.

normal business hours from our Help line 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.*

IX. Effective Date

235. These regulations are effective January 2, 2007. 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 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.

List of Subjects in 18 CFR Part 292

Electric power, Electric power plants, Electric utilities.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 292, chapter I, title 18, *Code of Federal Regulations*, as follows.

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

■ 1. The authority citation for part 292 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Section 292.303 is revised to read as follows:

§ 292.303 Electric utility obligations under this subpart.

(a) *Obligation to purchase from qualifying facilities.* Each electric utility shall purchase, in accordance with § 292.304, unless exempted by § 292.309 and § 292.310, any energy and capacity which is made available from a qualifying facility:

(1) Directly to the electric utility; or

(2) Indirectly to the electric utility in accordance with paragraph (d) of this section.

(b) *Obligation to sell to qualifying facilities.* Each electric utility shall sell to any qualifying facility, in accordance with § 292.305, unless exempted by § 292.312, energy and capacity requested by the qualifying facility.

(c) *Obligation to interconnect.* (1) Subject to paragraph (c)(2) of this section, any electric utility shall make such interconnections with any qualifying facility as may be necessary to accomplish purchases or sales under this subpart. The obligation to pay for any interconnection shall be determined in accordance with § 292.306.

(2) No electric utility is required to interconnect with any qualifying facility if, solely by reason of purchases or sales over the interconnection, the electric utility would become subject to regulation as a public utility under part II of the Federal Power Act.

(d) *Transmission to other electric utilities.* If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy and capacity from such qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to such electric utility. The rate for purchase by the electric utility to which such energy is transmitted shall be adjusted up or down to reflect line losses pursuant to § 292.304(e)(4) and shall not include any charges for transmission.

(e) *Parallel operation.* Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with any applicable standards established in accordance with § 292.308.

■ 3. Sections 292.309 through 292.314 are added to read as follows:

Sec.
292.309 Termination of obligation to purchase from qualifying facilities.
292.310 Procedures for utilities requesting termination of obligation to purchase from qualifying facilities.
292.311 Reinstatement of obligation to purchase.
292.312 Termination of obligation to sell to qualifying facilities.
292.313 Reinstatement of obligation to sell.
292.314 Existing rights and remedies.

§ 292.309 Termination of obligation to purchase from qualifying facilities.

(a) After August 8, 2005, an electric utility shall not be required, under this part, to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility if the Commission finds that the qualifying cogeneration facility or qualifying small power facility production has nondiscriminatory access to:

(1)(i) Independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and

(ii) Wholesale markets for long-term sales of capacity and electric energy; or

(2)(i) Transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and

(ii) Competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or

(3) Wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in paragraphs (a)(1) and (a)(2) of this section.

(b) For purposes of § 292.309(a), a renewal of a contract that expires by its own terms is a ''new contract or obligation'' without a continuing obligation to purchase under an expired contract.

(c) For purposes of § 292.309(a)(1), (2) and (3), with the exception of paragraph (d) of this section, there is a rebuttable presumption that a qualifying facility has nondiscriminatory access to the market if it is eligible for service under a Commission-approved open access transmission tariff or Commission-filed reciprocity tariff, and Commission-approved interconnection rules. If the Commission determines that a market meets the criteria of § 292.309(a)(1), (2) or (3), and if a qualifying facility in the relevant market is eligible for service under a Commission-approved open access transmission tariff or Commission-filed reciprocity tariff, a qualifying facility may seek to rebut the presumption of access to the market by demonstrating, *inter alia,* that it does not have access to the market because of operational characteristics or transmission constraints.

(d)(1) For purposes of § 292.309(a)(1), (2), and (3), there is a rebuttable presumption that a qualifying facility with a capacity at or below 20 megawatts does not have nondiscriminatory access to the market.

(2) For purposes of implementing paragraph (d)(1) of this section, the Commission will not be bound by the one-mile standard set forth in § 292.204(a)(2).

(e) Midwest Independent Transmission System Operator (Midwest ISO), PJM Interconnection, L.L.C. (PJM), ISO New England, Inc. (ISO–NE), and New York Independent System Operator (NYISO) qualify as markets described in § 292.309(a)(1)(i) and (ii), and there is a rebuttable presumption that qualifying facilities with a capacity greater than 20 megawatts have nondiscriminatory access to those markets through Commission-approved open access transmission tariffs and interconnection rules, and that electric utilities that are members of such regional transmission organizations or independent system operators (RTO/ISOs) should be relieved of the obligation to purchase electric energy from the qualifying facilities. A qualifying facility may seek to rebut this presumption by demonstrating, *inter alia,* that:

(1) The qualifying facility has certain operational characteristics that effectively prevent the qualifying facility's participation in a market; or

(2) The qualifying facility lacks access to markets due to transmission constraints. The qualifying facility may show that it is located in an area where persistent transmission constraints in effect cause the qualifying facility not to have access to markets outside a persistently congested area to sell the qualifying facility output or capacity.

(f) The Electric Reliability Council of Texas (ERCOT) qualifies as a market described in § 292.309(a)(3), and there is a rebuttable presumption that qualifying facilities with a capacity greater than 20 megawatts have nondiscriminatory access to that market through Public Utility Commission of Texas (PUCT) approved open access protocols, and that electric utilities that operate within ERCOT should be relieved of the obligation to purchase electric energy from the qualifying facilities. A qualifying facility may seek to rebut this presumption by demonstrating, *inter alia,* that:

(1) The qualifying facility has certain operational characteristics that effectively prevent the qualifying facility's participation in a market; or

(2) The qualifying facility lacks access to markets due to transmission constraints. The qualifying facility may show that it is located in an area where persistent transmission constraints in effect cause the qualifying facility not to have access to markets outside a persistently congested area to sell the qualifying facility output or

(g) The California Independent System Operator and Southwest Power Pool, Inc. satisfy the criteria of § 292.309(a)(2)(i).

(h) No electric utility shall be required, under this part, to enter into a new contract or obligation to purchase from or sell electric energy to a facility that is not an existing qualifying cogeneration facility unless the facility meets the criteria for new qualifying cogeneration facilities established by the Commission in § 292.205.

(i) For purposes of § 292.309(h), an ''existing qualifying cogeneration facility'' is a facility that:

(1) Was a qualifying cogeneration facility on or before August 8, 2005; or

(2) Had filed with the Commission a notice of self-certification or self-recertification, or an application for Commission certification, under § 292.207 prior to February 2, 2006.

(j) For purposes of § 292.309(h), a ''new qualifying cogeneration facility'' is a facility that satisfies the criteria for qualifying cogeneration facilities pursuant to § 292.205.

§ 292.310 Procedures for utilities requesting termination of obligation to purchase from qualifying facilities.

(a) An electric utility may file an application with the Commission for relief from the mandatory purchase requirement under § 292.303(a) pursuant to this section on a service territory-wide basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth in § 292.309(a)(1), (2) or (3) have been met. After notice, including sufficient notice to potentially affected qualifying cogeneration facilities and qualifying small power production facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in § 292.309(a)(1), (2) or (3) have been met.

(b) Sufficient notice shall mean that an electric utility must identify with names and addresses all potentially affected qualifying facilities in an application filed pursuant to paragraph (a).

(c) All potentially affected qualifying facilities shall include:

(1) Those qualifying facilities that have existing power purchase contracts with the applicant;

(2) Other qualifying facilities that sell their output to the applicant or that have pending self-certification or Commission certification with the Commission for qualifying facility status whereby the applicant will be the purchaser of the qualifying facility's output;

(3) Any developer of generating facilities with whom the applicant has agreed to enter into power purchase contracts, as of the date of the application filed pursuant to this section, or are in discussion, as of the date of the application filed pursuant to this section, with regard to power purchase contacts;

(4) The developers of facilities that have pending state avoided cost proceedings, as of the date of the application filed pursuant to this section; and

(5) Any other qualifying facilities that the applicant reasonably believes to be affected by its application filed pursuant to paragraph (a) of this section.

(d) The following information must be filed with an application:

(1) Identify whether applicant seeks a finding under the provisions of § 292.309(a)(1), (2), or (3).

(2) A narrative setting forth the factual basis upon which relief is requested and describing why the conditions set forth in § 292.309(a)(1), (2), or (3) have been met. Applicant should also state in its application whether it is relying on the findings or rebuttable presumptions contained in § 292.309(e), (f) or (g). To the extent applicant seeks relief from the purchase obligation with respect to a qualifying facility 20 megawatts or smaller, and thus seeks to rebut the presumption in § 292.309(d), applicant must also set forth, and submit evidence of, the factual basis supporting its contention that the qualifying facility has nondiscriminatory access to the wholesale markets which are the basis for the applicant's filing.

(3) Studies, including the applicant's long-term transmission plan, conducted by applicant, or the RTO, ISO or other relevant entity, that show:

(i) Transmission constraints by path, element or other level of comparable detail that have occurred and/or are known and expected to occur, and any proposed mitigation including transmission construction plans;

(ii) Levels of congestion, if available;

(iii) Relevant system impact studies for the generation interconnections, already completed;

(iv) Other information pertinent to showing whether transfer capability is available; and

(v) The appropriate link to applicant's OASIS, if any, from which a qualifying facility may obtain applicant's available transmission capacity (ATC) information.

(4) Describe the process, procedures and practices that qualifying facilities interconnected to the applicant's system must follow to arrange for the transmission service to transfer power to purchasers other than the applicant. This description must include the

process, procedures and practices of all distribution, transmission and regional transmission facilities necessary for qualifying facility access to the market.

(5) If qualifying facilities will be required to execute new interconnection agreements, or renegotiate existing agreements so that they can effectuate wholesale sales to third-party purchasers, explain the requirements, charges and the process to be followed. Also, explain any differences in these requirements as they apply to qualifying facilities compared to other generators, or to applicant-owned generation.

(6) Applicants seeking a Commission finding pursuant to § 292.309(a)(2) or (3), except those applicants located in ERCOT, also must provide evidence of competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In demonstrating that a meaningful opportunity to sell exists, provide evidence of transactions within the relevant market. Applicants must include a list of known or potential purchasers, *e.g.*, jurisdictional and non-jurisdictional utilities as well as retail energy service providers.

(7) Signature of authorized individual evidencing the accuracy and authenticity of information provided by applicant.

(8) Person(s) to whom communications regarding the filed information may be addressed, including name, title, telephone number, and mailing address.

§ 292.311 Reinstatement of obligation to purchase.

At any time after the Commission makes a finding under §§ 292.309 and 292.310 relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the factual basis upon which the application is based and describe why the conditions set forth in § 292.309(a), (b) or (c) are no longer met. After notice, including sufficient notice to potentially affected electric utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the conditions set forth in § 292.309(a), (b), or (c) which relieved the obligation to purchase, are no longer met.

§ 292.312 Termination of obligation to sell to qualifying facilities.

(a) Any electric utility may file an application with the Commission for relief from the mandatory obligation to sell under this section on a service territory-wide basis or a single qualifying facility basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth in paragraphs (b)(1) and (b)(2) of this section have been met. After notice, including sufficient notice to potentially affected qualifying facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in paragraphs (b)(1) and (b)(2) of this section have been met.

(b) After August 8, 2005, an electric utility shall not be required to enter into a new contract or obligation to sell electric energy to a qualifying small power production facility, an existing qualifying cogeneration qualifying facility, or a new qualifying cogeneration facility if the Commission has found that;

(1) Competing retail electric suppliers are willing and able to sell and deliver electric energy to the qualifying cogeneration facility or qualifying small power production facility; and

(2) The electric utility is not required by State law to sell electric energy in its service territory.

§ 292.313 Reinstatement of obligation to sell.

At any time after the Commission makes a finding under § 292.312 relieving an electric utility of its obligation to sell electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the factual basis upon which the application is based and describe why the conditions set forth in Paragraph (b)(1) and (b)(2) of this section are no longer met. After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to sell electric energy under this section if the Commission finds that the conditions set forth in paragraphs (b)(1) and (b)(2) of this section are no longer met.

§ 292.314 Existing rights and remedies.

Nothing in this section affects the rights or remedies of any party under any contract or obligation, in effect or pending approval before the appropriate State regulatory authority or non-regulated electric utility on or before August 8, 2005, to purchase electric energy or capacity from or to sell electric energy or capacity to a qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

Note: The following appendix will not be published in the *Code of Federal Regulations.*

Appendix A: List of Petitioners Requesting Clarification or Submitting Comments

AES Shady Point, LLC (AES Shady Point)
Albers, John D. (Mr. Albers)
Allegheny Power (Allegheny)
Alliant Energy Corporate Services, Inc. (Alliant)
American Chemistry Council
American Electric Power Service Corporation (AEP)
American Energy Company
American Forest and Paper Association (American Forest & Paper)
American Iron and Steel Institute
American Petroleum Institute
American Public Power Association and Large Public Power Council (APPA)
American Wind Energy Association (AWEA)
Caithness Energy, LLC (Caithness)
California Cogeneration Council (CCC)
California Independent System Operator Corporation (CAISO)
Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (New York Transmission Owners)
Central Vermont Public Service Corporation and Green Mountain Power Corporation (Central Vermont)
Coalition of Midwest Transmission Customers (Midwest Transmission Customers)
Cogeneration Association of California and Energy Producers and Users Coalition (Cogeneration Association of California)
Cogeneration Coalition of Washington
Congressmen Boucher, Brown and Pickering
Consolidated Edison Company of New York, Inc. (ConEd)
Constellation Energy Group, Inc. (Constellation)
Council of Industrial Boiler Owners (CIBO)
Deere & Company (Deere)
Direct Energy Services, LLC (Direct Energy)
Dow Chemical Company (Dow)

Edison Electric Institute (EEI)
Electricity Consumers Resource Council (ELCON)
Electric Power Supply Association (EPSA)
Entergy Services, Inc. (Entergy)
Environmental Law and Policy Center
Exelon Corporation (Exelon)
The Fertilizer Institute
FirstEnergy Corp. (FirstEnergy)
Florida Industrial Cogeneration Association (Florida Industrial Cogeneration)
Granite State Hydropower Association, Inc. and Vermont Independent Power Producers Association (Granite State)
Independent Energy Producers Association of California (Independent Energy Producers)
Industrial Energy Consumers of America (Industrial Energy Consumers)
Landfill Gas Coalition
Louisiana Energy Users Group (LEUG)
Midwest Renewable Energy Projects, LLC (Midwest Renewable Energy Projects)
Missouri River Energy Services (Missouri River)
Midwest Transmission Customers
Modesto Irrigation District (Modesto Irrigation)
Montana-Dakota Utilities Co. (Montana-Dakota)
National Grid USA (National Grid)
National Petrochemical & Refiners Association (NPRA)
National Rural Electric Cooperative Association (NRECA)
Nelson Industrial Steam Company's Industrial Participants (NISCO)
New York Independent System Operator, Inc. (NYISO)
NSTAR Electric & Gas Corporation (NSTAR)
Occidental Chemical Corporation (Occidental)
Oklahoma Corporation Commission
Oklahoma Gas and Electric Company (OG&E)
Ottinger, Richard L. (Mr. Ottinger)
Pacific Gas and Electric Company (PG&E)
PacifiCorp
PJM Interconnection, LLC (PJM)
PJM Transmission Owners
PPL Electric Utilities Corporation (PPL)
Progress Energy, Inc. (Progress Energy)
Public Interest Organizations (PIOs) (Center for Energy Efficiency & Renewable Technologies, Delaware Division of the Public Advocate, Environmental Law & Policy Center, Interwest Energy Alliance, Izaak Walton League of America, Natural Resources Defense Council, Northwest Energy Coalition, Office of the Ohio Consumers' Counsel, Pace Energy Project, Project for Sustainable FERC Energy Policy, West Wind Wires, and Western Resource Advocates)
Public Interest and Renewable Energy Organizations
Public Power Council
Public Service Company of New Mexico (PSNM) jointly with Texas-New Mexico Power Company (TNP)
Public Utilities Commission of the State of California (CPUC)
Public Utility Commission of Texas (PUCT)
Reliant Energy, Inc. (Reliant)
Senators Alexander, Carper and Collins
Solid Waste Authority of Palm Beach, Florida (Solid Waste Authority)
Southeast Electricity Consumers Association (SeECA)
Southern California Edison Company (SCE)
Swecker, Gregory (Mr. Swecker)
Transmission Agency of Northern California (TANC)
TXU Energy, Power and Wholesale Companies (TXU)
U.S. Combined Heat & Power Association (USCHPA)
Utah Association of Energy Users (UAE)
Wisconsin Industrial Energy Group, Inc.
Xcel Energy Services Inc. (Xcel)

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Federal Register

Wednesday,
November 1, 2006

Part III

Department of Education

34 CFR Parts 668, 673, 682 and 685
Federal Student Aid Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 673, 682 and 685

RIN 1840–AC87

Federal Student Aid Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is amending the Federal Student Aid Program regulations to implement the changes to the Higher Education Act of 1965, as amended (HEA), resulting from the Higher Education Reconciliation Act of 2005 (HERA), Pub. L. 109–171, and other recently enacted legislation. These final regulations reflect the provisions of the HERA that affect students, borrowers, postsecondary educational institutions, lenders, and other program participants in the Federal student aid programs authorized under Title IV of the HEA.

Final regulations for the two new Title IV grant programs created by the HERA, the Academic Competitiveness Grant Program and the National Science and Mathematics Access to Retain Talent (SMART) Grant Program, are being published in a separate notice in the **Federal Register**.

DATES: *Effective Date:* These final regulations are effective December 1, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Gail McLarnon, U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, DC 20006. Telephone: (202) 219–7048 or via the Internet at: *Gail.McLarnon@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On August 9, 2006, the Secretary published in the **Federal Register** interim final regulations with a request for comments (71 FR 45666) for the Federal student financial assistance programs. The interim final regulations were effective on September 8, 2006, and implemented most of the changes made to the HEA by the HERA, enacted as part of the Deficit Reduction Act of 2005 (Pub. L. 109–171). The interim final regulations also implemented changes made to the HEA by: The Taxpayer-Teacher Protection Act of 2004 (Pub. L. 108–409); certain provisions of Pub. L. 107–139; the Pell Grant Hurricane and Disaster Relief Act (Pub. L. 109–66); the Student Grant Hurricane and Disaster Relief Act (Pub. L. 109–67); and the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109–234).

The August 9, 2006, interim final regulations included a request for public comment. This document contains a discussion of the comments we received and revisions to the interim final regulations that we made as a result of these comments.

In the interim final regulations, we stated that changes to the final regulations made after consideration of the public comments would be effective July 1, 2007. After considering the comments we received, we have decided not to make any substantive changes to the regulations. We have made some technical and conforming changes that were identified during the public comment period, but these technical changes are not subject to the delayed effective date under section 482 of the HEA, and therefore become effective 30 days after publication of these final regulations.

Analysis of Comments and Changes

The changes to the interim final regulations included in this document were developed through the analysis of comments received on the interim final regulations published on August 9, 2006. We received 55 comments on the interim final regulations.

An analysis of the comments and of the changes in the regulations since publication of the interim final regulations follows. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize the Secretary to make. We also do not respond to comments pertaining to issues that were not within the scope of the interim final regulations.

Definition of Telecommunications Course (§ 600.2)

Comments: A commenter representing accrediting agencies believed that the reference to ''regular and substantive interaction'' in the definition of *telecommunications course* was inconsistent with Congress' intent to permit institutions maximum flexibility in the development and application of curriculum, and placed an undue burden on accrediting agencies.

Discussion: The Secretary does not agree. The regulations do not restrict the curricula institutions may offer or the delivery modes they may use. Instead, the regulations reflect the clear distinction in the HERA between telecommunications courses and correspondence courses. This distinction is necessary because the HERA eliminated the circumstances under which telecommunications courses are considered correspondence courses, and excluded telecommunications courses from the ''50 percent rule'' limitations on institutional eligibility for Title IV, HEA program assistance, while retaining them for correspondence courses. Because of the changes made by the HERA, it is necessary to clarify the regulatory definition to distinguish telecommunications courses from correspondence courses. We have defined the term *telecommunications course* to conform to the usage of that term by the higher education community. None of the commenters proposed alternative language.

The revised definition of the term *telecommunications course* does not impose any new requirements on accrediting agencies. Since 1998, section 496(n)(3) of the HEA has required the Secretary to specifically designate whether recognized accrediting agencies have accreditation of distance education within the scope of their recognition. Since 1994, accrediting agencies have also been required under § 602.22(a)(2)(iii) to provide prior approval for an institution's addition of courses or programs that represent a significant departure in the method of delivery from those previously offered. The interim final regulations do not modify these requirements, or add any new ones.

Changes: None.

Comments: While supporting our effort to draw a clear distinction between telecommunications and correspondence courses, one commenter thought that the language in the definition of *telecommunications course* was not specific enough to determine how much interactivity was sufficient. The commenter suggested that the definition be revised to include interaction among students and that we clarify that ''regular'' interaction means ''not trivial'' rather than ''at specific intervals.''

Discussion: The primary purpose of revising the definition of *telecommunications course* was to draw a clear distinction between telecommunications and correspondence courses. In drawing this

distinction, we wanted to avoid as much as possible dictating a particular teaching method. The Secretary believes that requiring interaction among students, as well as between students and the instructor, would preclude certain teaching methods, such as self-paced instruction.

We disagree with the commenter on the meaning of ''regular'' interaction. We believe the phrase ''regular and substantive'' means that the interaction should both take place at regular intervals and not be trivial.

Changes: None.

Comments: Two commenters representing financial aid administrators supported the change in the definition of the term *telecommunications course* but asked whether instruction by video cassette or disc recording would be considered to be telecommunications coursework.

Discussion: We believe that the definition of *telecommunications course* adequately addresses the issue raised in the comments. The regulations provide that instruction by video cassette or disc recording is telecommunications coursework when the course involves the use of other telecommunications technologies for regular and substantive interaction between students and instructor, and when the course is offered onsite in the same award year. Otherwise, the use of video cassettes or disc recording is considered a correspondence course.

Changes: None.

Distance Education (§§ 600.2, 600.7, 600.51, 668.8 and 668.38)

Comments: One commenter agreed that academic programs offered through any use of telecommunications or correspondence by foreign schools should not be eligible for Title IV, HEA program assistance.

A few commenters did not believe that the HERA intended to deny eligibility under the Federal Family Education Loan (FFEL) Program to a student who physically attends a foreign school but takes a portion of his or her program through telecommunications classes. The commenters felt that it is unfair to bar from FFEL eligibility a student who could fulfill a program requirement only through telecommunications coursework because the class is not offered at the foreign school the student attends. One commenter suggested that U.S. military personnel deployed outside of the U.S. may need to take courses via telecommunications instruction as part of their program of study.

The commenters recommended that the definition of an eligible program for a foreign school be modified to permit the inclusion of telecommunications courses. Specifically, the commenters suggested the definition be changed to include a program at a foreign school that requires on-site attendance in traditional classroom or lab settings in at least one class while permitting one or more additional telecommunications classes, while excluding a program at a foreign school that permits the student to attend courses solely via telecommunications instruction.

Alternatively, the commenters suggested that the effective date of the regulations be changed to allow foreign schools to deliver second and subsequent disbursements of pending loans on or after July 1, 2006 if the first disbursement was made prior to July 1, 2006.

Discussion: The final regulations reflect the statutory requirements for an eligible program to include programs offered in whole or in part through telecommunications instruction by institutions in the United States with appropriate accreditation. The statute does not extend this eligibility to foreign schools and the Secretary does not have the authority to do so by regulation.

In response to the comment regarding U.S. military personnel located abroad, it is the Secretary's understanding that such students do not usually attend foreign schools because they have access to programs offered by domestic institutions. Lastly, the effective date is established by the HERA and cannot be changed by regulation.

Changes: None.

Academic Year (§ 668.3)

Comments: One commenter suggested that the Secretary change the definition of an academic year so that institutions can use the same definition as they use for grade level in the Stafford Loan Program.

Discussion: The definition of an academic year in § 668.3 reflects the statutory definition in section 481(a) of the HEA, and the Secretary cannot change that definition.

Changes: None.

Direct Assessment Programs (§ 668.10)

Comments: One commenter agreed that direct assessment programs offered at foreign schools should not be considered eligible for Title IV funding.

Discussion: The Secretary appreciates the commenter's support.

Changes: None.

Comments: One commenter representing several higher education associations, and two commenters representing financial aid administrators, asked how the Department will evaluate satisfactory academic progress for direct assessment programs.

Discussion: Students enrolled in direct assessment programs who are receiving Title IV HEA, program assistance must meet the same satisfactory academic progress requirements as do students attending other types of programs. However, since direct assessment programs may be designed in a variety of ways, we will determine how we will evaluate institutional compliance with satisfactory academic progress standards on a case-by-case basis as part of the initial eligibility review.

Changes: None.

Comments: One commenter thought that § 668.10(a)(3) was intended to require an institution to develop a protocol for equating programs administered under direct assessment rules with clock hours for credit hour measurements, but that the text in the interim final regulations was unclear. The commenter suggested some revised language.

Discussion: The commenter is correct about the intent of the regulations. We agree that the commenter's proposed revised language is clearer than the language in the interim final regulations.

Changes: We have revised § 668.10(a)(3) for clarity, but without changing the meaning.

Treatment of Title IV Funds When a Student Withdraws (§§ 668.22, 668.35, and 668.173)

Post-Withdrawal Disbursement Counseling

Comments: Several commenters questioned why an institution must obtain the student's confirmation to apply loan funds to the student's account, but not to apply other Title IV program funds to that account. Several commenters questioned why an institution must obtain confirmation that a student wishes to receive grant funds as a direct disbursement. Commenters noted that the HERA provision that changed the post-withdrawal disbursement requirements addressed confirmation of receipt of loan funds, but not grant funds.

Discussion: As in the past, § 668.164(d)(1) and (d)(2) require an institution to obtain a student's authorization (or a parent's authorization in the case of a parent PLUS loan) to credit the student's account with any Title IV, HEA funds for charges other than tuition, fees, and room and board if the student contracts with the institution for other services.

An institution may obtain such an authorization from a student or parent at any time. The HERA added a new provision that goes beyond the pre-existing requirements in § 668.164(d)(1) and (d)(2) to require an institution to obtain confirmation from a student (or a parent in the case of a parent PLUS Loan) before making any post-withdrawal disbursement of loan funds. This confirmation cannot be made until the need for the post-withdrawal disbursement has been determined, i.e., after the student withdraws. This change ensures that a student or a parent has an opportunity after the student's withdrawal to decline all or a part of the loan, thus eliminating or reducing his or her loan debt. The Secretary did not add a similar change to the regulations for grant funds because she believes the requirements of § 668.164(d)(1) and (d)(2) are sufficient to control the application of grant funds to a student's account.

The requirement in § 668.164(g)(3)(i) that an institution obtain confirmation that a student wishes to receive a post-withdrawal direct disbursement of grant funds is not new. Students are provided with an opportunity to refuse direct disbursements of grant funds so that they may preserve the amount of their grant eligibility if they return to school within the award year.

Changes: None.

Comments: Several commenters felt that the interim final regulations did not clearly explain how the requirements in § 668.22 are applied in concert with the regulations for making a late disbursement (§ 668.164(g)(3)) and for notifying a student, or parent (for a parent PLUS Loan), to provide that student or parent an opportunity to cancel a loan when the institution credits the student's account with FFEL, Direct Loan, or Perkins Loan program funds (§ 668.165(a)(2)). Many commenters believed a conforming amendment was needed to clarify whether § 668.165(a)(2) applies in the case of a post-withdrawal disbursement.

Discussion: The new confirmation requirements do not apply to late disbursements made to students who did not withdraw. Section 668.164(g)(3)(i) requires an institution to make any post-withdrawal disbursement due to a student who withdraws during a payment period or period of enrollment in accordance with the new post-withdrawal disbursement procedures. However, the new post-withdrawal disbursement requirements do not apply to late disbursements made to students who successfully complete the payment period or period of enrollment (§ 668.164(g)(3)(ii)) or to students who do not withdraw, but cease to be enrolled as at least half-time students (§ 668.164(g)(3)(iii)).

The commenters are correct that a conforming amendment to § 668.165(a)(2) is necessary. For students who withdraw and are due a post-withdrawal disbursement, the new post-withdrawal disbursement procedures in § 668.22 supersede the provisions in § 668.165(a)(2) that require an institution to notify a student or parent of loan funds that are credited to a student's account. Because the new post-withdrawal disbursement procedures require an institution to obtain a student's confirmation (or a parent's confirmation in the case of a parent PLUS Loan), the institution does not have to notify the student or parent again when the institution credits the loan funds to the student's account after it receives the borrower's confirmation. The notification requirement in § 668.165(a)(2) still applies in all other cases when an institution credits loan funds to a student's account.

Changes: The Secretary has revised § 668.165(a)(2) to make it clear that an institution is not required to notify a student or parent of loan funds that are credited to a student's account for students who withdraw and are due a post-withdrawal disbursement.

Comments: Several commenters noted that requiring an institution to provide notification of the outcome of a post-withdrawal disbursement request ''electronically or in writing'' is redundant, because ''in writing'' means through conventional mailing methods or electronically.

Discussion: The commenters are correct.

Changes: The reference to electronic notification has been removed from § 668.22(a)(5)(iii)(E).

Withdrawals From Clock Hour Programs

Comments: One commenter supported the new regulatory provisions governing the Return of Title IV Funds in the case of clock hour programs. One commenter felt that the regulations should allow an institution to determine the percentage of aid earned by a student who withdraws and has completed more clock hours than he or she was scheduled to complete by using the completed hours, rather than the scheduled hours. The commenter noted that this was consistent with the previous policy for students withdrawing from clock-hour programs.

Discussion: Prior to the enactment of the HERA, either completed hours or scheduled hours were used to determine earned aid for a student who withdrew from a clock-hour program. However, the HERA changed the law to allow the use of scheduled hours only.

Changes: None.

Grant Overpayment Requirements

Comments: One commenter suggested that the regulations be modified to clarify that the provision that a student is not required to return an original grant overpayment amount of $50 or less applies on a Title IV, HEA program-by-program basis.

Discussion: The Secretary agrees with the commenter.

Changes: Section 668.22(h)(3)(ii)(B) has been revised to make it clear that the provision that a student is not required to return an original grant overpayment amount of $50 or less applies on a Title IV, HEA program-by-program basis.

Comments: Several commenters asked the Department to raise to $50 the $25 de minimis amount for overpayments in the Academic Competitiveness Grant (ACG) and National SMART grant programs and other Title IV programs to match the de minimis grant overpayment amount for students who withdraw, which was raised to $50 by the HERA.

Discussion: The Secretary does not agree that the amounts should correspond. The $25 de minimis standard used in the regulations is based upon the Department's determination of the amount that is cost effective for the Department to collect on outstanding balances owed to the Department. We are able to successfully pursue collections of $25 or higher with Internal Revenue Service (IRS) offsets and other methods.

Changes: None.

Waiver of Grant Overpayment for Students Affected by a Disaster

Comments: One commenter felt that the regulatory language applying the waiver of grant overpayment for students affected by a disaster to students ''whose withdrawal ended within the award year during which the designation occurred or during the next succeeding award year'' was unclear. The commenter asked the Secretary to clarify that students remain eligible for the grant overpayment waiver even if they do not return to the same institution in the following year.

Discussion: An otherwise eligible student qualifies for the waiver if he or she withdraws during the award year during which the major disaster designation occurred or during the next succeeding award year, if the student withdrew because of the major disaster.

Changes: Section 668.22(h)(5)(iii) has been revised to clarify that the grant

overpayment waiver applies to students whose withdrawal due to a disaster occurred, rather than ended, within the award year during which the designation occurred or during the next succeeding award year.

Order of Return of Grant Funds

Comments: One commenter felt that the regulations should be changed to make it clear that an institution will not have to return funds to both the ACG and National SMART Grant programs for the same withdrawal.

Discussion: Because an institution may opt to use the period of enrollment, rather than the payment period, to perform a Return of Title IV Funds calculation for a student who withdraws from a non-standard term or non-term program, it is possible, although highly unlikely, that both an ACG and a National SMART Grant could be disbursed (or scheduled to be disbursed) to a student for the same period. In such a case, funds from both the ACG and National SMART Grant programs may need to be returned for the same withdrawal.

Changes: None.

Return of Funds Within 45 Days

Comments: One commenter felt that the Secretary should extend the other deadlines under § 668.22 from 30 days to 45 days to correspond to the extension of the maximum amount of time an institution has to return unearned funds for which it is responsible. The commenter felt this extension should also be applied to notifications to students for post-withdrawal disbursements and notifications to students of Title IV grant overpayments resulting from withdrawal. The commenter asserted that a uniform deadline makes sense because the same Return of Title IV Funds process leads up to all three requirements, and consistency would help ensure compliance.

Discussion: Institutions have previously indicated that they needed an extension of the former 30-day return deadline to provide additional time to perform the administrative functions necessary to return the funds. The actual calculation of earned funds is not time consuming. The Secretary believes that providing institutions with over four weeks to enter information from their records and calculate the amount to be returned is more than sufficient.

With regard to the request that the Secretary extend the 30-day deadlines for notifications to students, the Secretary does not believe it is in the best interest of students to extend these deadlines merely for consistency's sake. The Secretary believes that the sooner an institution attempts to contact these students, the more likely it is that the institution will reach the students.

Changes: None.

Student Debts Under the HEA and to the U.S. (§ 668.35)

Comments: Several commenters suggested that § 668.35(e)(3), which governs the amount of an overpayment that renders a student ineligible for additional Title IV, HEA program assistance, be changed from $25 to $50 to be consistent with the new statutory requirement governing repayment of grant funds under the return of Title IV aid provisions.

Discussion: The Secretary disagrees with the commenters. In 2002, we published final regulations to make the treatment of overpayments consistent in the Title IV, HEA programs, including incorporating the de minimis amount concept that applied to grant overpayments under the return to Title IV aid requirements. We decided to use the $25 de minimis standard for consistency and simplicity, and because it is cost effective. We do not believe it is appropriate to raise the de minimis amount applicable to overpayments when the Department has the tools and resources available to collect these amounts.

However, as a result of the change in the minimum amount of a grant repayment for which a student is responsible under the return of Title IV aid provisions from $25 to $50, we are amending § 668.35(e) to clarify that a student who owes a grant overpayment of $50 or less that is not a remaining balance and is a result of the return of Title IV aid calculation is eligible to receive additional Title IV, HEA program assistance.

Changes: We have added a new paragraph (4) to § 668.35(e) to clarify that a student who owes a grant overpayment of $50 or less under the circumstances explained above is eligible to receive additional Title IV, HEA program assistance.

Estimated Financial Assistance (§§ 673.5, 682.200, and 685.102)

Comments: One commenter suggested that we add benefits paid under Section 903 of Pub. L. 96–342 (Educational Assistance Pilot Program) that is currently in the definition of *estimated financial assistance* in §§ 682.200(b) and 685.102(b) to the definition of *estimated financial assistance* in § 673.5(c). The commenter also suggested that we add language in § 682.200(b)(1)(iv), which includes in the definition of *estimated financial assistance* benefits paid under the Veteran's Affairs Educational Assistance Pilot Program and language from § 685.102(b)(2)(ii), which excludes from estimated financial assistance the amounts of Federal Perkins Loan and Federal Work-Study funds that the student has declined.

Another commenter requested that the definition of *estimated financial assistance* in all three sections be modified to exclude any alternative or private loans not certified by the institution. This commenter suggested that only those loans that the institution is aware the student is receiving should be included in the definition of *estimated financial assistance*. An additional, similar comment was received suggesting that language be added to the definitions in all three sections to specifically state that only benefits that an institution is aware of must be considered estimated financial assistance.

Discussion: Although the list of individual veterans' education benefits in each of the three sections that define *estimated financial assistance* is not all inclusive, the Secretary agrees with the first commenter that, for consistency, benefits paid under section 903 of Pub. L. 96–342 (Educational Assistance Pilot Program) should be included in § 673.5(c). However, it would be redundant to specifically exclude from the definition of *estimated financial assistance* in § 673.5(c) the amounts of Federal Perkins Loan and Federal Work-Study funds that the student has declined. Section § 673.5 defines the term *estimated financial assistance* for the purpose of determining eligibility for campus-based funds. It would not make sense to exclude campus-based funds declined by a student from the list of items used to determine that student's eligibility for those campus-based funds. If a student declines funds from a campus-based program, the amount of those declined funds would not be used to determine eligibility for campus-based funds.

With respect to the proposal to define *estimated financial assistance* as including only loans of which the institution is aware, we note that, under the administrative capability guidelines in § 668.16(b) and (f), an institution must have a mechanism in place for obtaining and reviewing all information it receives that has a bearing on a student's eligibility for Title IV, HEA assistance. The institution must communicate this information to the individual designated to administer the Title IV programs at the institution. In light of this requirement, we believe that it is unlikely that a student will be

receiving loans of which the institution is not aware.

Changes: The definition of *estimated financial assistance* in § 673.5(c)(1)(ix) has been revised to include benefits paid under section 903 of Pub. L. 96–342 (Educational Assistance Pilot Program). A technical change has also been made to correct the reference in § 685.102(b)(1)(ix) from ''paragraph (2)(iii)'' to ''paragraph (2)(iv)''.

Military Deferment (§§ 674.34, 682.210(t), 682.211(i) and 685.204)

Comments: One commenter recommended that we extend eligibility for the new military deferment established by the HERA to Perkins Loans disbursed before July 1, 2001 if the borrower received at least one Perkins Loan first disbursed on or after July 1, 2001.

Discussion: Section 8007(f) of the HERA specifies that the military deferment applies to loans ''for which the first disbursement is made on or after July 1, 2001.'' The Secretary does not have the authority to extend eligibility for the military deferment to loans for which the first disbursement was made before July 1, 2001.

Changes: None.

Comments: Some commenters asked if a qualified borrower who experiences multiple deployments could receive separate deferments for each of his or her eligible Perkins, FFEL and Direct Loan program loans, as long as each deferment period did not last longer than the three-year maximum.

Discussion: The three-year maximum for the military deferment applies to each loan, not to the borrower. If a borrower receives a military deferment on a loan for three years, or receives multiple military deferments on a loan that add up to three years, that loan no longer qualifies for a military deferment. If the borrower goes back to school, obtains more Title IV loans, and then is called back to active duty, the new loans would qualify for up to three years of military deferment. However, the older loan that has already been in a military deferment for the three-year maximum would not qualify for a military deferment.

Changes: None.

Comments: Several commenters recommended that we confirm that a lender has the authority to grant a mandatory administrative forbearance, as provided for in § 682.211(i), on a borrower's pre-July 1, 2001 loans, if the borrower qualifies for a military deferment on loans that were first disbursed on or after July 1, 2001.

Discussion: FFEL lenders are required to grant mandatory administrative forbearances when notified by the Secretary that exceptional circumstances exist, such as a local or national emergency or a military mobilization. Some borrowers may qualify for a military deferment on loans first disbursed on or after July 1, 2001 and also may qualify for a mandatory administrative forbearance on loans first disbursed before July 1, 2001. However, not all borrowers who qualify for a military deferment necessarily qualify for a mandatory administrative forbearance.

Changes: None.

Comments: Several commenters recommended that we change the name of the prior military deferment that is available to borrowers with loans made before July 1, 1993, to the ''Armed Forces deferment'', to avoid confusion with the new military deferment enacted by the HERA.

Discussion: The FFEL and Direct Loan Public Service Deferment Request forms do not use the term ''military deferment'' to refer to the pre-July 1, 1993 military deferment mentioned in the comments. Instead, these forms refer to borrowers who are ''on active duty in the Armed Forces of the United States.'' These forms are the primary source of information to borrowers on the prior military deferment. Accordingly, we do not believe that there will be any significant confusion among borrowers. Moreover, we believe that re-naming the old military deferment in the regulations serves no purpose.

Changes: None.

Perkins Loan Rehabilitation (§ 674.39)

Comments: One commenter questioned the statutory basis for denying a borrower who has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining the Perkins Loan the opportunity to rehabilitate the defaulted Perkins Loan. The commenter questioned the statutory basis for denying loan rehabilitation to such borrowers. The commenter also contended that institutions have no reasonable way of knowing whether a borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining a Perkins Loan.

Discussion: Section 8021(a) of the HERA provides that a student who has been convicted of, or has pled nolo contendere or guilty to a crime involving fraud in obtaining Title IV, HEA program assistance is not eligible for additional Title IV assistance unless he or she has repaid the fraudulently obtained Title IV aid. If a borrower were permitted to rehabilitate a fraudulently obtained Perkins Loan under § 674.39 of the Perkins Loan program regulations, the borrower would regain eligibility for additional Title IV, HEA program assistance without having repaid the fraudulently obtained loan in full, as required by the HERA.

We do not agree with the commenter's contention that an institution will not know if a borrower was found guilty of fraud. The institution would almost certainly be involved in any legal proceedings relating to a Perkins Loan that was fraudulently obtained from that institution.

Changes: None.

Definition of Satisfactory Repayment Arrangement (§§ 682.200 and 685.102)

Comments: Several commenters pointed out that the standard for an on-time payment for purposes of rehabilitating a loan is now different from the standard for an on-time payment for purposes of making satisfactory repayment arrangements on a defaulted loan to regain Title IV, HEA program assistance eligibility. Under the rehabilitation rules, an on-time payment is a payment made within 20 days of the due date. Under the satisfactory repayment arrangement rules, an on-time payment is a payment made within 15 days of the due date. Since some borrowers make satisfactory repayment arrangements and attempt loan rehabilitation concurrently, the commenters recommended using within 20 days of the due date as the on-time standard for both purposes.

Discussion: The making of six consecutive monthly payments under satisfactory repayment arrangements restores Title IV, HEA program assistance eligibility to a defaulted borrower. We believe that the standard for on-time payments for purposes of regaining eligibility for Title IV, HEA program assistance should be stricter than the standard for rehabilitation of a defaulted loan. In addition, the on-time payment standard for borrowers who are in a regular repayment status requires that the payments be made within 15 days of the due date. We do not believe that it is appropriate to provide a longer period for on-time payments for borrowers who are in default on their loans than for borrowers who are current on their loans. Borrowers in default should be held to an on-time standard that is at least as strict as the standard applied to current borrowers, not rewarded with extra time to make a payment. Finally, we note that Congress did not apply the 20-day standard adopted for the loan rehabilitation program to borrowers in other situations.

Changes: None.

Eligible Borrower (§§ 682.201 and 685.200)

Comments: Two commenters recommended adding language to §§ 682.201 and 685.200 to provide that a student borrower is not eligible for Title IV, HEA program assistance unless the borrower has repaid any Title IV, HEA program assistance obtained by fraud, if the student has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining Title IV, HEA program assistance. These commenters also recommended that we revise § 682.201 to list the general eligibility requirements for all borrowers, and then the requirements that are specific to each loan type. The commenters felt that this approach would be more efficient and eliminate unnecessary redundancies.

Discussion: The interim final regulations in §§ 668.32(m) and 668.35(i) include the new eligibility provision that prohibits a student borrower from obtaining Title IV, HEA program assistance unless the borrower has repaid any Title IV, HEA program assistance obtained by fraud. Section 682.201(a) and (b) of the FFEL regulations stipulate that a Stafford Loan borrower and a student PLUS borrower, respectively, must meet the eligibility requirements in 34 CFR part 668 to qualify for a Stafford Loan. Similar references to the eligibility requirements in 34 CFR part 668 are in § 685.200(a)(1)(ii) and 685.200(b)(1)(ii) of the Direct Loan regulations. We believe that it would be redundant to include the language regarding the student eligibility requirements already outlined in part 668 in §§ 682.201 and 685.200.

We disagree with the suggestion that restructuring § 682.201 would be more efficient. In developing the interim final regulations, we determined that the most efficient and easily understandable way to incorporate the changes mandated by the HERA into § 682.201 was to fit the changes into the existing structure of this section. We believe that it is easier to identify changes that we have made to a section if the overall structure of the section remains consistent with past versions of that section. Although some redundancy is unavoidable with this approach, we have reduced the redundancies through the use of cross-references.

Changes: None.

Comments: Several commenters noted that a student borrower may receive a Federal Direct Subsidized Stafford/Ford Loan or a Federal Direct Unsubsidized Stafford/Ford Loan and a FFEL Program Student PLUS Loan for the same period of enrollment. These commenters recommended revising the PLUS loan student eligibility requirements in both the FFEL and Direct Loan programs, to stipulate that a graduate or professional student's annual loan maximum eligibility for either a FFEL Stafford Loan or a Direct Stafford/Ford Loan, as applicable, must be determined before awarding the student a PLUS Loan.

Discussion: The Secretary has previously issued guidance stating that a graduate or professional student's maximum annual Stafford Loan eligibility must be determined before the student applies for a PLUS Loan, although the student is not first required to borrower up to his or her maximum annual Stafford Loan limit before receiving a PLUS Loan. If a school participates in both the FFEL and Direct Loan programs, the school must determine the borrower's maximum annual Stafford Loan eligibility under the program the school is participating in for Stafford Loan purposes. We agree that this guidance should be incorporated in the regulations.

Changes: We have revised §§ 682.201(b)(3) and 685.200(b)(1)(iv) to specify that a graduate or professional student's maximum annual Stafford Loan eligibility under either the Direct Loan or FFEL program must be determined before the student applies for a PLUS Loan.

Comments: Two commenters recommended that § 682.201(d)(1) be revised to stipulate that a borrower who obtained a loan by identity theft or some other illegitimate means, or who obtained a loan for which he or she was ineligible, may not consolidate that loan. In addition, these commenters recommended that these borrowers not be permitted to consolidate loans for which the borrower is eligible until the loans for which the borrower was ineligible have been paid in full. Several commenters noted that new § 682.201(d)(2) states that a borrower may not consolidate a loan for which the borrower is wholly or partially responsible. Because our revision stipulating that a borrower who obtained a loan by identity theft or some other illegitimate means, or who obtained a loan for which he or she was ineligible, may not consolidate that loan was unclear, several commenters asked if the word ''not'' was inadvertently dropped from this section.

Discussion: Section 682.201(d)(2) of the interim final regulations should have read, ''A borrower may not consolidate a loan under this section for which the borrower is wholly or partially ineligible.'' This language mirrors the existing provisions in § 685.211(e)(4) of the Direct Loan regulations. The revised § 682.201(d)(2) precludes a borrower who obtained a Title IV loan by identity theft, fraud, or some other illegitimate means from consolidating the ineligible loan. However, we do not believe that the HERA prohibits a borrower who has obtained loans for which the borrower is ineligible from consolidating loans for which the borrower is eligible, and we do not believe we have the authority to impose such a restriction by regulation. We believe the revision to § 682.201(d)(2) adequately addresses commenters' concerns and that revising § 682.201(d)(1) is unnecessary.

Changes: We have replaced ''responsible'' with ''ineligible'' in § 682.201(d)(2).

Eligibility for a Direct Consolidation Loan (§§ 682.201, 685.100 and 685.220)

Comments: Two commenters recommended that we amend the FFEL and Direct Loan program regulations to clarify that, in the case of a borrower who wishes to consolidate a Federal Consolidation Loan that has been submitted for default aversion into the Direct Loan Program, the borrower must be delinquent or in default on the Federal Consolidation Loan at the time the borrower applies for the Direct Consolidation Loan. The commenters believed that the current regulatory language would allow a borrower to consolidate a Federal Consolidation Loan on which the borrower is current on making payments into a Direct Consolidation Loan, if the Federal Consolidation Loan had been submitted for default aversion at some time in the past.

Discussion: We agree that Federal Consolidation Loans that are currently delinquent or in default may be consolidated into a Direct Consolidation Loan. However, we do not believe that it is necessary to amend the current regulatory language in §§ 682.201, 685.100 and 685.220 to state this requirement more explicitly.

Changes: None.

Comments: Several commenters urged the Secretary to clarify that borrowers with defaulted Federal Consolidation Loans are eligible to consolidate into the Direct Loan Program, without including another eligible loan, for the purpose of obtaining an income contingent repayment (ICR) plan. Section 428C(a)(3)(B)(i)(IV) of the HEA provides this option for borrowers with delinquent Federal Consolidation Loans that have been submitted to the guaranty agency for default aversion. The commenters believed that this

provision of the law, which was added by the HERA, was intended to provide the ICR option to borrowers who are either seriously delinquent or in default on their Federal Consolidation Loans. They also noted that the statutory language does not distinguish between non-defaulted and defaulted borrowers, and that any default claim filing would have been preceded by a default aversion submission.

Discussion: The commenters are correct in reading the regulations implementing the changes made to section 428C(a)(3)(B)(i)(IV) of the HEA to allow a borrower to consolidate a single defaulted Federal Consolidation Loan into the Direct Loan Program for the purpose of obtaining an ICR plan. We believe that the regulatory language is sufficiently clear and that it is not necessary to revise the regulations to state this more explicitly.

An otherwise eligible borrower may also consolidate a single Federal Consolidation Loan into the Direct Loan Program for the purpose of obtaining an income contingent repayment plan if the borrower has filed an adversary complaint in a bankruptcy proceeding seeking to have the Federal Consolidation Loan discharged, regardless of whether that Federal Consolidation Loan is current, delinquent, or in default. A borrower who is seeking to have a Federal Consolidation Loan discharged in bankruptcy should be treated the same as a borrower whose loan has been submitted for default aversion. A borrower who seeks to have a loan discharged in bankruptcy is clearly stating his or her intent not to repay the loan, but the bankruptcy filing precludes the submission of a default aversion request. Offering the Direct Loan Program ICR option to such a borrower provides an alternative to having the loan discharged in bankruptcy.

Changes: None.

Permissible Charges by Lenders to Borrowers (§ 682.202(a))

Commments: One commenter urged the Department to develop and publish regulations to restrict a lender's ability to charge an FFEL Program borrower an interest rate that is less than the rate specified in the HEA and the program regulations. The commenter believes that the regulations should require lenders to charge all borrowers the same rate to stop lenders from using interest rates to discriminate between institutions and borrowers based on inequitable criteria or to eliminate competition in the student lending market.

Discussion: Section 427A(l) of the HEA provides that nothing shall prohibit a lender from charging a borrower an interest rate less than the rate specified in the statute. Accordingly, we do not have the statutory authority to require lenders to charge all borrowers the same interest rate.

Changes: None.

Insurance Premium and Federal Default Fees (§§ 682.202(d)(2) and 682.401(b)(10))

Comments: One commenter stated that the changes made to §§ 682.202(d)(2) and 682.401(b)(10) in the interim final regulations appear to eliminate the authority of a lender or guaranty agency, under § 682.209(f)(4), to charge a guarantee fee to a borrower who is refinancing a fixed rate PLUS Loan or a Supplemental Loans for Students (SLS) Loan made prior to July 1, 1987 under § 682.209(f)(1). The commenter believes that the HERA provisions that changed the optional insurance premium to a mandatory Federal default fee did not remove a lender's or guaranty agency's authority to charge a guarantee fee in these cases.

Discussion: We agree that the HERA did not remove a lender's or guaranty agency's authority to charge a guarantee fee if a borrower refinances a fixed rate PLUS or SLS loan made prior to July 1, 1987. However, we believe the existing language in § 682.209(f)(4), which specifically states that the refinancing lender may charge the borrower a guarantee fee in these circumstances, already addresses this issue.

Changes: None.

Loan Disbursement Through an Escrow Agent (§§ 682.207(b)(1)(iv) and 682.408(c))

Comments: Many commenters noted that the discussion in the preamble of the interim final regulations related to the new 10-day deadline for a lender to pay funds to an escrow agent for disbursement to a school differed from the regulatory language and requested clarification. The commenters indicated that the preamble stated that the transfer of loan funds must take place no earlier than 10 days prior to disbursement to the borrower, while the regulations indicated that the 10 days referred to the transfer of the loan funds to the school prior to the school's delivery of the funds to the borrower. A couple of commenters indicated that an additional change was needed to § 682.408(c)(2) to reflect the reduction from 21 to 10 days for disbursement through an escrow agent. Several commenters also recommended that § 682.408(c) be revised to provide that an escrow agent, as the lender's agent, could disburse loan funds directly to a borrower in a study-abroad program at the borrower's request.

Discussion: We agree with the commenters that there is a difference between the discussions of the 10-day period in the preamble and in the interim final regulations. The language in the interim final regulations that states that the escrow agent shall transmit loan proceeds received from a lender to a school not later than 10 days after the agent receives the funds from the lender accurately reflects our policy on this issue.

A revision to § 682.408(c)(2) reflecting the reduction from 21 to 10 days for disbursement through an escrow agent is unnecessary. Paragraph (c)(2) of § 682.408 was incorporated into new § 682.408(c) in the interim final regulations and the reduction from 21 to 10 days for disbursement through an escrow agent is reflected in this new paragraph.

We agree with the commenters who recommended that § 682.408(c) be revised to provide that an escrow agent, as the lender's agent, could disburse loan funds directly to a borrower in a study-abroad program at the borrower's request.

Changes: We have amended § 682.408(c) to clarify that an escrow agent may disburse Stafford Loan proceeds directly to a borrower who is attending a study-abroad program and who requests a direct disbursement from the lender.

Due Diligence in Disbursing a Loan (§§ 682.207 and 682.604)

Comments: Several commenters disagreed with our determination that PLUS Loan funds cannot be disbursed directly to a borrower enrolled in a study-abroad program or at a foreign school. The commenters believed that the ''same terms and conditions'' provision in section 428B(a)(2) of the HEA permits retention of the prior policy allowing direct disbursement of PLUS Loan funds. The commenters noted that, while the PLUS funds check must still be made co-payable to the institution and the borrower under 428B(c)(2) of the HEA, disbursing funds directly to a borrower to be endorsed and mailed to an institution may assist borrowers in paying for expenses while traveling to a foreign school.

Discussion: Section 428B(a)(2) of the HEA does not authorize the Secretary to establish disbursement rules for PLUS Loans made to pay for attendance at foreign institutions or for students enrolled in study-abroad programs that

are different from the rules for other FFEL Loans for attendance at those institutions.

Changes: None.

Comments: One commenter suggested that the regulations in § 682.207(b)(1)(v)(C)(*1*) be revised to clarify that a lender or guaranty agency must verify a student's enrollment with the home institution, rather than with the foreign school, before making a direct disbursement to a student in a study-abroad program.

Discussion: The Secretary agrees with the commenters.

Changes: Section 682.207(b)(1)(v)(C)(*1*) has been revised to clarify that a lender or guaranty agency may make a disbursement directly to a student enrolled in a study-abroad program only after verification of the student's enrollment with the home institution.

Comments: One commenter did not agree that a lender or guaranty agency should be required to verify that a continuing student is still enrolled at the enrollment status for which the loan was certified before making a disbursement of Stafford Loan funds directly to a student at a foreign school. The commenter noted that, although the preamble stated that the verification requirements in the regulations are based on those in Dear Colleague Letter (DCL) G–03–348, this requirement differs from that in the DCL, which simply required verification that the student was accepted for enrollment at the foreign school. The commenter felt that the institution should be responsible for notifying the lender if the borrower's enrollment status changed to less than half-time.

A couple of commenters did not believe that the regulations should limit how a lender or guaranty agency may contact a foreign school or home institution to verify enrollment. The commenters felt that other forms of contact, in addition to contact by telephone or e-mail, such as facsimile, should be acceptable.

One commenter was concerned that the regulations do not specify who at a foreign school may authorize a disbursement to be sent directly to a borrower. The commenter felt that this gap left the process open to abuse.

Discussion: The intent of the statutory requirement is to require a confirmation that a student who is attending or plans to attend a foreign school is actually eligible to receive FFEL funds when those funds will not be sent to the school, but will be disbursed directly to a student. Therefore, we believe it is appropriate to require a lender or guaranty agency to confirm that a continuing student's enrollment (at least half-time) supports eligibility for the loan disbursement. As the commenter noted, a change in enrollment status would affect a student's eligibility for a loan only if the student has dropped below half-time enrollment. Therefore, the lender or guaranty agency need only confirm that the student is still enrolled at least half-time.

Because of concerns with timeliness and security, the Secretary does not believe that all forms of contact are appropriate for the verification of enrollment. However, the Secretary does agree that contact by facsimile is acceptable.

The Secretary agrees that not just any individual at a foreign school should be permitted to authorize a disbursement directly to a student. In DCL GEN–06–11, the Department asked foreign schools to use the modified institutional eligibility electronic application (EAPP) to enter the names of the individuals who are authorized by the school to certify FFEL Loan applications. The DCL noted that the Department expects guaranty agencies or lenders to contact these individuals, whose names will be accessible in the Department's Postsecondary Education Participants Systems (PEPS), to verify enrollment. To the extent that a foreign school notifies a guaranty agency or lender of other individuals who are authorized to provide this information, the guaranty agency or lender must verify the information with at least one of the persons entered by the school on the EAPP that those officials are authorized to act on behalf of the institution in administering the FFEL Program. To allow the Secretary the flexibility to change this process in response to possible systems changes, the Secretary does not believe that the procedures for this contact should be specified in the regulations. However, the Secretary has decided that the regulations should require guaranty agencies and lenders to contact foreign schools in accordance with any procedures specified by the Department.

Changes: Section 682.207(b)(2)(i) has been revised to permit a lender or guaranty agency to contact a foreign school via facsimile to verify a student's enrollment. In addition, § 682.207(b)(2)(i)(A) has been changed to require guaranty agencies and lenders to contact foreign schools in accordance with any procedures specified by the Secretary.

Parental Leave and Working Mother Deferments (§§ 682.210(o) and (r) and 685.204(d)(2))

Comments: Many commenters asked whether the deletion of section 428(b)(7)(A)(ii) from the HEA by the HERA effectively eliminated the parental leave and working mother deferments for borrowers with loans disbursed before July 1, 1993. The commenters are concerned that these deferments will not be available to an otherwise eligible borrower because the borrower must waive up to one month of the borrower's grace period in order to meet the eligibility criteria for the deferment.

Discussion: The requirement that a borrower waive at least one month of the grace period so the borrower may be certified as having been enrolled at least half time within the six-month period preceding the deferment start date in § 682.210(o) applies only to the parental leave deferment. Deferments are a term and condition of the borrower's promissory note. The Congress, in making changes to the HEA historically, has not eliminated deferments already granted to a borrower as a term and condition of the borrower's loan, and it does not appear that Congress intended to do so in this case. Accordingly, otherwise eligible borrowers may continue to waive a month of the grace period, if necessary, in order to qualify for the parental leave deferment.

Changes: None.

Forbearance (§ 682.211)

Comments: Several commenters suggested that we eliminate § 682.211(h)(3) of the FFEL regulations because section 8014(e) of the HERA amended the HEA to remove the requirement that the terms of a mandatory forbearance be in writing.

Discussion: While we agree that the HERA eliminated the requirement that the terms of a mandatory forbearance agreement be in writing, we also note that the HERA requires that the terms of a mandatory forbearance agreed to by the lender and the borrower or endorser be documented by a confirmation notice sent by the lender to the borrower/endorser and by the lender recording the terms in the borrower's file. We believe that, with the exception of administrative forbearances in § 682.211(f), the same procedures should apply to all the forbearances. The interim final regulations amended § 682.211(b)(1) to reflect the new forbearance requirements. We believe that § 682.211(h)(3) should also be changed to reflect the new requirements that the lender send a notice to the

borrower/endorser and include a notation in the borrower's file confirming the forbearance rather than simply eliminating the requirement for a written forbearance agreement.

Changes: We have amended § 682.211(h)(3) to reflect these changes.

Teacher Loan Forgiveness (§§ 682.215(c) and 685.217(c))

Comments: One commenter noted that the use of the word ''either'' with regard to a borrower qualifying for teacher loan forgiveness based on teaching special education in ''either an eligible elementary or secondary school'' could be misinterpreted. The commenter recommended removing the word ''either'' to make it clear that a borrower could combine teaching service in an eligible elementary school and an eligible secondary school to qualify for teacher loan forgiveness as a highly qualified special education teacher.

Discussion: Use of the word ''either'' was not intended to imply that service as a highly qualified special education teacher in an eligible elementary school and service as a highly qualified special education teacher in an eligible secondary school could not be combined to qualify a borrower for teacher loan forgiveness.

Changes: We have removed the word ''either'' from §§ 682.215(c)(3)(ii)(B), 682.215(c)(4)(ii)(B), 685.217(c)(3)(ii)(B), and 685.217(c)(4)(ii)(B).

Payment of Special Allowance on FFEL Loans (§ 682.302)

Comments: One commenter asked us to clarify the effective date for the change made by the HERA to the calculation of special allowance payments for PLUS Loans.

Discussion: As reflected in the interim final regulations, PLUS Loans made after January 1, 2000 are no longer subject to the minimum 9 percent trigger for special allowance payments. In accordance with the effective date for the provision of the HERA that made this change, lenders will be paid special allowance on these loans for activity beginning April 1, 2006, which will be reflected on billing reports submitted to the Department after June 30, 2006.

Changes: None.

Comments: Some commenters, particularly from the FFEL industry, claimed that the regulations are impermissibly retroactive. In particular, these commenters claimed that the interim final regulations improperly applied the statutory changes made by the Taxpayer-Teacher Protection Act of 2004 (TTPA), and the HERA, to periods before those statutes became effective. The commenters pointed to the explanation of certain terms in § 682.302(f) as an example of the changes that they felt were being improperly applied retroactively.

Discussion: The changes made to § 682.302 are not retroactive. Prior to the publication of the August 9 interim final regulations, the regulatory provisions in § 682.302 had not been updated since 1994, except for a change to reflect the 1993 statutory amendment that eliminated the 9.5 percent minimum special allowance payment (SAP) rate on loans acquired with funds from a tax-exempt obligation originally issued on or after October 1, 1993. Thus, the prior regulations did not reflect guidance issued by the Department since 1993 to interpret the HEA and the regulations (DCL L–93–161 (November 1993), L–93–163 (December 1993), and L–96–186 (March 1996), FP–05–01 and FP–06–01) or the changes made to those requirements by the TTPA or HERA.

The regulations must reflect the rules for the special allowance eligibility of both loans for which SAP at the 9.5 percent minimum rate is now claimed and loans on which this rate may be claimed in the future. The TTPA placed significant restrictions on the eligibility of new loans for the 9.5 percent SAP, and the HERA significantly restricted whether additional loans could acquire eligibility. However, the eligibility of the great majority of loans on which a 9.5 percent SAP is now and will be claimed depends on, or may be affected by, transactions such as various refinancing transactions that occurred prior to the effective date of either the TTPA or HERA. The prior regulations did not state the consequences of some of those transactions, even though those consequences had been well settled, under the Department's interpretations of the law in effect when the transactions occurred. To clarify the requirements for 9.5 percent SAP eligibility, the interim final regulations first incorporate these interpretations, and then address changes made by the TTPA to the continued eligibility of these loans for 9.5 percent SAP, and by the HERA as to whether loans may acquire that eligibility.

The interim final regulations include in § 682.302(f) an explanation of certain terms (refinance and originally issued) that reflects Departmental interpretations and usage of those terms historically. Based on that usage, it is reasonable to conclude that the terms are already generally understood as explained in the regulations.

The interim final regulations, as published on August 9, 2006, do no more than provide loan holders (and other interested parties) an orderly statement of the requirements for acquiring and continued eligibility for 9.5 percent SAP for all cohorts of loans, both as in effect before the 2004 and 2006 amendments to the HEA, and under the 2004 and 2006 amendments to the HEA. The interim final regulations did not create or change the terms, conditions, and requirements for the eligibility for the 9.5 percent SAP from those which already existed under applicable law. To the extent that loan holders were in compliance with the requirements of: (1) The then-current regulations; (2) applicable prior Department interpretations of those regulations and the HEA; and (3) changes made by the TTPA and by the HERA, the billing status of loans was not changed with the publication of the interim final regulations.

Changes: None.

Comment: Several commenters claimed that § 682.302(e)(2) and (3) improperly requires that a loan acquired with pre-October 1, 1993 tax-exempt funding be ''financed continuously'' by tax-exempt financing to retain eligibility for SAP at the 9.5 percent minimum rate. Some believed that the interpretations on which the Department relied in adopting the interim final regulations had not been communicated to the public, or that the regulations went beyond merely updating existing regulations to reflect longstanding policy. Another commenter questioned whether the ''debt'' to which § 682.302(e)(2)(i)(B) refers to as having been ''refinanced'' is a student loan or a bond.

Discussion: The term ''financed continuously'', to which the comments refer, appears only in § 682.302(e)(2). Section 682.302(e)(2) describes the special allowance rate applicable to any loan acquired with funds from a source that makes the loan eligible for a SAP at the 9.5 percent minimum rate that has been refinanced. All loans that are initially eligible for a 9.5 percent SAP and have been refinanced can be divided into two mutually exclusive groups. The first group includes only those loans that have been refinanced exclusively and continuously from tax-exempt sources. The second group includes all loans not in the first group. The phrase ''financed continuously'' is used to describe the first group, not to exclude the second group from potential eligibility for SAP at the 9.5 percent minimum rate. The interim final regulations contained no provisions that limit continued eligibility for SAP at the 9.5 percent minimum rate only to loans in the first group—those loans continuously refinanced from tax-

exempt sources. Some loans in the second group also retain that eligibility after refinancing. The regulations add no condition on 9.5 percent SAP eligibility that was not already contained in the statute or regulations.

The regulations accurately reflect Department interpretations of applicable law that establish which SAP rate applied to loans refinanced using tax-exempt sources. The Department has had numerous discussions with program participants who have cited these interpretations and it is clear that the loan industry has been aware of the Department's interpretation of these terms. The regulations in § 682.302(e)(2)(i)(A) and (B) describe the first group of refinanced loans—those continuously refinanced using tax-exempt sources—and state that such loans qualify for a SAP at the 9.5 percent minimum return rate.

These regulations rest squarely on the Department's interpretation of the HEA as articulated in previous guidance issued in DCL 93–L–161 (November 1993), p. 13; Dear Colleague Letter 93–L–163 (December 1993), p. 2. Under the Department's interpretation of the regulations included in the DCLs, loans that were eligible for the 9.5 percent SAP rate prior to a tax-exempt refinancing remained eligible after that refinancing. Because refinancing from tax-exempt sources does not alter eligibility of the loan for the 9.5 percent SAP rate, there is no need to distinguish between loans involved in a single tax-exempt refinancing and those involved in a series of tax-exempt refinancings. The regulations therefore include in this first group all loans that have been associated only with a tax-exempt refinancing, without regard to the number of those refinancings. The phrase ''financed continuously by tax-exempt obligations,'' in § 682.302(e)(2)(i)(B)(*2*) simply describes loans associated exclusively with tax-exempt refinancing.

The regulations do not exclude from eligibility for the 9.5 percent SAP loans affected by other refinancings. The Department's regulations in § 682.302(e)(2)(ii) describe loans refinanced from sources other than qualified tax-exempt sources. This second group consists of two subgroups, which are distinguished by the treatment of the tax-exempt obligation affected by the refinancing. If the prior tax-exempt obligation is retired or deceased, SAP is payable at the taxable rate. This rule has been in effect since 1985. If the prior tax-exempt obligation has not been retired or defeased, SAP remains payable at the 9.5 percent minimum return rate as discussed in DCL 96–L–186 (March 1996).

The regulations use the words ''a loan is refinanced'' to describe the refinancing of an individual student loan. The term ''refinance'' is commonly used as well to refer to the refunding of an outstanding bond or other financial obligation. The regulations in § 682.302(e)(2)(i) use the phrase to refer to a bond or other instrument issued to refund an existing bond or other obligation of the issuer.

Changes: Section 682.302(e)(2) as revised in the interim final regulations effectively explains the applicability of the SAP rates and so it is not necessary for us to retain paragraph (c)(5) of § 682.302. Therefore, subparagraph (c)(5) is removed.

Comments: One commenter objected to the explanation in § 682.302(f)(2) that a bond is considered to be ''originally issued'' when issued to obtain funds to make or acquire loans in which the Authority did not have an interest. This explanation, the commenter noted, would exclude a tax-exempt obligation issued to refund an existing taxable bond or to refinance loans already held by the Authority. The provision would thus disqualify from eligibility for the 9.5 percent SAP loans acquired with proceeds of those obligations, even if they had been issued prior to October 1, 1993.

Discussion: The provision addressing the phrase ''originally issued'' is used to explain how the October 1, 1993, deadline affects at least four different types of tax-exempt obligations: (a) Obligations used to obtain funds to make loans or acquire loans from third parties; (b) obligations that refund a pre-October 1, 1993, qualifying obligation or are part of a series of such refunding issues; (c) obligations used to refund a taxable obligation of the issuer; and (d) obligations used to obtain funds to acquire loans that the Authority made or purchased using funds from either a taxable obligation or a tax-exempt obligation issued on or after October 1, 1993, but not to refund that obligation.

The language in § 682.302(f)(2) to which the commenter objects clearly applies to the ''new money'' issues, described in paragraph (a) above. However, we agree with the commenter that the language could be read to exclude from tax-exempt special allowance treatment loans acquired with funds from tax-exempt obligations described in paragraphs (c) and (d), even if the tax-exempt bond had been issued before October 1, 1993. That result would be contrary to the position taken in the 1985 regulations and contrary to our intent in using this particular language.[1] We also believe that the language should be revised to make it clear that a tax-exempt refunding, or series of such refundings, of a tax-exempt obligation does not change the SAP status of loans made or purchased with funds obtained from the first such tax-exempt obligation so refunded, as described in paragraph (b).

Changes: The interim final regulations were intended to state, and not change, existing law. Accordingly, we have revised § 682.302 to state, in new paragraph (f)(2)(i), that an obligation the proceeds of which are used to make or purchase loans, including by pledge as collateral for that obligation, is considered to be originally issued on the date it is issued. The limitation that loans are considered purchased only if the Authority has neither an existing legal or equitable interest in the loan is removed. Second, the regulation is revised to add a new paragraph (f)(2)(ii) to address specifically a tax-exempt obligation that refunds, initially or in a series of such refundings, a tax-exempt obligation the proceeds of which were used to make or purchase loans (one described in paragraph (f)(2)(i)). Such a tax-exempt refunding obligation is considered to be originally issued on the date on which the initial tax-exempt obligation, described in paragraph (f)(2)(i), was issued.

Basic Program Agreement (§ 682.401)

Comments: One commenter requested that we revise § 682.401(b)(10)(iii) to clarify that a lender is required to charge an insurance premium or Federal default fee.

Discussion: Sections 682.401(b)(10)(i)(A) and (B) clearly states, with the exception of a Consolidation Loan or SLS or PLUS Loan refinanced under § 682.209(e) or (f), the requirements on the collection of insurance premiums and Federal default fees by a guaranty agency. Further clarification is unnecessary.

Changes: None.

Comments: Several commenters requested that a change be made to § 682.401(b)(14) to reflect the payment to lenders of exempt, lender-of-last-resort, and other claims that may be paid at 100 percent insurance.

Discussion: This section of the FFEL regulations outlines the basic program agreement between the guaranty agency and the Secretary. Specifically, § 682.401(b)(14) outlines the guarantee

[1] The term purchase includes acquisition of an interest in a loan by means of a pledge of the loan, and the 1985 regulations implicitly interpret the term purchase as used in section 438 of the HEA to include acquisition of a loan by pledge, not merely acquisition from another party.

liability of the agency, which relates primarily to the payment of default claims. Although other kinds of claims may be paid on a loan, we do not believe that it would be appropriate to include these other claim types, none of which can be reasonably anticipated at the time of guarantee, in § 682.401(b)(14).

Changes: None.

Comments: Several commenters stated that the HERA revised section 428(c)(2) of the HEA to require guarantors to establish procedures to ensure that Consolidation Loans are not an excessive proportion of the guaranty agency's recoveries on defaulted loans, but objected to the inclusion in § 682.401(b)(29) of the requirement that guarantors submit these procedures to the Secretary for approval.

Discussion: We believe that if a guarantor is required by law to establish procedures to ensure that Consolidation Loans are not an excessive portion of the agency's recoveries on defaulted loans, then the Secretary has a fiscal responsibility to review and approve such procedures. The requirement to submit these procedures to the Secretary for approval is also authorized by § 682.401(d)(2).

Changes: None.

Identity Theft (§§ 682.402 and 685.215)

Comments: Many commenters expressed concern regarding the provisions of the interim final regulations that implement the HERA provisions relating to the discharge of an FFEL or Direct Loan that was falsely certified as the result of the crime of identity theft. Several commenters felt that a definition of identity theft based on the adjudication of a crime is too narrow and burdensome and that we should adopt the definition of identity theft used in the Fair Credit Reporting Act (FCRA) and by the Federal Trade Commission (FTC).

Many commenters felt that tying a discharge of an FFEL or Direct Loan to a determination by a Federal, State or local court that the crime of identity theft had occurred, and requiring documentation of that fact, was unduly restrictive. The commenters believed that requiring victims whose cases are actually prosecuted to await the outcome of a judicial process for relief fails to provide discharges and reimbursements in a timely fashion and fails to offer victims of identity theft proper relief. Several commenters asked for clarification on how a loan would be discharged under the common law defense of forgery if a law enforcement agency does not pursue a perpetrator of identity theft. Finally, the commenters requested that we immediately adopt an explicit, reliable process that provides sufficient protection to bona fide victims of identity theft and that we also track cases of unresolved identity thefts within the Department.

Several commenters did not agree with the requirement that a lender and guarantor demand payment on a discharged loan from the perpetrator and pursue collection action if payment in full is not received. These commenters urged the Department to allow guarantors either to subrogate loans discharged based on identity theft to the Department or refer the loans to the appropriate enforcement agencies for action.

Several commenters stated that the provisions related to identity theft would be better placed in a discrete section of the regulations. They believe this approach would facilitate processing and reporting, and ensure that lenders, guarantors, and other program participants have access to comprehensive regulations in a single, identifiable section.

Several commenters noted inconsistencies between the regulations and the preamble with respect to identity theft. These commenters state that the preamble erroneously suggested that the new regulations provide for reimbursement to the loan holder only when perpetrator is affiliated with the school. The commenters requested that preamble to the final regulations accurately describe the identity theft provisions in this regard.

Discussion: The HERA amended the HEA to authorize a discharge of a FFEL or Direct Loan Program loan if the borrower's eligibility was falsely certified because the borrower was a victim of the ''crime'' of identity theft. The HERA specifically provides for a loan discharge only when a ''crime'' of identity theft has occurred. For this reason, the interim final regulations provide relief only to the victim of a proven crime of identity theft.

The purpose of the Fair and Accurate Credit Transactions Act (FACT) (which amended the FCRA) and similar legislation and the FTC rules is to enable individuals who believe that their identifying information has been misappropriated to alert parties who might extend credit to the thief based on that stolen identity information. The purpose of the identity theft provision in the HEA is different—to relieve borrowers and lenders from liability on loans that result from proven misuse of that information. Thus, the FACT Act requires credit reporting agencies to post ''fraud alerts'' on an individual's credit record to deter lenders from extending credit to a thief who uses the stolen identity information, and to block the reporting of any information on the record that the individual identifies as resulting from that identity theft. 16 U.S.C. §§ 1681c–1, 1681c–2. There is little, if any, substantive difference between the FACT Act definition of ''identity theft'' in 16 U.S.C. § 1681a(q)(3) and the descriptive definition used in the interim final regulations. Therefore, there is no reason to use the specific FACT Act definition.

The commenters' claim that the regulations are unduly restrictive is contrary to American common law. As indicated in the preamble to the interim final regulations, under generally applicable laws, individuals who do not apply for loans, execute promissory notes for loans or knowingly accept the benefits of loan disbursements are not liable to repay those loans, even if their names were forged on the loan instrument. An individual who claims that his or her signature was forged is not required to delay asserting that claim until a criminal prosecution occurs and nothing in the Department's regulations require such a delay. An individual who claims that his or her signature was forged can assert that claim to oppose liability on a loan and the holder of the loan must evaluate and accept or reject that claim whether or not a criminal prosecution occurs.

The regulations require the guaranty agency, not the lender, to demand payment from the perpetrator of the identity theft. Guaranty agencies must ordinarily use due diligence to collect FFEL Program loans and the perpetrator is liable for such a debt. In some instances, the Department may choose to take assignment of the debt. However, the regulations do not require a guaranty agency to take unusual or extraordinary steps to collect this debt.

The comment that the regulations regarding identity theft discharge relief should be placed in a separate section does not explain why such treatment would improve clarity of the procedure. The provisions added in the interim final regulations implement a specific discharge provision added by the HERA to the other discharge relief available under section 437(c) of the HEA. The regulations are not intended to provide general guidance on handling claims that loan applications or promissory notes have been forged where the claim does not rest on a proven crime. Because each provision for discharge relief under section 437(c) of the HEA offers relief to borrowers or purported borrowers by payment to the holder of the loan, it is logical to include

procedures for handling claims under the new discharge provision among the existing procedures for claims for other kinds of discharge relief.

The comment suggesting that the Department adopt a process for tracking what it refers to as unresolved identity thefts does not appear to be practicable at this time. To the extent that this proposal is meant to deter lenders from extending new credit based on new false applications using the same individual's identity, the proposal duplicates the procedure already required under the FACT Act. Lenders must obtain a credit report in order to qualify an applicant for a PLUS Loan, and therefore, the alert option available under the FACT Act can be expected to provide effective prospective relief with respect to applications for PLUS Loans.

Implementation of a system that would prospectively protect alleged victims of identity theft from misuse under all the student loan programs requires participation and input from many participants in the loan programs. Such a process may be both costly and complicated. The Department is open to considering practical proposals in the future.

Finally, the commenter is correct that there are inconsistencies between the preamble to the interim final regulations and the interim final regulations, themselves, regarding reimbursement to the loan holder when the perpetrator of identity theft is affiliated with a school. As noted in the preamble to the interim final regulations, § 682.402(e)(1)(i)(B) of the false certification discharge provisions has, since 1994, made discharge relief, with the accompanying reimbursement to the lender, available in instances in which an individual's signature was forged on a promissory note or loan application by the school. If the forgery is not committed by someone affiliated with a school, the purported borrower would not ordinarily be legally liable for the loan. However because the loan is not legally enforceable against the borrower, the loan does not qualify for any FFEL payments from the Department. The new identity theft provision in § 682.402(e)(1)(i)(C) allows the lender to be reimbursed when the loan was made by reason of a crime of the theft of the identity of the purported borrower, without regard to whether the thief was affiliated with a school. The final regulations bar payment to the lender if the theft was committed by the lender or an agent of the lender. The preamble to the interim final regulations accurately stated these elements of the regulation. We will revise § 682.402(e)(1)(iii)(A) to be consistent with the preamble discussion in the interim final regulations.

While we believe that the interim final regulations are fully consistent with the HEA and other laws, we are sympathetic to the concerns of the commenters. We intend to include this issue on the agenda for a future negotiated rulemaking to possibly consider other approaches.

Changes: Section 682.402(e)(1)(iii)(A) has been revised by adding the word ''not'' before the words ''pay reinsurance''.

Rehabilitation of Defaulted Loans (§ 682.405(a)(2)(i)(B))

Comments: Several commenters stated that the regulations for rehabilitation of a defaulted loan do not account for borrowers who make only sporadic payments before beginning the required number of qualifying payments to rehabilitate the loan. They also claimed that the regulations did not reflect the 20-day grace period for a timely payment as provided in the statute.

Discussion: We believe the regulations accurately reflect the HEA and Congressional intent. Borrowers must request, or in some fashion initiate, loan rehabilitation so that the period during which the 9 qualifying payments must be made is clear for both the guaranty agency and the borrower.

Additionally, a reasonable and affordable payment amount needs to be established, and the consequences of loan rehabilitation, such as the addition of collection costs to the rehabilitated loan amount, the post-rehabilitation payment period and the likely increased payment amount, need to be explained to the borrower. Although the borrower can now make 9 qualifying payments over a 10 consecutive month period to rehabilitate a defaulted loan, a borrower should not be encouraged to make late payments or to miss a monthly payment as part of a loan rehabilitation agreement.

Changes: None.

Comments: One commenter noted that the original § 682.405(b)(1)(ii) through (v) had been removed from the interim final regulations and asked if this was intentional.

Discussion: We thank the commenter for bringing this inadvertent drafting error to our attention.

Changes: We have reinserted these paragraphs and renumbered them accordingly.

Special Insurance and Reinsurance Rules (§ 682.415)

Comments: Some commenters asked the Secretary to interpret the change in the HERA that reduced the insurance percentage paid to lenders and lender servicers that have been designated as ''exceptional performers'' not to apply to loans for which the first disbursement was made before October 1, 1993. These commenters noted that, prior to October 1, 1993, the HEA required guaranty agencies to provide 100 percent insurance to lenders, but that rate was later reduced to 98 and 97 percent. Until enactment of the HERA, however, lenders or lender servicers who were designated as exceptional performers received 100 percent insurance on all claims. The HERA reduced the insurance for exceptional performers to 99 percent. The commenters argue that the HERA should not be interpreted to reduce the insurance on loans for which the first disbursement was made before October 1, 1993 to 99 percent for exceptional performers. The commenters also argue that to interpret the HERA to apply to loans for which the first disbursement was made before October 1, 1993, would violate the lenders' contractual and Constitutional rights.

Discussion: The Secretary does not agree with the commenters. The HERA amended section 428I(b)(1) of the HEA to provide that a lender or lender servicer designated for exceptional performance would receive 99 percent insurance on ''all loans for which claims are submitted for payment by that eligible lender or servicer for the one-year period'' for which the lender or lender servicer has been designated. In making this change, Congress eliminated all references to 100 percent insurance for exceptional performers. Congress did not retain the 100 percent insurance for any group of loans. Thus, there is no statutory basis for the Secretary to authorize 100 percent insurance on any claims submitted by an exceptional performer after the effective date of the HERA (July 1, 2006).

The Secretary also does not agree that this change violates any contractual or constitutional rights of a lender. A lender chooses to apply for exceptional performer status because of the benefits it provides to the lender. A lender is not required to apply for such status or to retain such status after it has been granted. Moreover, Congress can modify the terms of the exceptional performer status or end it completely without any violation of a lender's rights. In the HERA, Congress chose to reduce the insurance coverage on loans held by exceptional performers that were made before October 1, 1993, apparently as a way of offsetting the overall costs of providing higher insurance coverage to

exceptional performer lenders and lender servicers than to others. A lender or lender servicer that has been designated as an exceptional performer can still receive 100 percent insurance on loans disbursed prior to October 1, 1993 by relinquishing its exceptional performer status. By relinquishing its exceptional performer status, however, it will be accepting a lower insurance rate on all other claims.

Changes: None.

School as FFEL Lender (§ 682.601(a) and (b))

Comments: Many commenters asked that we clarify the regulations regarding a school lender's use of proceeds from the sale or other disposition of loans for need-based grants. These same commenters questioned the difference between the items identified in the parenthetical phrase in § 682.601(a)(8) and those identified as not considered ''reasonable and direct administrative expenses'' in § 682.601(b) and asked that these discrepancies be eliminated.

One commenter requested that we identify the mandated costs of reduced origination fees and reduced interest rates as allowable, reasonable and direct administrative expenses for school lenders. A couple of commenters asked for guidelines on how a school lender should use loan proceeds for required need-based grants in a manner that would supplement, but not supplant non-Federal funds that would otherwise be used for need-based student grant programs. The commenters also noted that no definition of need-based grant was provided in the regulations. One of those same commenters also asked us to clarify that a school operating as a FFEL school lender would not be prohibited from providing assistance to its students, other than Stafford Loans, from institutional sources. Another commenter stated that required need-based grants from loan proceeds should be based on the school lender's actual net loan proceeds from the prior year.

One commenter suggested that § 682.601(a)(9) be revised to clarify that the loans a school lender must make prior to April 1, 2006 be FFEL program loans. Another commenter asked us to clarify whether a FFEL school lender was required to conduct a separate independent audit of its lender operation.

Discussion: In reviewing the regulatory provisions that address the use of loan proceeds for need-based grants and allowable, reasonable and direct administrative expenses, we agree that further clarification is appropriate.

We believe that certain FFEL school lender's mandated or required expenses can be characterized as programmatic expenses, but not as direct administrative expenses under the HEA. As a result, § 682.601(b) specifies that reasonable and direct administrative expenses do not include the costs associated with securing financing, the cost of offering reduced origination fees or reduced interest rates to borrowers, or the cost of offering reduced Federal default fees to borrowers. However, we have decided to permit a school lender to exclude the costs of other statutorily mandated or necessary programmatic expenses from the calculation of ''proceeds from the sale or other disposition of loans'' that must be used for need-based grants. The parenthetical phrase in § 682.601(a)(8) addresses this exclusion. Certain optional costs, such as reduced Federal default fees, are not covered by the exclusion from loan proceeds or as a reasonable and direct administrative expense.

A school that is also a FFEL Program lender should be able to demonstrate on an ongoing basis that there is no pattern or practice of reducing institutional funds available for use as non-Federal need-based grants or scholarships as a result of the availability of lender produced funds that must also be used for need-based grants.

An institution's continued commitment to use institutional as well as school lending-produced proceeds for this purpose will demonstrate that the school is supplementing, not supplanting, institutional funds committed to need-based grants and scholarships.

We will not dictate a specific approach a school lender must use to determine its budget for need-based grants from lending-produced proceeds. The lender must be able to show clearly that all proceeds from the sources listed in § 682.601(a)(8), except for those authorized to be used for reasonable and direct administrative expenses and other required programmatic costs that can be netted from proceeds, are used for need-based grants. We understand that award commitments are made in advance of the start of the school's academic year and that this period does not generally correspond with the school lender's fiscal year. Determining the pool of funds available for need-based grants based on the school lender's immediately preceding fiscal year's lending performance, with an additional factor for increased proceeds based on increased loan volume, if applicable, would appear to be a reasonable approach. ''Need,'' for purposes of need-based grants, is documented need for Title IV, HEA program purposes. The provisions governing FFEL school lenders do not prohibit the school from making other forms of student financial assistance available to its students.

As provided in § 682.601(a)(7) and discussed in the preamble of the interim final regulations, a FFEL school lender must submit a compliance audit as a lender in accordance with the requirements contained in § 682.305(c)(2) for any fiscal year in which the school engages in activities as an eligible lender, beginning with the first fiscal year beginning on or after July 1, 2006. School lenders subject to the Single Audit Act, 31 U.S.C. 7502, will be required under § 682.601(a)(7) to include its FFEL Program lending activities in the annual audit and to include information on those activities in the audit report, whether or not the lending activities or the student financial aid programs are considered a ''major program'' under the Single Audit Act. Other school lenders will have to arrange for a separate audit of their lending activities using the Lender Audit Guide available through the Department of Education's Office of Inspector General.

In making the changes to clarify the audit requirements, we determined that § 682.305(c)(2)(v) and (vi) included outdated references to other Departmental regulations and audit requirements. We have corrected the citations to the audit requirements for governmental entities in § 682.305(c)(2)(v). We have also added nonprofit organizations to § 682.305(c)(2)(v), because amendments to the Single Audit Act apply the same requirements to governmental entities and nonprofit organizations. We have removed the separate discussion of audit requirements for nonprofit organizations in § 682.305(c)(2)(vi) and replaced it with a cross-reference to the school lender audit requirements.

Changes: The requirement that school lenders have an annual audit in § 682.601(a)(7) has been amended to clarify that, in addition, a school lender subject to the Single Audit Act must in addition during years when the student financial aid cluster, as defined in OMB Circular A–133 Compliance Supplement, is not audited as a major program, also audit the school's lending activities as a major program under the Single Audit Act. This additional requirement is without regard to the amount of loans made. We have also made technical corrections to § 682.305(c)(2) as discussed above.

Section 682.601(a)(8) has been revised to remove the words ''which does not include providing origination fees or interest rates at less than the fee or rate

authorized under the provisions of the Act'' following the words ''need-based grants'' and before ''; and''. A technical change has also been made to § 682.601(a)(9) to reflect the requirement that an eligible school lender must have made one or more FFEL program loans on or before April 1, 2006.

Processing Loan Proceeds (§§ 682.604 and 685.304)

Comments: Several commenters recommended requiring entrance and exit counseling for graduate or professional students who borrow PLUS Loans. The commenters noted that a graduate or professional student PLUS borrower who has not also borrowed a Stafford Loan would never have had the benefit of Stafford Loan entrance or exit counseling. In addition, these commenters recommended that the exit counseling clarify the different repayment rules for PLUS loans and Stafford Loans. Two commenters suggested that graduate or professional students with both Stafford Loans and PLUS Loans could be exempted from the entrance counseling requirement for their PLUS Loans, because these borrowers would have already received entrance and exit counseling on their Stafford Loans.

Discussion: The HEA exempts PLUS Loan borrowers from exit counseling requirements. Although the Secretary encourages institutions to provide exit counseling to graduate and professional student PLUS Loan borrowers, the Secretary does not have the authority to require such counseling by regulation.

With regard to entrance counseling, FFEL lenders are already required, under § 682.205, to provide extensive disclosure information to borrowers before disbursing a loan. This disclosure information, which can be provided through either the rights and responsibilities statement or a plain language disclosure sent to the borrower, includes an explanation of when repayment of the loan is required. Lenders are also required to provide a disclosure to borrowers prior to the loan going into repayment. This disclosure must include the borrower's repayment schedule, the due date of the first installment payment, and the number, amount, and frequency of payments. For Direct Loans, the Department provides essentially the same information to borrowers that FFEL lenders provide under § 682.205. We believe that these disclosures are sufficient for the limited number of graduate or professional student PLUS borrowers who have not received Stafford Loan entrance counseling.

Changes: None.

Comments: One commenter requested that PLUS Loans be covered in the overaward language in § 682.604(h) because graduate and professional students are now eligible PLUS Loan borrowers.

Discussion: We agree with the commenter that the overaward language should be amended to include student PLUS Loans.

Changes: Section 682.604(h) has been amended to reflect this change. We have also made the same change in § 685.303(e) of the Direct Loan Program regulations.

Borrower Eligibility (§ 685.200)

Comments: Several commenters recommended that we revise § 685.200(b)(1)(iv) to allow a student Direct PLUS Loan applicant who is determined to have an adverse credit history to receive a Direct PLUS Loan if the student obtains an endorser who does not have an adverse credit history. The commenters noted that the endorser option is available to student PLUS applicants in the FFEL Program.

Discussion: We did not intend to deny student applicants for Direct PLUS Loans the option of obtaining an endorser.

Changes: We have revised § 685.200(b)(5) of the regulations to more clearly reflect that a student Direct PLUS Loan applicant who is determined to have an adverse credit history may receive a Direct PLUS Loan if he or she obtains an endorser who does not have an adverse credit history, or documents to the satisfaction of the Secretary that there are extenuating circumstances.

Charges for Which Direct Loan Borrowers Are Responsible (§ 685.202)

Comments: Several commenters suggested that we revise § 685.202(a)(3) to provide that the portion of a Direct Consolidation Loan that is attributable to Health Education Assistance Loan Program (HEAL) loans is subject to the same interest rate provision that applies to Federal Consolidation Loans under § 682.202(a)(4)(v). The commenters noted that section 455(a)(1) of the HEA, as amended by the HERA, requires Direct Consolidation Loans and Federal Consolidation Loans to have the same terms, conditions, and benefits, unless otherwise specified in Part D of the HEA.

Discussion: The HERA amended the HEA to require that Direct Consolidation Loans have the same terms, conditions, and benefits as Federal Consolidation Loans, unless otherwise specified in the law. However, in this case, there is a specific interest rate provision for Direct Consolidation Loans in section 455(b)(7)(C) of the HEA, and that provision does not specify a different interest rate for the portion of a Direct Consolidation Loan that is attributable to HEAL Loans. Therefore, Direct Consolidation Loans are not subject to the provision that applies to Federal Consolidation Loans under section 428C(d)(2) of the HEA.

Changes: None.

Repayment Plans (§ 685.208)

Comments: Several commenters suggested that the HERA requires that the graduated and extended repayment plans do not require a borrower to repay the minimum amount allowed under statute. In addition, these commenters suggested that a borrower's monthly payments under these repayment plans must be at least the amount of interest and that we add a provision that would disallow single graduated payments that exceed three times any other graduated installment payment.

Discussion: We agree that the minimum annual repayment rules should not apply to a graduated repayment plan. The HEA exempts graduated and income sensitive repayment plans from the minimum annual repayment provisions. The HEA does not exempt extended repayment plans from the minimum annual payment requirement. In addition, the FFEL Program regulations state that graduated and income sensitive repayment plans may have installments less than the minimum. However, the FFEL Program regulations do not provide for extended repayment plans to have installments less than the minimum annual payment amount. The final regulations provide that the 10-year graduated repayment plan and the extended repayment plan can have graduated payments.

We do need to add to the regulations for the graduated repayment plan, for borrowers entering repayment on or after July 1, 2006, a provision that does not allow any single installment payment to be more than three times the amount of any other payment.

Although the HEA does not specifically require that the payments must be at least the amount of interest, we agree that the regulations would be clearer by including a provision that monthly payments on all Direct Loan Program repayment plans must be at least the amount of the monthly accrued interest, except that the monthly payment amount under the Income Contingent and Alternative repayment plans may be less than the monthly accrued interest.

Changes: We have revised § 685.208(g)(3) and 685.208(h)(2) to provide that, under a graduated repayment schedule, a borrower's payments may be less than $50 a month and any single installment payment may not be more than three times the amount of any other installment payment.

We have added a new paragraph (a)(2)(iv) in § 685.220 of the Direct Loan repayment regulations to provide that monthly repayment plans, except Income Contingent and Alternative repayment plans, must be at least the amount of the monthly accrued interest.

Consolidation (§ 685.220)

Comments: Several commenters recommended that we revise § 685.220(c)(1) to clarify that, if a Federal Consolidation Loan is consolidated into a Direct Consolidation Loan, only the portion of the Federal Consolidation Loan that qualified for an interest subsidy will be included in the subsidized portion of the new Direct Consolidation Loan. The commenters noted that in many cases, only a portion of a Federal Consolidation Loan qualifies for an interest subsidy.

Discussion: We agree that the current regulatory language is unclear with respect to the treatment of Federal Consolidation Loans that are included in the subsidized portion of Direct Consolidation Loans.

Changes: We have revised § 685.220(c)(1) to clarify that only the portion of a Federal Consolidation Loan that qualified for an interest subsidy will be included in the subsidized portion of a Direct Consolidation Loan.

Comments: Several commenters pointed out that § 685.220(d)(1)(ii)(E) and (F) prohibit a borrower from consolidating a loan that is subject to a judgment or an order for wage garnishment unless the judgment has been vacated or the wage garnishment order has been lifted at the time the borrower applies for a Direct Consolidation Loan. In contrast, the corresponding FFEL Program regulations in § 682.201(c) provide that a judgment or wage garnishment order must have been vacated or lifted at the time a Federal Consolidation Loan is made. The commenters recommended that we revise § 685.220 to be consistent with the FFEL Program requirements related to the consolidation of loans subject to a judgment or wage garnishment.

Discussion: We agree with the commenters that the Direct Loan Program regulations should make it clear that the judgment and wage garnishment eligibility requirements must be met at the time the Direct Consolidation Loan is made rather than at the time of the borrower's application for the loan.

Changes: We have revised § 685.220(d) to clarify that the eligibility requirements for consolidating a loan subject to a judgment or wage garnishment must be met at the time a Direct Consolidation Loan is made.

Comments: To ensure that Direct Loan Program borrowers have the same options for resolving a default as FFEL Program borrowers, some commenters recommended that the Secretary clarify in the regulations that a borrower with a defaulted Direct Consolidation Loan remains eligible for loan rehabilitation with a repayment plan that provides for reasonable and affordable payments such as those available under an income contingent repayment plan. Other commenters recommended that the Secretary amend the Direct Loan Program regulations to allow a borrower to consolidate a defaulted Direct Consolidation Loan if the borrower first makes satisfactory repayment arrangements on the defaulted loan and includes at least one additional eligible loan in the consolidation.

Discussion: There is nothing in the regulations that prohibits a borrower with a defaulted Direct Consolidation Loan from entering into an agreement to rehabilitate that loan under a repayment plan that provides for reasonable and affordable payments.

We agree that the Direct Loan Program regulations, as currently written, might suggest that a borrower with a defaulted Direct Consolidation Loan is ineligible to consolidate that loan into a new Direct Consolidation Loan under any conditions. However, this was not our intent. A borrower with a defaulted Direct Consolidation Loan may consolidate that loan into a new Direct Consolidation Loan if the borrower includes at least one additional eligible loan in the consolidation, and meets the other eligibility requirements that apply to borrowers who wish to consolidate a defaulted loan.

Changes: We have revised the regulations in § 685.220(d)(1)(ii) to clarify that a borrower may consolidate a defaulted Direct Consolidation Loan if the borrower: (1) makes satisfactory repayment arrangements on the defaulted loan or agrees to repay the new Direct Consolidation Loan under the income contingent repayment plan; and (2) includes at least one additional eligible loan in the consolidation.

Agreements Between an Eligible School and the Secretary for Participation in the Direct Loan Program (§ 685.300)

Comments: Several commenters recommended that we amend the regulations to reflect the Department's previous guidance that a school that awards Direct Subsidized Loans and Direct Unsubsidized Loans to its graduate or professional students through the Direct Loan Program may award PLUS Loans to its graduate or professional students through the FFEL Program, and that a school may also award Direct PLUS Loans to its graduate and professional students through the Direct Loan Program and Subsidized and Unsubsidized Federal Stafford Loans through the FFEL Program.

Discussion: We agree that the Department's prior guidance should be incorporated in the regulations.

Changes: We have revised § 685.300(b)(8) to clarify that a school may award a PLUS Loan to a parent or to a graduate or professional student through either the Direct Loan Program or the FFEL Program, and a Stafford Loan through the other loan program to a dependent undergraduate or graduate or professional student borrower for the same period of enrollment. However, a school may not award the same type of loan (i.e., Stafford or PLUS) from different loan programs to the same student or parent borrower for the same period of enrollment.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined this regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. The Secretary accordingly has assessed the potential costs and benefits of this regulatory action and has determined the benefits justify the costs.

Need for Federal Regulatory Action

These final regulations are needed to implement recent amendments to the HEA that affect students, borrowers and program participants in the Federal student aid programs authorized under Title IV of the HEA.

The Secretary has limited discretion in implementing most of these provisions. The majority of the changes included in these final regulations simply modify the Department's regulations to reflect statutory changes made by the HERA and the other laws mentioned earlier. These statutory provisions are either already effective or will be effective shortly.

The Secretary has exercised limited discretion in implementing the HERA provisions in the following areas:

- *Direct Assessment:* The HERA extends eligibility for Title IV, HEA programs to instructional programs using or recognizing the use by others of direct assessment of student learning;
- *Identity Theft:* The HERA authorizes a discharge of a FFEL or Direct Loan Program loan if the borrower's eligibility to borrow was falsely certified because the borrower was a victim of the crime of identity theft; and
- *Special Allowance Payments:* The HERA modifies the conditions under which a loan holder qualifies for special allowance interest benefits related to PLUS loans the first disbursement of which was made on or after January 1, 2000.

The following section addresses the alternatives that the Secretary considered in implementing these discretionary portions of the HERA provisions.

Regulatory Alternatives Considered

Direct Assessment Alternatives: In developing the direct assessment regulations, the Secretary drew upon the Department's experience with Western Governors University (WGU), the only institution currently participating in the Title IV student financial assistance programs that uses direct assessment, in lieu of credit or clock hours, as a measure of student learning. WGU became an eligible institution by participating in the Distance Education Demonstration Program.

The Secretary looked at how the Title IV student financial aid rules had been applied in both the nonterm and non-standard term models employed by WGU and identified basic principles on which to base the regulations. One principle is that institutions that use direct assessment would need to develop equivalencies in credit or clock hours in terms of instructional time for the amount of student learning being assessed. This was necessary because many applicable Title IV, HEA program requirements use time and/or credit or clock hours to measure things other than student learning. In addition, institutions would have to define enrollment status, payment periods, and satisfactory academic progress.

A second principle is tied to the statutory language that characterizes direct assessment programs as instructional programs. The Secretary determined that institutions must provide a means for students to fill in the gaps in their knowledge and that Title IV, HEA program funds should only be used to pay for learning that occurs while the student is enrolled in the program.

The Secretary considered what should constitute ''instruction'' in a direct assessment program. The word ''instruction'' is not specifically defined in the Department's regulations and, in its ordinary meaning the word connotes teaching. There are several other ways, however, in which an institution might assist students to prepare for assessments. The Secretary considered whether the definition of instructional time in § 668.8(b)(3), which is used for other types of programs, could be used for direct assessment programs and determined that the definition was not sufficiently broad to be used in this context.

The Secretary recognized that institutions offering direct assessment programs might use courses or learning materials developed by other entities, such as training and professional development organizations and other educational institutions, to assist students in preparing for the assessments. The Secretary considered whether the use of outside resources could be considered contracting out a portion of an educational program and determined that it could be. Therefore, the Secretary included in the direct assessment regulations a provision that exempts direct assessment programs from the limitations on contracting for part of an educational program.

Identity Theft Alternatives: Section 8012 of the HERA authorizes a discharge of a FFEL or Direct Loan Program loan under section 437(c) of the HEA if the eligibility of the borrower was falsely certified as a result of the crime of identity theft. In developing regulations to implement section 8012, we sought to reflect the statutory language that requires the Department to discharge the borrower's responsibility to repay the loan when a ''crime of identity theft'' has occurred. The final regulations require that to receive a discharge on a loan, an individual must provide the holder of the loan, a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is the named borrower of the loan was the victim of the crime of identity theft. We adopted this standard as an inexpensive and reliable way to implement the new discharge provision. If the perpetrator of an identity theft is never prosecuted, and no judicial determination that a crime occurred is rendered, a borrower can still be relieved of any responsibility to repay the loan under the common law (and in many instances, State law) defense of forgery. We stressed this consideration in the preamble to the interim final regulations.

One alternative we considered was to authorize a discharge for ''identity theft'' based on representations from the individual, much as is now done for closed school discharge relief, that the crime of identity theft had been committed, and that the claimant was the victim of that criminal act. We rejected this alternative as costly, unworkable, and unnecessary to provide relief to the individuals who may be victims of this crime. Under this alternative, the claimant and/or the lender would be required to submit evidence needed to establish whether conduct has occurred that would constitute the crime of identity theft. That evidence may be voluminous, difficult to obtain, and would likely include witness testimony. Amassing and transmitting that evidence would be difficult and costly for lenders and claimants. Furthermore, determining whether a crime has been committed requires discerning the identity of the perpetrator and determining the state of mind of that person. Neither the Department nor the guaranty agency is authorized to determine whether that evidence shows that a crime has been committed. That determination is routinely and reliably made through the judicial process, which is designed to perform this function. Moreover, there

is no need to ignore the judicial process in order to give relief to those individuals who did not in fact take out the loans for which they are listed as borrowers. Under State statutes and common law, individuals whose signatures have been forged on loan documents are not liable for those debts. Individuals who show that their signatures have been forged on loan documents, and that they neither authorized nor received a loan made in their name, are not held liable by the Department. For these reasons, we rejected the alternative that would entail an extra-judicial proof of a crime. Instead, we simply require the claimant to submit a copy of a judicial verdict that identity theft was committed.

Special Allowance Payment Alternatives: The Department considered a number of alternatives related to the effective date for implementation of section 8006 of the HERA, which eliminates the limitation that special allowance payments on PLUS Loans for which the first disbursement was made on or after January 1, 2000, only be paid if the formula for determining the borrower interest rate produces a rate that exceeds the statutory maximum borrower rate of 9 percent.

The first alternative was to make this provision retroactive to January 1, 2000, an approach that would result in substantial additional special allowance payments to many PLUS Loan holders. Although this option was suggested by some members of the student loan industry, the Department determined that this approach was inconsistent with the statute.

Other alternatives considered reflected differing interpretations of the provision's effective date. Section 8006 states that ''amendments made by this subsection shall not apply with respect to any special allowance payment made under section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087–1) before April 1, 2006.'' Since special allowance payments are made on a quarterly basis, the Department had to determine whether the statute's intent was to remove the limitation on PLUS special allowance payments for the quarter of January–March 2006—the first quarter for which bills would be submitted, verified, and paid after April 1, 2006 or for the quarter of April–June 2006, the first full quarter after the HERA's enactment. The Department estimated Federal costs would increase by $53 million if the limitation was removed for the January–March quarter. This estimate was based on data on special allowance rates and balances for the affected quarter. After a careful review of the statutory language, the Department determined that the statute's likely intent was to remove the limitation for the January–March 2006 quarter, since this was the first quarter for which payments would be made after April 1, 2006. The final regulations reflect this determination.

Benefits

Given the breadth of these regulations, the discussion of benefits and costs will be limited in most cases to provisions with an economic impact of $100 million or more in any one year. By facilitating the implementation of changes made in the HERA and other recent student aid-related statutes, these final regulations will support the provision of a broad range of student benefits. In general, these benefits reduce the costs of higher education to students, increase the amount of Federal student aid or increase the number of students eligible for Federal student aid. The economic benefits of any specific change are difficult to discern, as they have direct benefit to the individual aid recipient and broader societal benefits resulting from the economic impact and tax-paying potential of a well-educated population. Research indicates that reductions in the cost of higher education are correlated to increased student enrollment, retention, and completion. The U.S. Census Bureau has found people with a bachelor's degree realize as much as 75 percent higher lifetime earnings than those whose education is limited to a high school degree. (''The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings,'' July 2002.)

Specific benefits provided to student borrowers in these final regulations include increases in certain FFEL and Direct Loan Program loan limits; reduced origination fees in the FFEL and Direct Loan Programs; broadened eligibility for PLUS Loans to include graduate and professional students; expanded access to distance education programs; permanently expanded loan forgiveness for highly qualified math, science, and special education teachers at low-income schools; and a new deferment for FFEL, Direct Loan and Perkins Loan Program borrowers who serve on active duty military service during times of war or national emergency. These benefits are projected to increase Federal outlays by $5.2 billion for loans originated in FY 2006–2010. This estimate was developed using projected interest rate, loan volume, and borrower demographic data used in preparing the FY 2007 President's Budget. Projected loan volume and borrower data are based on trend analyses of actual program activity, primarily drawn from the National Student Loan Data System (NSLDS) and other Department systems.

These estimates were derived from the Department's projections that show that loan volume will increase an estimated $3.2 billion in award year 2007–2008 and $11.6 billion from fiscal year 2006–2010 as a result of higher loan limits. Over the latter period, average loan amounts are estimated to increase by $184 for Stafford Loans and $156 for Unsubsidized Stafford Loans. The phased reduction of loan origination fees is estimated to reduce fees by $5.6 billion on 70,000 loans over award years 2006–2010.

The expansion of distance education made possible by the changes to the ''50 percent rule'' and the definition of correspondence courses will allow institutions to more aggressively pursue new communication technologies to provide students significantly greater flexibility in the scheduling and location of academic programs. The Department estimates this expanded flexibility will increase the pool of students eligible for Federal student aid by 30,000 students a year in 2006 and 2007, of whom 17,000 per year will be eligible to receive a Pell Grant. With an average grant of $2,306, these additional Pell Grant recipients will receive an estimated $196 million in Pell Grant aid over 2006–2010. This estimate is based on a trend analysis of Pell Grant program data and projections of institutional and program eligibility for Federal student aid derived through the use of accreditation data. The Department included in these estimates that additional students made eligible for student aid would borrow $441 million in student loans over 2006–2010.

The regulation's teacher loan forgiveness provisions offer incentives to help address longstanding national and regional elementary and secondary school staffing problems. Many studies (Boe, Bobbitt, & Cook, 1997; Grissmer & Kirby, 1992; Murnane et al. , 1991; Rumberger, 1987) and extensive research prepared for the National Commission on Mathematics and Science Teaching) have found math, science, and special education to be fields with especially high turnover and those predicted most likely to suffer shortages. More than tripling the teacher loan forgiveness amount—from $5,000 to $17,500—for qualifying teachers in these fields should offer a powerful incentive for recruitment and retention, especially given the additional eligibility requirement that recipients

teach for five consecutive years before receiving the benefit. The Department estimates this expanded benefit will increase Federal loan subsidy costs in the FFEL and Direct Loan programs by $825 million for loans originated in 2007–2010. These estimates assume over 32,000 teachers will be eligible for additional forgiveness amounts, increasing the average amount forgiven for those borrowers by approximately $8,500, from $4,700 to $13,300. (The additional benefits were available for loans made in 2006 as a result of the Taxpayer-Teacher Protection Act of 2004, so for the purposes of this analysis additional benefits have only been considered for 2007 and beyond.) This estimate was developed using projected interest rate, loan volume, and borrower demographic data used in preparing the FY 2007 President's Budget. Estimates of borrower eligibility were based on program data—primarily from NSLDS—demographic information from the National Center for Education Statistics' Schools and Staffing Survey.

Lastly, the Department's estimates took into account the creation of a new deferment related to active-duty military service during a war or national emergency is estimated to reduce interest payments by an average of $1,500 for 21,000 borrowers.

In addition to implementing expanded borrower benefits, these final regulations also implement a number of provisions intended to improve the cost-effectiveness and efficiency of the FFEL and Direct Loan programs, streamline program operations for participating institutions, and standardize loan terms and conditions across the two programs. These changes are estimated to reduce Federal outlays by $7.0 billion for loans made in FY 2006–2010, freeing up resources for other urgent requirements. This estimate was also developed using projected interest rate, loan volume, and borrower demographic data used in preparing the FY 2007 President's Budget. Projected loan volume, guaranty agency and lender information, and borrower data are based on trend analyses of actual program activity, primarily drawn from NSLDS and other Department systems.

Provisions intended to enhance loan program efficiency include a number of changes intended to promote risk-sharing by FFEL participants through reduced program subsidies, including: restrictions on higher-than-standard special allowance payments for loans funded through tax-exempt securities; provisions under which the Department will recover excess interest paid to loan holders when student interest payments exceed the special allowance level set in the statute; and a reduction in loan holder's insurance against default from 98 percent to 97 percent of a loan's principle and accrued interest. Given the broad availability of FFEL program loans—over 4,000 lenders provided more than $43 billion in new loans and an additional $53 billion in consolidation loans in FY 2005—these changes are not expected to reduce student and parent access to loan capital.

The student loan industry features high competition among loan providers, using an array of interest rate discounts and other borrower benefits to attract volume. The overwhelming majority of student loans are sold by the originating lender in the secondary market. The impact on individual lenders of HERA provisions reducing Federal subsidies are inestimable; a substitution of subsidies for student interest rate cuts may occur or the secondary market price of securitized loans may be revalued. Given the high level of government guaranty on these loans, as well as the guaranteed rate of return, continued access to loan capital for all borrowers should be assured. The impact on individual loan holders may be mitigated by investment and tax considerations from their investment portfolios as a whole. Higher borrower loan limits and standardized repayment terms may increase long-term interest income to some loan holders under these regulations.

The estimates were derived from changes to limit the payment of higher-than-standard special allowance on loans funded through tax-exempt securities, balances eligible to receive the higher special allowance payments are estimated to decrease from $15.5 billion in FY 2006 to $8.3 billion in FY 2010. While the recovery of excess interest subsidies produced no estimated savings under interest rate projections used for the FY 2007 President's Budget, this policy does save significant amounts under the probabilistic interest rate forecasting methodology used by the Congressional Budget Office and adopted by the Administration for the FY 2007 Mid-Session Review. These savings are not included in the estimate of total savings discussed above, as this was developed prior to the Mid-Session Review. Reducing lender insurance against default from 98 percent to 97 percent is estimated to decrease Federal payments by $37.5 million over FYs 2006–2010.

Lastly, the final regulations include a number of provisions intended to standardize terms and conditions and broaden borrower choices, particularly for consolidation loans. These changes include the repeal of the single holder rule, which limits the ability of FFEL borrowers whose loans are held by a single holder to consolidate with other lenders, and the standardization of graduated and extended repayment plans—previously different for Direct Loans and FFEL—on the FFEL model. The repeal of the single holder rule should give all borrowers access to interest rate discounts and other benefits available through the highly competitive consolidation loan market. The standardization of repayment plan terms will eliminate a possible source of confusion for borrowers and promote equity across the two loan programs. Under this provision, the Department estimates more Direct Loan borrowers who wish to obtain longer-than standard repayment plans will consolidate their loans. As a result, the estimated percentage of Stafford Loan borrowers in standard repayment will increase from 76 percent to 87 percent, while the percentage in graduated and extended repayment will decrease from 23 percent to 11 percent.

These provisions also are expected to improve market transparency and remove transaction barriers for loan borrowers, improving market openness and efficiency for both borrowers and loan providers.

Costs

These final regulations include a number of provisions that will impose increased costs on some borrowers, such as an increase in the loan interest rate for FFEL PLUS borrowers, the elimination of in-school and joint consolidation loans, and the mandatory imposition of the previously optional 1 percent guaranty agency default insurance premium. (At the same time, these provisions will reduce the Federal costs of these programs and, in the case of the guaranty fee, improve the financial stability of guaranty agencies. Only 14 of 35 agencies collected this fee in FY 2005; the mandatory imposition of the fee is estimated to add $1.5 billion to the balance of agency Federal Funds over 2006–2010.) Prior to the HERA, these provisions allowed loan providers or guaranty agencies to discriminate among borrowers through the unequal distribution of borrower costs. While some borrowers may lose unearned benefits through these statutory and regulatory changes, market equitability and transparency are improved.

These final regulations also authorize the Secretary to waive a student's Title IV grant repayment if the student withdrew from an institution of higher education because of a major disaster as

declared by the President in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The Secretary will exercise this waiver authority on a case-by-case basis after determining that a major disaster has significantly affected recipients of Title IV grant aid.

Because entities affected by these regulations already participate in the Title IV, HEA programs, these lenders, guaranty agencies, and schools must have already established systems and procedures in place to meet program eligibility requirements. These regulations generally involve discrete changes in specific parameters associated with existing guidance—such as changes in origination fees, loan limits, or reinsurance percentages—rather than wholly new requirements. Accordingly, institutions wishing to continue to participate in the student aid programs have already absorbed most of the administrative costs related to implementing these final regulations. Marginal costs over this baseline are primarily related to one-time system changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation. The Department is particularly interested in comments on possible administrative burdens related to these system or process changes.

Assumptions, Limitations, and Data Sources

Because these final regulations largely restate statutory requirements that would be self-implementing in the absence of regulatory action, cost estimates provided above reflect a pre-statutory baseline in which the HERA and other statutory changes implemented in these regulations do not exist. Costs have been quantified for five years, as over time this has been a typical period between reauthorizations of the HEA.

In developing these estimates, a wide range of data sources were used, including the NSLDS, operational and financial data from Department of Education systems, and data from a range of surveys conducted by the National Center for Education Statistics such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these final regulations. Expenditures are classified as transfers to postsecondary students; savings are classified as transfers from program participants (lenders, guaranty agencies).

TABLE 2.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$976.
From Whom To Whom?	Federal Government to Postsecondary Students; Student Aid Program Participants to Federal Government.

Paperwork Reduction Act of 1995

We received one comment on the Paperwork Reduction Act portion of the interim final regulations. The commenter disagreed with the Paperwork Reduction Act information collection burden analysis for the changes we made to § 682.604. These changes implemented section 8010 of the HERA to end the exemption from multiple disbursement requirements for eligible foreign institutions. Our analysis stated that, in the vast majority of cases, the lender or guaranty agency is already required to disburse a FFEL Program Loan in two installments as a regular business practice and that this change would produce no additional burden for foreign schools.

The commenter stated that, while the requirement to disburse a loan in two installments is a regular business practice at U.S. institutions, prior to publication of the interim final regulations, it had not been true for foreign schools. The commenter stated that disbursing a loan in two installments is a new burden for foreign schools and for lenders and guaranty agencies that provide loans to their American students enrolled in foreign schools.

As a result of public comment, we have reconsidered and recognized the burden associated with the elimination of the exemption of single disbursement of FFEL Loans to students attending foreign institutions. While there is additional burden associated with making two disbursements of a FFEL Loan for a student attending a foreign institution, the burden is primarily at the institution in the processing of an additional disbursement. Since the normal business process for a lender or guaranty agency includes making multiple disbursements of FFEL Loans, there is no significant additional burden to the lender or guaranty agency. These additional activities will increase burden hours by 20,000. A Paperwork Reduction Act submission for OMB Control Number 1845–0020, which covers the burden in § 682.604, has been submitted to OMB for approval.

As noted in the interim final rules, the Department has been working with its major stakeholders to develop the forms and applications necessary to implement many of the provisions of this rulemaking activity. The Department plans to separately publish the required **Federal Register** notices for the collections of information associated with the following sections: active duty military (§§ 674.34, 682.210, and 685.204), obtaining and repaying a loan (§ 682.102), identity theft (§ 682.402), and consolidation (§ 685.220).

OMB has already approved the increased burden for the information collection requirements associated with the teacher loan forgiveness provisions (§§ 682.215 and 685.217) under OMB Control Number 1845–0059.

Assessment of Education Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 673

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Employment, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loans program—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 25, 2006.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 668, 673, 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.2 [Amended]

■ 2. Section 668.2 is amended in paragraph (b) in the first sentence of the definition of *Federal PLUS program* by adding the word ''dependent'' immediately after the words ''encourages the making of loans to parents of''.

■ 3. Section 668.10 is amended by revising paragraph (a)(3) introductory text to read as follows:

§ 668.10 Direct assessment programs.

(a) * * *

(3) All regulatory requirements in this chapter that refer to credit or clock hours as a measurement apply to direct assessment programs. Because a direct assessment program does not utilize credit or clock hours as a measure of student learning, an institution must establish a methodology to reasonably equate the direct assessment program (or the direct assessment portion of any program, as applicable) to credit or clock hours for the purpose of complying with applicable regulatory requirements. The institution must provide a factual basis satisfactory to the Secretary for its claim that the program or portion of the program is equivalent to a specific number of credit or clock hours.

* * * * *

§ 668.22 [Amended]

■ 4. Section 668.22 is amended by:

■ A. In paragraph (a)(5)(iii)(E), removing the words ''electronically or''.

■ B. In paragraph (h)(3)(ii)(B), removing the word ''A'' and adding, in its place, the words ''With respect to any grant program, a''.

■ C. In paragraph (h)(5)(iii), removing the word ''ended'' and adding, in its place, the word ''occurred''.

■ 5. Section 668.35 is amended by:

■ A. In paragraph (e)(2), removing the word ''or''.

■ B. In paragraph (e)(3), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; or''.

■ C. Adding a new paragraph (e)(4).

The addition reads as follows:

§ 668.35 Student debts under the HEA and to the U.S.

* * * * *

(e) * * *

(4) The overpayment is an amount that a student is not required to return under the requirements of § 668.22(h)(3)(ii)(B).

* * * * *

§ 668.164 [Amended]

■ 6. Section 668.164 is amended in paragraph (g)(2)(i) by adding the word ''parent'' immediately before the word ''PLUS''.

■ 7. Section 668.165 is amended by revising the introductory text of paragraph (a)(2) to read as follows:

§ 668.165 Notices and authorizations.

(a) * * *

(2) Except in the case of a post-withdrawal disbursement made in accordance with 34 CFR 668.22(a)(5), if an institution credits a student's account at the institution with Direct Loan, FFEL, or Federal Perkins Loan Program funds, the institution must notify the student, or parent of—

* * * * *

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

■ 8. The authority citation for part 673 continues to read as follows:

Authority: 20 U.S.C. 421–429, 1070b–1070b–3, and 1087aa–1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

§ 673.5 [Amended]

■ 9. Section 673.5 is amended in paragraph (c)(1)(ix) by removing the word ''and'' immediately before the number ''1607'' and adding the words '', and Section 903 of Public Law 96–342 (Educational Assistance Pilot Program)'' at the end of the paragraph.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 10. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.101 [Amended]

■ 11. Section 682.101 is amended in paragraph (c) by removing the words '', or married couples each of whom have eligible loans under these programs'', in the third sentence.

§ 682.201 [Amended]

■ 12. Section 682.201 is amended by:

■ A. In paragraph (b)(3), adding the words ''or under the Federal Direct Subsidized Stafford/Ford Loan Program and Federal Direct Unsubsidized Stafford/Ford Loan Program, as applicable'' immediately after the words ''Unsubsidized Stafford Loan Program''.

■ B. In paragraph (c)(1)(vii), removing the parentheticals ''(b)(2)(ii)'' and adding, in their place, the parentheticals ''(c)(2)(ii)''.

■ C. In paragraph (c)(3), removing the parentheticals ''(b)(1)'' and adding, in their place, the parentheticals ''(c)(1)''.

■ D. In paragraph (d)(1)(i)(A)(*3*), removing the reference to ''§ 682.209(a)(7)(viii)'' and adding, in its place, a reference to ''§ 682.209(a)(6)(iii)''.

■ E. In paragraph (d)(2), removing the word ''responsible'' and adding, in its place, the word ''ineligible''.

§ 682.204 [Amended]

■ 13. Section 682.204 is amended by:

■ A. In paragraph (a)(1)(i), removing the word ''certified'' and adding, in its place, the word ''disbursed''.

■ B. In paragraph (a)(1)(ii), removing the word ''certified'' and adding, in its place, the word ''disbursed''.

■ C. In paragraph (a)(1)(iii), removing the word ''certified'' and adding, in its place, the word ''disbursed''.
■ D. In paragraph (a)(2)(i), removing the word ''certified'' and adding, in its place, the word ''disbursed''.
■ E. In paragraph (a)(2)(ii), removing the word ''certified'' and adding, in its place, the word ''disbursed''.
■ F. In paragraph (d)(5), removing the word ''certified'' and adding, in its place, the word ''disbursed''.
■ G. In paragraph (d)(6)(ii), removing the word ''certified'' and adding, in its place, the word ''disbursed''.
■ H. In paragraph (d)(6)(iii), removing the word ''certified'' and adding, in its place, the word ''disbursed''.

§ 682.206 [Amended]

■ 14. Section 682.206 is amended in paragraph (e)(3) by adding the words '', based on an application received prior to July 1, 2006,'' immediately before the word ''may''.
■ 15. Section 682.207 is amended by:
■ A. In paragraph (b)(1)(v)(C)(*1*), adding the words ''with the home institution'' after the words ''verification of the student's enrollment''.
■ B. Revising paragraph (b)(2)(i)(A)(*2*).
■ C. Revising paragraph (b)(2)(i)(A)(*3*).
■ D. In paragraph (b)(2)(i)(B), adding the word '', facsimile'' after the word ''telephone''.
■ E. In paragraph (b)(2)(iv) introductory text, removing the parentheticals ''(b)(1)(v)(D)(*1*)'' and adding, in their place, the parentheticals ''(b)(1)(v)(D)''.
The revisions read as follows:

§ 682.207 Due diligence in disbursing a loan.

(b) * * *
(2) * * *
(i) * * *
(A) * * *
* * * * *

(*2*) For a new student, contacting the foreign school the student is to attend in accordance with procedures specified by the Secretary, by telephone, e-mail or facsimile to verify the student's admission to the foreign school for the period for which the loan is intended at the enrollment status for which the loan was certified.

(*3*) For a continuing student, contacting the foreign school the student is to attend in accordance with procedures specified by the Secretary, by telephone, e-mail or facsimile to verify that the student is still enrolled at the foreign school for the period for which the loan is intended at the enrollment status for which the loan was certified.
* * * * *

§ 682.209 [Amended]

■ 16. Section 682.209 is amended by:
■ A. In paragraph (a)(6)(v)(B), removing the parentheticals ''(a)(7)(viii)(C)'' and adding, in their place, the parentheticals ''(a)(6)(viii)(C)''.
■ B. In paragraph (a)(7)(iv), removing the parentheticals ''(a)(8)(iii)'' and adding, in their place, the parentheticals, ''(a)(7)(iii)''.
■ 17. Section 682.211 is amended by:
■ A. In paragraph (f)(6), removing the words ''in the case of parent a PLUS Loan'' and adding, in their place, the words ''on whose behalf a parent has borrowed a PLUS Loan''.
■ B. Revising paragraph (h)(3).
The revision reads as follows:

§ 682.211 Forbearance.

* * * * *

(h) * * *

(3) *Forbearance agreement.* After the lender determines the borrower's or endorser's eligibility, and the lender and the borrower or endorser agree to the terms of the forbearance granted under this section, the lender sends, within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance and records the terms of the forbearance in the borrower's file.
* * * * *

§ 682.215 [Amended]

■ 18. Section 682.215 is amended by:
■ A. In paragraph (c)(3)(ii)(B), removing the word ''either''.
■ B. In paragraph (c)(4)(ii)(B), removing the word ''either''.
■ 19. Section 682.302 is amended by:
■ A. Revising paragraph (c)(1)(iii)(B)(*4*).
■ B. In paragraph (c)(1)(iii)(B)(*5*), removing the cross-reference ''§ 682.202(a)(2)(v)'' and adding, in its place, the cross-reference ''§ 682.202(a)(2)(v)(A)''.
■ C. Removing paragraph (c)(5).
■ D. Revising paragraph (f) introductory text.
■ E. Revising paragraph (f)(2).
The revision reads as follows:

§ 682.302 Payment of Special Allowance on FFEL loans.

* * * * *

(c) * * *
(1) * * *
(iii) * * *
(B) * * *

(*4*) A Federal PLUS Loan made on or after July 1, 1998 and prior to October 1, 1998, except that no special allowance shall be paid any quarter unless the rate determined under § 682.202(a)(2)(v)(A) exceeds 9 percent;

(f) For purposes of this section—
* * * * *

(2) The date on which an obligation is considered to be ''originally issued'' is determined under § 682.302(f)(2)(i) or (ii), as applicable.

(i) An obligation issued to obtain funds to make loans, or to purchase a legal or equitable interest in loans, including by pledge as collateral for that obligation, is considered to be originally issued on the date issued.

(ii) A tax-exempt obligation that refunds, or is one of a series of tax-exempt refundings with respect to a tax-exempt obligation described in § 682.302(f)(2)(i), is considered to be originally issued on the date on which the obligation described in § 682.302(f)(2)(i) was issued.
* * * * *

■ 20. Section 682.305 is amended by:
■ A. In paragraph (c)(2)(v), adding the words ''or a nonprofit organization'' after the words ''governmental entity'' and removing the words ''and 34 CFR, part 80, appendix G'' and adding in their place the words ''and 34 CFR §§ 74.26 and 80.26, as applicable''.
■ B. Revising paragraph (c)(2)(vi).
■ C. In paragraph (d)(1), by adding the word ''rate'' immediately after the word ''interest'' the third time it appears in the sentence.
The revisions read as follows:

§ 682.305 Procedures for payment of interest benefits and special allowance and collection of loan origination fees.

* * * * *

(c) * * *
(2) * * *

(vi) With regard to a school that makes or originates loans, the audit requirements are in 34 CFR § 682.601(a)(7).
* * * * *

§ 682.401 [Amended]

■ 21. Section 682.401 is amended in paragraph (b)(27)(iv) by removing the parentheticals ''(b)(27)(ii)(D)'' and adding, in their place, the parentheticals ''(b)(27)(v)''.

§ 682.402 [Amended]

■ 22. Section 682.402 is amended by:
■ A. In paragraph (e), in the paragraph heading, removing the word ''borrower'' and adding, in its place, the word ''borrow''.
■ B. In paragraph (e)(1)(iii)(A), adding the word ''not'' immediately before the word ''pay''.
■ 23. Section 682.405 is amended by adding new paragraphs (b)(1)(iii) through (vii) to read as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *

(b) * * *

(1) * * *

(iii) For the purposes of this section, the determination of reasonable and affordable must—

(A) Include a consideration of the borrower's and spouse's disposable income and reasonable and necessary expenses including, but not limited to, housing, utilities, food, medical costs, work-related expenses, dependent care costs and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g. $50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination if the monthly reasonable and affordable payment established under this section is less than $50 or the monthly accrued interest on the loan, whichever is greater. However, $50 may not be the minimum payment for a borrower if the agency determines that a smaller amount is reasonable and affordable; and

(C) Be based on the documentation provided by the borrower or other sources including, but not be limited to—

(*1*) Evidence of current income (e.g., proof of welfare benefits, Social Security benefits, child support, veterans' benefits, Supplemental Security Income, Workmen's Compensation, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(*2*) Evidence of current expenses (e.g., a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(*3*) A statement of the unpaid balance on all FFEL loans held by other holders.

(iv) The agency must include any payment made under § 682.401(b)(4) in determining whether the nine out of ten payments required under paragraph (b)(1) of this section have been made.

(v) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(iii)(C) of this section.

(vi) A guaranty agency must provide the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the agency, and explaining any other terms and conditions applicable to the required series of payments that must be made before a borrower's account can be considered for repurchase by an eligible lender. The statement must inform borrowers of the effects of having their loans rehabilitated (*e.g.*, credit clearing, possibility of increased monthly payments). The statement must inform the borrower of the amount of the collection costs to be added to the unpaid principal at the time of the sale. The collection costs may not exceed 18.5 percent of the unpaid principal and accrued interest at the time of the sale.

(vii) A guaranty agency must provide the borrower with an opportunity to object to terms of the rehabilitation of the borrower's defaulted loan.

* * * * *

§ 682.408 [Amended]

■ 24. Section 682.408 is amended in paragraph (c) by adding, after the words ''§ 682.207(b)(1)(ii) and (iv)'', the phrase '', or Stafford Loan proceeds to a borrower in accordance with the requirements of § 682.207(b)(1)(i) and (ii),''.

■ 25. Section 682.601 is amended by:

■ A. Revising paragraph (a)(7).

■ B. Revising paragraph (a)(8).

■ C. In paragraph (a)(9), adding the words ''one or more FFEL program'' before the word ''loans''.

The revisions read as follows:

§ 682.601 Rules for a school that makes or originates loans.

(a) * * *

(7) Must, for any fiscal year beginning on or after July 1, 2006 in which the school engages in activities as an eligible lender, submit an annual compliance audit that satisfies the following requirements:

(i) With regard to a school that is a governmental entity or a nonprofit organization, the audit must be conducted in accordance with § 682.305(c)(2)(v) and chapter 75 of title 31, United States Code, and in addition, during years when the student financial aid cluster (as defined in Office of Management and Budget Circular A–133, Appendix B, Compliance Supplement) is not audited as a ''Major Program'' (as defined under 31 U.S.C. 7501) must, without regard to the amount of loans made, include in such audit the school's lending activities as a Major Program.

(ii) With regard to a school that is not a governmental entity or a nonprofit organization, the audit must be conducted annually in accordance with § 682.305(c)(2)(i) through (iii);

(8) Must use any proceeds from special allowance payments and interest payments from borrowers, interest subsidy payments, and any proceeds from the sale or other disposition of loans (exclusive of return of principal, any financing costs incurred by the school to acquire funds to make the loans, and the cost of charging origination fees or interest rates at less than the fees or rates authorized under the HEA) for need-based grants; and

* * * * *

§ 682.604 [Amended]

■ 26. Section 682.604 is amended in the introductory text to paragraph (h) by removing the words ''or SLS'' and adding, in their place, '', SLS or PLUS''.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 27. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

§ 685.102 [Amended]

■ 28. Section 685.102 is amended in the definition of *Estimated Financial Assistance* in paragraph (b)(1)(ix) by removing the parentheticals ''(2)(iii)'' and adding, in their place, the parentheticals ''(2)(iv)''.

§ 685.200 [Amended]

■ 29. Section 685.200(b) is amended by:

■ A. Removing the paragraph (b)(1) designation.

■ B. Redesignating paragraphs (b)(1)(i), (ii), (iii), (iv), and (v) as paragraphs (b)(1), (2), (3), (4), and (5), respectively.

■ C. In newly redesignated paragraph (b)(4), removing the words ''and Stafford Ford/Loan Program; and'' and adding, in their place, the words ''Stafford/Ford Loan Program or under the Federal Subsidized and Unsubsidized Stafford Loan Program, as applicable; and''.

■ D. In newly redesignated paragraph (b)(5), removing the words ''does not have an adverse credit history in accordance with'' and adding, in their place, the words ''meets the requirements of''.

§ 685.203 [Amended]

■ 30. Section 685.203 is amended by:

■ A. In paragraph (a)(1)(i), removing the word ''originated'' and adding, in its place, the word ''disbursed''.

■ B. In paragraph (a)(1)(ii), removing the word ''originated'' and adding, in its place, the word ''disbursed''.

■ C. In paragraph (a)(1)(iii), removing the word ''originated'' and adding, in its place, the word ''disbursed''.

■ D. In paragraph (a)(2)(i), removing the word ''originated'' and adding, in its place, the word ''disbursed''.

■ E. In paragraph (a)(2)(ii), removing the word ''originated'' and adding, in its place, the word ''disbursed''.

■ F. In paragraph (c)(2)(v), removing the word ''originated'' and adding, in its place, the word ''disbursed''.

■ G. In paragraph (c)(2)(vi)(B), removing the word ''originated'' and adding, in its place, the word ''disbursed''.
■ H. In paragraph (c)(2)(vii), removing the word ''originated'' and adding, in its place, the word ''disbursed''.
■ 31. Section 685.208 is amended as follows:
■ A. By adding a new paragraph (a)(2)(iv).
■ B. By revising paragraph (g)(3).
■ C. By revising paragraph (h)(2).

§ 685.208 Repayment plans.

(a) * * *

(2) * * *

(iv) No scheduled payment may be less than the amount of interest accrued on the loan between monthly payments, except under the income contingent repayment plan or an alternative repayment plan.

(g) * * *

(3) A borrower's payments under this repayment plan may be less than $50 per month. No single payment under this plan will be more than three times greater than any other payment.

(h) * * *

(2) A borrower's payments under this repayment plan may be less than $50 per month. No single payment under this plan will be more than three times greater than any other payment.

* * * * *

§ 685.217 [Amended]

■ 32. Section 685.217 is amended by:
■ A. In paragraph (c)(3)(ii)(B), removing the word ''either''.
■ B. In paragraph (c)(4)(ii)(B), removing the word ''either''.
■ 33. Section 685.220 is amended by:
■ A. In paragraph (c)(1), removing the words ''and to'' immediately before the words ''Federal Consolidation Loans'' and adding, in their place, the words ''and attributable to the portion of'', and by removing the words ''if they are'' and adding, in their place, the words ''that is''.
■ B. In paragraph (d)(1) introductory text, removing the words '', at the time the borrower applies for such a loan,''.
■ C. In paragraph (d)(1)(i) introductory text, removing the word ''The'' and adding, in its place, the words ''At the time the borrower applies for a Direct Consolidation Loan, the''.
■ D. In paragraph (d)(1)(ii) introductory text, adding the words ''At the time the borrower applies for the Direct Consolidation Loan,'' immediately before the words ''on the loans being consolidated,''.
■ E. In paragraph (d)(1)(ii)(A), removing the words ''six-month''.
■ F. In paragraph (d)(1)(ii)(D), removing the words ''Except as provided in paragraph (d)(4) of this section, in'' and adding, in their place, the word ''In''.
■ G. Redesignating paragraphs (d)(1)(iii) and (d)(1)(iv) as paragraphs (d)(1)(iv) and (d)(1)(v), respectively.
■ H. Adding a new paragraph (d)(1)(iii).
■ I. Removing paragraph (d)(4).
■ J. Redesignating paragraph (h)(1) as paragraph (h)(1)(i).
■ K. Redesignating paragraph (h)(2) as paragraph (h)(1)(ii).
■ L. Redesignating paragraph (h)(3) as paragraph (h)(2).

The addition reads as follows:

§ 685.220 Consolidation.

* * * * *

(d) * * *

(1) * * *

(iii) On the loans being consolidated, the borrower is—

(A) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(B) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted.

* * * * *

■ 34. Section 685.300 is amended by revising paragraph (b)(8) to read as follows:

§ 685.300 Agreements between and eligible school and the Secretary for participation in the Direct Loan Program.

* * * * *

(b) * * *

(8) Provide that eligible students at the school and their parents may participate in the programs under part B of the Act at the discretion of the Secretary for the period during which the school participates in the Direct Loan Program under part D of the Act, except that—

(i) A student may not receive a Direct Subsidized Loan and/or a Direct Unsubsidized Loan under part D of the Act and a subsidized and/or unsubsidized Federal Stafford Loan under part B of the Act for the same period of enrollment;

(ii) A graduate or professional student or a parent borrowing for the same dependent student may not receive a Direct PLUS Loan under part D of the Act and a Federal PLUS Loan under part B of the Act for the same period of enrollment;

* * * * *

§ 685.303 [Amended]

■ 35. Section 685.303(e) introductory text is amended by removing the words ''or Direct Unsubsidized Loan'' and adding, in their place, the words '', Direct Unsubsidized, or Direct PLUS Loan''.

* * * * *

[FR Doc. E6–18183 Filed 10–31–06; 8:45 am]

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Federal Register

Wednesday,
November 1, 2006

Part IV

Department of Education

34 CFR Parts 668, 690, and 691

Student Assistance General Provisions; Federal Pell Grant Program; Academic Competitiveness Grant Program; and National Science and Mathematics Access to Retain Talent Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 690, and 691

RIN 1840–AC86

Student Assistance General Provisions; Federal Pell Grant Program; Academic Competitiveness Grant Program; and National Science and Mathematics Access to Retain Talent Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is adopting as final, with changes, interim final regulations in: 34 CFR part 691 for the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs; 34 CFR part 668 (Student Assistance General Provisions); and 34 CFR part 690 (Federal Pell Grant Program). These final regulations are needed to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Reconciliation Act of 2005 (HERA), Pub. L. 109–171, enacted on February 8, 2006, 20 U.S.C. 1070a–1.

These final regulations for the ACG and National SMART Grant programs specify the eligibility requirements for a student to apply for and receive an award under these programs for the 2007–2008 award year. For regulations that will take effect for the 2008–2009 award year and subsequent award years, the Secretary intends to conduct negotiated rulemaking, as required under section 492 of the HEA.

DATES: *Effective Date:* These final regulations are effective July 1, 2007.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), that institutions of higher education (institutions), State educational agencies (SEAs), and local educational agencies (LEAs) that administer title IV, HEA programs may, at their discretion, choose to implement all of the provisions of these final regulations on or after November 1, 2006, including for the 2006–2007 award year. For further information, see ''Implementation Date of These Regulations'' under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: Jacquelyn Butler, U.S. Department of Education, 1990 K Street, NW., Room 8053, Washington, DC 20006–8544. Telephone: (202) 502–7890. Sophia McArdle, U.S. Department of Education, 1990 K Street, NW., Room 8019, Washington, DC 20006–8544. Telephone: (202) 219–7078.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On July 3, 2006, the Secretary published interim final regulations (71 FR 37990) implementing the ACG and National SMART Grant programs added to the HEA by the HERA. The interim final regulations were effective on August 2, 2006. At the time the interim final regulations were published, the Secretary requested public comment on whether changes to the regulations were warranted.

The July 3, 2006, interim final regulations included a discussion of the major issues covered by the regulations. The following list summarizes those issues and identifies the pages of the preamble to the July 3, 2006, interim final regulations on which a discussion of those issues can be found:

The Secretary repeated in the ACG and National SMART Grant regulations several definitions and sections from the Federal Pell Grant Program regulations (71 FR 37990–37991).

The Secretary specified that only students who are United States citizens are eligible to receive ACG and National SMART Grants (71 FR 37991).

The Secretary detailed the requirements for institutions to follow when resolving overpayments to students under the ACG and National SMART Grant programs (71 FR 37991).

The Secretary defined *eligible major* for purposes of the National SMART Grant Program (71 FR 37991).

The Secretary defined *eligible program* for the ACG and National SMART Grant programs (71 FR 37991).

The Secretary specified the duration of student eligibility for the ACG and National SMART Grant programs by academic year (71 FR 37991).

The Secretary delineated the institutional participation requirements, including a requirement that an institution that participates in the Federal Pell Grant Program and offers an educational program that is an eligible program for the ACG or National SMART Grant programs, must participate in the ACG and National SMART Grant programs (71 FR 37992).

The Secretary specified the circumstances under which correspondence courses may be applied toward a student's full-time enrollment status in a noncorrespondence study program (71 FR 37992).

The Secretary delineated the requirements for a student to attend more than one institution and receive an ACG or National SMART Grant (71 FR 37992).

The Secretary specified the procedures that a student must follow when applying for an ACG or National SMART Grant (71 FR 37992).

The Secretary set forth the ACG and National SMART Grant general student eligibility requirements (71 FR 37992).

The Secretary specified the application of an academic year to a student's eligibility for an ACG and National SMART Grant (71 FR 37992).

The Secretary provided the grade point average (GPA) requirements for receiving an ACG or National SMART Grant (71 FR 37993).

The Secretary provided the circumstances under which a student is not eligible for an ACG in the student's first academic year of enrollment if the student previously enrolled in a program of undergraduate education (71 FR 37993–37994).

The Secretary specified the institutional requirements for documenting a student's completion of a rigorous secondary school program of study (71 FR 37994–37995).

The Secretary stated the student requirements for declaring an eligible major in order to be eligible for a National SMART Grant (71 FR 37994).

The Secretary provided guidelines for recognizing a rigorous secondary school program of study for ACG eligibility (71 FR 37994).

The Secretary delineated how eligible majors will be determined and their duration for the National SMART Grant Program (71 FR 37995).

The Secretary specified how the maximum ACG and National SMART Grants will be determined each year (71 FR 37995–37996).

The Secretary stipulated how ACG and National SMART Grant funds are treated in relation to other aid received (71 FR 37996).

The Secretary detailed how an institution calculates an ACG or National SMART Grant payment for a payment period (71 FR 37996).

The Secretary specified how an institution calculates an ACG or National SMART Grant payment for a student who transfers from another institution (71 FR 37996).

The Secretary detailed the requirements that govern an

institution's determination of a student's eligibility for a disbursement of an ACG or National SMART Grant, including provisions regarding changes in a student's GPA, payment prior to receipt of a GPA, payments for nonterm self-paced programs, and, for National SMART Grants, changes to a student's major (71 FR 37996–37997).

The Secretary specified how often an institution may pay a student (71 FR 37997).

Implementation Date of These Regulations: Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulations that an entity subject to the regulations may choose to implement earlier and the conditions under which the entity may implement the provisions early. The Secretary is using the authority granted to her under section 482(c) to designate all of the regulations included in this document for early implementation, beginning with the 2006–2007 award year, at the discretion of each institution, SEA, and LEA.

Analysis of Comments and Changes

The regulations in this document were developed through the analysis of comments received on the interim final regulations published on July 3, 2006. The Secretary invited comments on the interim final regulations, and we received 80 comments.

An analysis of the comments and of the changes in the regulations since publication of the interim final regulations follows. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes.

General Comments

Comments: One commenter was concerned that the ACG and National SMART Grant program requirements would intrude on the academic policies of institutions with regard to credit accrual, calculation of GPA, determinations of academic progress, the treatment of transferred credits, and academic year standing. The commenter believed that permitting institutions to follow current business processes and practices would be in accord with current delivery systems and be clear to students.

Discussion: The Secretary has no intention of interfering with institutions' academic policies and administration. Many of the program requirements about which the commenter is concerned are required by the HEA. The program requirements in the regulations are necessary to deliver ACGs and National SMART Grants to students and do not mandate any changes in institutional academic policies or administration.

Changes: None.

Section 691.2 Definitions

Comments: Several commenters believed that the term *Scheduled Award* is inappropriately applied to the ACG and National SMART Grant programs. The commenters believed that the term is confusing because the term relates to award year eligibility for Federal Pell Grants, which are payable for part-time enrollment, but is being applied to academic year eligibility for ACGs and National SMART Grants, which are payable for full-time enrollment only. Some commenters acknowledged the Secretary's need for a term that could be applied if the grants were subject to ratable reduction, but suggested that the Secretary use a different term. Others believed that the term would introduce unnecessary complexity into the ratable reduction process.

Discussion: The Secretary believes that it is prudent to keep the ACG and National SMART Grant programs as similar to the Federal Pell Grant Program as possible within the constraints of the law. The Secretary believes the term *Scheduled Award* is appropriately applied to all three programs, as it refers to the amount a full-time student can be awarded for a full academic year, as in the Federal Pell Grant Program. Also, the term is appropriate as funds are allocated by award year, and the Secretary establishes the maximum Scheduled Award for that award year. Because the programs require only full-time enrollment as an eligibility criterion, there will not be Payment and Disbursement Schedules published as there are for the Federal Pell Grant Program, but the concept of *Scheduled Award* does apply with regard to such issues as remaining eligibility for transfer students and ratable reductions.

Changes: None.

Comments: Several commenters believed that it was unclear whether proprietary institutions could participate in the ACG and National SMART Grant programs.

Discussion: Under the regulations, an otherwise eligible proprietary institution that offers an *eligible program* as defined in § 691.2 may participate in the ACG and National SMART Grant programs. Section 691.2 specifies that these regulations use the definition of *eligible institution* in 34 CFR part 600. This definition includes institutions of higher education, as defined in § 600.4; proprietary institutions, as defined in § 600.5; and postsecondary vocational institutions, as defined in § 600.6.

Changes: None.

Comments: Several commenters believed that title IV-eligible certificate programs should be included in the definition of an *eligible program.* The commenters argued that, while the law provides that a student must be enrolled or accepted for enrollment in a two- or four-year degree granting institution to be eligible for an ACG, or in a four-year degree granting institution to be eligible for a National SMART Grant, it does not prohibit a student from receiving an ACG or National SMART Grant for attending a certificate program offered by such a degree-granting institution. Many commenters asserted that certificate programs are just as important, if not more important, than degree programs to the future economic growth of States and the nation, and the students just as deserving of these grants as those enrolled in degree programs. In addition, the commenters asserted that many certificate programs attract the same caliber of students as those enrolled in degree programs. Several commenters noted that many students who initially seek certificates subsequently transfer into degree programs. A few commenters suggested including in the definition of *eligible program* certificate programs that are fully transferable into baccalaureate degree programs and certificate programs that are fully acceptable for credit toward an associate's degree. One commenter believed that, if certificate programs were not considered eligible outright, then the definition of an *eligible program* should include one-year programs that are fully acceptable for credit toward an associate's degree. The commenter asserted that, as with a two-year program that is fully acceptable for credit toward a bachelor's degree, the end result is an acceptable two- or four-year degree. One commenter noted that the Department's position is counter to the longstanding policy permitting an institution to designate a program as eligible for all title IV programs.

Several commenters supported including in the definition of an *eligible program* graduate degree programs that include at least three academic years of undergraduate education. One commenter asked the Secretary to clarify a student's eligibility for a National SMART Grant if the student's

status has changed to graduate student because he or she is in the fourth year of a graduate program that contains at least three undergraduate years. One commenter believed that the definition of an *eligible program* should not include a graduate degree program that includes at least three academic years of undergraduate education. The commenter noted that this interpretation appears broader than the requirements for Federal Pell Grant eligibility for programs that include a fifth year that counts toward a graduate degree program, primarily education certification. The commenter suggested that the regulations reference § 668.8, which defines an *eligible program* for other title IV, HEA eligibility.

Discussion: The Secretary has determined that because the HEA limits eligibility to a student enrolled or accepted for enrollment in a two- or four-year degree-granting institution, eligibility must be limited to two- or four-year degree programs, as defined in § 691.2. Therefore, certificate programs do not qualify as eligible programs for ACGs. However, a student in a two-academic-year program acceptable for full credit toward a bachelor's degree may qualify, provided he or she meets other eligibility criteria. Because only students attending four-year institutions are eligible for National SMART Grants and a student must be enrolled in the third and fourth academic years to be eligible, the Secretary believes that a student must be enrolled in at least a bachelor's degree program to be eligible for a National SMART Grant.

Section 401A(c)(3)(C) of the HEA, in defining the term *eligible student*, refers to a student enrolled or accepted for enrollment in specific years of a program of undergraduate education. Although a graduate degree program that includes at least three years of undergraduate education may be an eligible program for ACG and National SMART Grant purposes, under section 401A(c) of the HEA, a student enrolled in such a program is eligible for an ACG or National SMART Grant only while the institution considers the student to be an undergraduate student in accordance with the definition of *undergraduate student* in § 691.2. Once a student is considered to be a graduate student, the student is no longer eligible for a National SMART Grant.

With respect to the definition of an *eligible program*, it is important to define eligibility for students enrolled in a program that leads directly to a graduate degree without first awarding a bachelor's degree. Students enrolled in these programs have a period of undergraduate work for which they should be eligible for ACG and National SMART Grant funds notwithstanding the fact that the programs are structured differently than the typical separate degree programs for undergraduate and graduate programs. For programs that start at the undergraduate level and lead directly to a graduate degree without defining when the student is considered an undergraduate and graduate student, the definition in § 691.5 allows eligible students to receive the appropriate funds from these two grant programs.

Changes: None.

Section 691.6 Duration of Student Eligibility—Undergraduate Course of Study

Comments: Many commenters objected to the Department's decision to base the duration of eligibility on an academic year as defined for purposes of the title IV, HEA programs, as measured in weeks of instructional time and, for undergraduate programs, credit or clock hours. These commenters stated that using the title IV, HEA definition of *academic year* was administratively burdensome and unworkable. Some commenters found the definition of *academic year* in part 691 to be inconsistent with other uses of the term in administering title IV, HEA programs. One commenter believed that only the credit hour portion of the definition of academic year should be used. Commenters also were concerned that a student's title IV, HEA academic year may not match the student's grade level used in the other title IV, HEA programs such as the FFEL and Direct Loan programs. The commenters recommended that the Secretary rely on grade level progression as in the FFEL and Direct Loan programs to determine the first, second, third, or fourth year of a student's enrollment.

Discussion: Under section 401A(c)(3) of the HEA, a student is eligible for an ACG in the student's ''first academic year of a program of undergraduate education'' and ''second academic year of a program of undergraduate education'' and for a National SMART Grant in the ''third or fourth academic year of a program of undergraduate education.'' The term *academic year* is defined in section 481(a)(2) of the HEA as amended by the HERA and explicitly applies to all title IV, HEA programs. The definition provides that an academic year contains a minimum number of weeks of instructional time and a minimum number of credit or clock hours. The Secretary has no flexibility to deviate from this defined term.

Contrary to the assertions of some commenters, the Secretary believes that the interpretation of the term *academic year* in the regulations is not inconsistent with other title IV uses of the term. For example, the HEA provisions governing loan limits provide greater flexibility in this regard than does section 401A for ACGs and National SMART Grants. Specifically, section 428(b)(1)(A) of the HEA sets loan limits based on whether the student has ''successfully completed'' a ''year'' of a program of undergraduate education. The Secretary has interpreted the term ''successfully completed the first year of a program of undergraduate education'' in section 428 to relate to a student's grade level, as determined by the institution. The Secretary did not, in so doing, interpret the term *academic year* as referring to the borrower's year in college. Instead, the Secretary interpreted the entirely different phrase ''first year.'' The Secretary has no flexibility to interpret section 401A in a similar fashion, because, unlike section 428, section 401A specifically uses the statutorily defined term *academic year.* The Secretary cannot limit the definition to the credit hour provisions, as was suggested by the commenters, because the statutory definition of *academic year* requires a minimum number of weeks of instructional time, in addition to the completion of a minimum number of credit or clock hours.

Changes: None.

Comments: Some commenters were concerned with the effect previous enrollment in eligible programs at other institutions and the amount of transfer credits accepted would have on a student's academic progression. One commenter questioned whether academic progression was based on attendance in each eligible program separately, or on the student's attendance in all eligible programs at any institution. Another commenter thought institutions should be allowed to count the credits that are being accepted for a transfer student in the same way credits are counted for other programs, rather than trying to monitor previous credits differently for ACGs and National SMART Grants.

Discussion: For purposes of ACGs and National SMART Grants, a student's academic progression is not based on the student's enrollment in each eligible program separately, but rather is based on all eligible programs in which a student has enrolled over the course of the student's undergraduate education. An institution is responsible for determining whether any previous enrollment by a student as measured in

weeks of instructional time and hours affects the student's eligibility for an academic year. If the student previously received an ACG or National SMART Grant for an academic year, or a portion of an academic year, an institution must consider the student to have completed an eligible program through that academic year, or that portion of an academic year, in weeks of instructional time and hours, unless the institution has information to the contrary. For example, if an institution accepts a transfer student who has received a first-year ACG Scheduled Award, the institution must consider the student to have completed his or her first year of ACG eligibility regardless of the number of transfer credits the institution accepts. To the extent a determination does not conflict with information related to grants previously received, when determining the appropriate academic year for a transfer student, the institution may rely on the transfer credits accepted, along with the estimated number of weeks of instructional time completed in proportion to the academic year of the student's eligible program at the institution to which the student transferred.

Changes: The Secretary has amended § 691.6(a) and (b) to clarify that a student's academic year progression is based on attendance in all eligible programs in which the student has enrolled over the course of the student's undergraduate education.

Comments: Several commenters were concerned with the treatment of Advanced Placement (AP) and International Baccalaureate (IB) credits and transfer credits. One commenter sought clarification of the treatment of AP and IB credits in relation to the requirement that a student must successfully complete the hours of an academic year along with the weeks of instructional time to progress to the next academic year. Some commenters were concerned that including AP and IB credits, along with transfer credits earned while enrolled in high school, would discourage students from taking these courses in high school if they resulted in a student being denied eligibility for a grant.

Discussion: AP or IB credits accepted toward a student's eligible program count toward the completion of the hours of an academic year. Because AP and IB credits are earned based on secondary school courses and subsequent tests, there are no weeks of instructional time in postsecondary education associated with these credits. A student must successfully complete both measures of an academic year to progress to the next academic year. A student who entered college with 24 semester hours of AP credits toward an eligible program may be starting to earn hours toward completing the second academic year but would still be in the first academic year because, for purposes of an ACG or National SMART Grant, no weeks of instructional time while enrolled in an eligible program would have elapsed. Similarly, a student who entered college with 24 semester hours earned as a nonregular student in an undergraduate program while enrolled in high school, or possibly after high school, would also be in the position of starting to earn the second academic year of credits but would still be in the first academic year, because, for purposes of an ACG or National SMART Grant, no weeks of instructional time while enrolled in an eligible program would have elapsed. As a result, students will not be discouraged from enrolling in AP or IB courses in high school or in college courses as a nonregular student while in high school because doing so would not affect their eligibility for an ACG or National SMART Grant.

Changes: None.

Comment: One commenter recommended that ''grade level'' be determined once at the beginning of each award year and that the student maintain that level of eligibility for the year as long as the student is full-time.

Discussion: The Secretary does not agree that the regulations should be changed. Although a single annual determination may simplify the programs' administration, it would deny an otherwise eligible student an additional grant if the student progresses to another academic year during the award year and qualifies for another Scheduled Award.

Changes: None.

Section 691.7 Institutional Participation

Comments: Several commenters believed that the requirement that an institution participate in the ACG and National SMART Grant programs in order to continue its participation in the Federal Pell Grant Program is an infringement on institutional autonomy and is not supported by the statute. Commenters noted that even in the FFEL and Direct Loan programs—where, similar to the Federal Pell Grant, ACG, and National SMART Grant programs, one part of the law encompasses several programs—institutional choice of participation is allowed. Several commenters stated that it was their understanding that the longstanding policy for the title IV, HEA programs allows an institution to designate a particular educational program as eligible for all title IV programs or only for some title IV, HEA programs and recommended that the Secretary continue this policy. With so little lead time for implementation, the commenters had concerns about the impact of the mandatory participation on an institution's administrative capability.

Several commenters objected to the exclusion of an administrative cost allowance for the ACG and National SMART Grant programs, particularly because of the administrative burden of the required rapid implementation. Some commenters believed that the Secretary was acting inconsistently by disallowing the administrative cost allowance for the ACG and National SMART Grant programs, as the Secretary apparently otherwise considers the Federal Pell Grant, ACG and National SMART Grant programs, all of which fall under subpart 1 of part A, to be conjoined, and section 489(a) of the HEA requires the Secretary to pay an administrative cost allowance ''equal to $5 for each student at that institution who receives assistance under subpart 1 of part A.''

Discussion: The Secretary believes that requiring an institution to participate in the ACG and National SMART Grant programs in order to participate in the Federal Pell Grant Program when eligible programs are offered at the institution is consistent with the statute's requirement that the Secretary award grants to Pell-eligible students. The Secretary believes that Congress intended that financially needy students receive all of the grants to which they are entitled under the HEA. Requiring institutional participation, thus, assures that students otherwise eligible for ACGs and National SMART Grants receive their awards.

The Secretary believes that the mandatory participation in the Federal Pell Grant, ACG, and National SMART Grant programs is distinguishable from the flexibility given to institutions to choose whether to participate in the FFEL or Direct Loan Programs because needy students may be eligible for both a Federal Pell Grant and an ACG or a National SMART Grant concurrently, while students may only obtain loans under either the FFEL program or Direct Loan program during a term.

Under the HEA, an institution receives an administrative cost allowance for each student receiving a Federal Pell Grant. Because students receiving ACGs and National SMART Grants are receiving Federal Pell Grants,

the institution does not receive an additional administrative cost allowance.

Changes: None.

Section 691.11 Payments From More Than One Institution

Comments: Two commenters disagreed with the requirement that the same school disburse Federal Pell Grant funds and ACG and National SMART Grant funds when a student is attending more than one institution under a written agreement.

Discussion: The Secretary believes that it is appropriate to require that the same institution that administers a student's ACG or SMART Grant award administer the student's Federal Pell Grant award, because the programs are related in many ways. Several requirements related to the administration of the Federal Pell Grant Program and the ACG and National SMART Grant programs necessitate that the same institution disburse funds from these programs.

Requirements such as that a student receive a Federal Pell Grant disbursement in the same award year in which the student receives an ACG or National SMART Grant, the requirement that an institution pay only on the transaction that is the valid institutional student information record (ISIR) (and only the institution paying the Federal Pell Grant will know which ISIR is the valid one), and the requirements related to reporting of verification records for the Federal Pell Grant Program make this choice necessary. The Secretary is aware that there may be a few situations in which a student is attending more than one institution under a written agreement. However, based on these factors, in the very limited circumstances in which different institutions would choose to administer and disburse funds from different title IV, HEA programs, the regulations under this section appropriately mandate that the institution that chooses to disburse Federal Pell Grant Program funds must also disburse the ACG and National SMART Grant funds.

Changes: None.

Section 691.12 Application

Comments: Several commenters recommended that the 2007–2008 Free Application for Federal Student Aid (FAFSA) should request the information for a student to self-identify that he or she has successfully completed a rigorous secondary school program of study as provided for in § 691.12(b)(2).

Discussion: The Secretary agrees that this information should be included on the FAFSA to the extent practicable. The 2007—2008 electronic FAFSA form (FAFSA on the Web) collects this information, and students are able to provide the necessary information as a part of the application. More than 90 percent of all students apply electronically using FAFSA on the Web or through their institutions. The small minority of applicants using a paper FAFSA currently receive notification by mail or, if an e-mail address is provided, an e-mail that the student may call a toll-free telephone number or go to a web site to provide the necessary information. The 2007–2008 FAFSA has already been approved by OMB under the Paperwork Reduction Act, but we will consider future improvements to the paper FAFSA during the next clearance cycle.

Changes: None.

Comments: Two commenters recommended that the regulations clarify that an institution has the authority to request additional application information, similar to the Secretary's authority.

Discussion: Under section 483(a) of the HEA only the Secretary has the authority to require a student to provide information concerning the student's need and eligibility for the title IV, HEA programs, and the Secretary is required to collect the student's information on the FAFSA. Institutions may not use any additional application data collection beyond the FAFSA to determine a student's title IV eligibility. However, an institution does have the authority under 34 CFR 668.16(f) and 668.54(a)(3) of the Student Assistance General Provisions to require a student to provide any information or documentation necessary to resolve any concerns regarding a student's eligibility or application information as well as the authority to require documentation directly from a cognizant authority regarding the completion of a rigorous secondary school program of study under § 691.15(b)(2)(ii). The Secretary does not believe that these authorities need to be repeated in § 691.12.

Changes: None.

Comments: One commenter recommended that all application requirements appear only in the Federal Pell Grant regulations to eliminate the possibility of conflicting language.

Discussion: Section 691.12, while similar to the Federal Pell Grant Program regulations when possible, does include provisions specific only to the ACG and National SMART Grant programs. The Secretary believes that regulations specific to the ACG and National SMART Grant programs should not be included in the Federal Pell Grant Program regulations, as it may cause confusion.

Changes: None.

Section 691.15 Eligibility To Receive a Grant

Citizenship

Comments: Several commenters objected to the requirement that students must be U.S. citizens in order to qualify for an ACG or National SMART Grant. One commenter stated that preventing permanent residents from receiving a National SMART Grant excludes from consideration more than twenty percent of Federal Pell Grant recipients who are majoring in the National SMART Grant fields of study.

Discussion: Section 401A(c)(1) of the HEA specifies that only U.S. citizens are eligible for ACG and National SMART Grants. The Secretary does not have the authority to change this requirement through regulations.

Changes: None.

Federal Pell Grant Eligibility

Comments: A number of commenters objected to the requirement that an eligible student must be receiving a Federal Pell Grant disbursement for the same payment period in which he or she will receive the ACG or National SMART Grant. They stated that the statute only requires that a student be eligible for a Federal Pell Grant, not receiving a Federal Pell Grant for the same payment period. These commenters believed that the Secretary exceeded her statutory authority and arbitrarily denied a Federal entitlement to otherwise eligible students. The commenters were especially concerned about eligibility for payment periods that cross award years, pointing out that there are various situations in which students who attend college year-round may have exhausted their Federal Pell Grant eligibility yet still have remaining eligibility for an ACG or National SMART Grant. For these Pell-eligible students who have already received a full scheduled Federal Pell Grant award, the receipt of an ACG or National SMART Grant may be of critical importance. In addition, some students attending low-cost institutions may have substantial outside scholarship assistance that reduces their need and resultant ACG or National SMART Grant during the regular fall through spring academic calendar, but may have unmet need during the summer term. Some commenters suggested that it would be more reasonable to define Federal Pell Grant eligibility for this purpose in terms of an expected family contribution (EFC) within the range for

a Federal Pell Grant award for the award year in which the payment period is placed.

Discussion: The Secretary agrees with the commenters that students should not have to receive a Federal Pell Grant during the same payment period to be eligible for an ACG or National SMART Grant. Rather, students who would otherwise be eligible for an ACG or National SMART Grant award but have already exhausted their Federal Pell Grant eligibility for the award year should be eligible to receive an ACG or National SMART Grant award as long as they received a Federal Pell Grant in the same award year.

Change: Section 691.15(a)(2) has been revised to require that a student receive a Federal Pell Grant in the same award year, rather than the same payment period, to be eligible for an ACG or National SMART Grant. The Secretary has made conforming changes in §§ 691.65(a)(2) and 691.80(a) to reflect this change in the ACG and National SMART Grant student eligibility requirements. In addition, the Secretary has also made conforming changes to Subpart E of the Student Assistance General Provisions on verification of student aid application information by amending 34 CFR 668.51, 668.52, 668.54, 668.55, 668.58, 668.59, 668.60, and 668.61. These changes are necessary to clarify that these sections apply to the ACG and National SMART Grant programs to ensure the synchronous administration of these programs.

Full-Time Enrollment

Comments: One commenter expressed concern that the ACG and National SMART Grant regulations do not serve nontraditional students. The commenter believed that assistance from these programs should be available to students who enroll less than full-time.

Discussion: Section 401A(c) of the HEA requires that a student must be enrolled full-time in order to be eligible to receive assistance under the ACG and National SMART Grant programs. The Secretary does not have the authority to change this requirement through regulations.

Changes: None.

Rigorous Secondary School Program of Study Eligibility

Comments: One commenter asked whether a student who has completed his or her secondary school coursework in December but who graduated after January 1, 2005, or 2006, is eligible for an ACG. Another commenter was concerned that students who are not of traditional college age would not be eligible for an ACG.

Discussion: The requirement that a student have successfully completed a rigorous secondary school program of study after January 1, 2006, for a first-year student and after January 1, 2005, for a second-year student in order to receive an ACG is in section 401A(c)(3) of the HEA. The Secretary interprets the statute as requiring a student to have graduated in order to complete a rigorous secondary school program of study. For example, if a student completed the coursework of a rigorous secondary school program in December 2005, but actually graduated from the program after January 1, 2006, the student is eligible to receive a first year ACG. Although in the early years of the ACG program eligible students will be of traditional college age, as time goes by, students who are not of traditional college age may establish eligibility provided they have completed a rigorous secondary school program of study after the dates provided in the statute.

Changes: None.

Grade Point Average

Comments: Several commenters claimed that how and when to compute a cumulative GPA is confusing. One commenter wanted clarification on whether GPA for the student's eligible program meant cumulative GPA, major GPA, or something else. This commenter suggested removing the reference to eligible program if the Secretary intended a cumulative GPA computation. Some commenters supported the Secretary's interpretation of the GPA calculation for National SMART Grant eligibility in § 691.15(c)(3). One commenter pointed out that, for National SMART Grants, the Secretary did not follow the language from section 401A(c)(3)(C)(ii) of the HEA, which provides that GPA is determined in the coursework required for the major, but instead required GPA to be determined for the coursework required for a student's eligible program. The commenter supported the burden reduction in this case, but objected to the regulatory approach. Another commenter believed that the GPA for ACGs should be defined the same way it is for National SMART Grants. Yet another commenter indicated that, for National SMART Grants, institutions should have the flexibility to review academic major and GPA no more frequently than is required by institutions to monitor students under their Satisfactory Academic Progress (SAP) policy, so as to align these two academically related monitoring policies.

Discussion: As discussed in the preamble to the interim final regulations, the Secretary believes that a student's GPA for purposes of eligibility for the ACG and National SMART Grant programs should be calculated using the same standards that are used to calculate GPA for other academic and title IV purposes at the institution. The Secretary does not believe scores on tests in AP, IB, or College Level Examination (CLEP) programs should be converted to grades for any purpose under the ACG or National SMART Grant programs. For National SMART Grants in particular, the Secretary believes that the student must meet the GPA requirement based on all courses required for the student's eligible program, not just those required for the eligible major. The Secretary believes this approach is appropriate because it minimizes institutional burden when determining whether a student meets the GPA requirement and is in accord with other title IV, HEA program requirements related to GPAs. GPA cannot be computed the same way for the ACG Program as it is for the National SMART Grant Program because section 401A(c)(3) of the HEA requires a student to meet the necessary GPA only at the end of the student's first academic year for an ACG, but throughout the student's third and fourth academic years for a National SMART Grant.

The Secretary believes that the monitoring requirements for SAP would not be adequate to determine eligibility for an ACG or National SMART Grant based on cumulative GPA. Under § 668.32(f), although a student may be making satisfactory progress according to the institution's published SAP standards under § 668.16(e), and if applicable, under § 668.34, these standards allow a student to maintain a GPA below the 3.0 (on a 4.0 scale) GPA required to be eligible for an ACG or National SMART Grant. In addition, § 668.16(e)(4) provides that an institution must determine whether a student is making satisfactory progress at the end of each increment, which must not exceed the lesser of one academic year or one-half the published length of the program. In contrast, section 401A(c)(3)(C)(ii) of the HEA requires that a student meet the GPA requirement throughout the student's third and fourth academic year. Review of a student's GPA under the standards set forth in § 668.16(e) would not ensure that a student is meeting the requirements of the National SMART Grant Program.

Changes: None.

Transfer Student GPA

Comments: We received several comments related to the GPA of transfer students. One commenter supported the Secretary's interpretation for transfer GPA calculations. Another commenter asked for clarification on how to treat GPA in the case of transfer students who are admitted for summer and then take a 3-credit summer course. Three commenters requested an option to use the GPA earned at prior colleges as the indicator of sufficient academic performance for payment for the first term at the new college to determine eligibility for an ACG or National SMART Grant because, at many colleges, it would require a significant reengineering of the business process to calculate a GPA based solely on courses accepted toward the program. The commenters believed that cumulative GPA from other institutions should sufficiently demonstrate academic achievement. Another commenter questioned the fairness of the transfer hours GPA policy. The commenter was concerned that students who do poorly at the first institution could transfer to gain ACG or National SMART Grant eligibility, because only the hours accepted by the new institution would be considered and all poor grades excluded. The student who does poorly and stays at the first institution would not be eligible, but the student who transfers could be.

Discussion: The interim final regulations explain that, in the case of a transfer student, for the first payment period, institutions must rely on the grades of the courses from the prior institution accepted toward the student's eligible program. Transfer credits that were awarded through programs such as AP, IB, or CLEP programs should not be converted to grades to determine a student's GPA for purposes of eligibility for an ACG or National SMART Grant in the student's initial payment period after transferring. Once a student has the grades for a payment period at the new institution for coursework taken toward the eligible program, the institution may use the GPA calculated from those grades only, unless there is an institutional policy that a student's GPA at the new institution include transfer grades. While the Secretary agrees that cumulative GPA from a prior institution does serve as an academic performance indicator, the purpose of calculating GPA based solely on coursework accepted toward the eligible program is to ensure student eligibility for the ACG or National SMART Grant programs. Because this GPA calculation is used solely to determine a student's eligibility under these programs for the initial payment period of enrollment, there is no intrusion into institutional grading policy by the Secretary. Finally, the Secretary believes that the transfer hours GPA requirement in § 691.15(d) of the interim final regulations is an equitable means of establishing a transfer student's eligibility. Students who perform poorly overall will likely still transfer in a GPA that is below 3.0. Thus, these students would not be significantly more likely to receive a grant than a student who did poorly but stayed at the same institution.

Changes: None.

Comments: One commenter asked the Secretary to clarify whether an institution is required to follow its standards for academic and title IV, HEA program purposes to determine a transfer student's GPA once it has established eligibility using grades in coursework that the institution accepts for the student's first payment period. For example, if an institution normally does not use grades on transferred credit for SAP or other purposes, does the institution have the option of using such grades for ACG and National SMART Grant recipients only?

Discussion: An institution's policies for the administration of the title IV, HEA programs generally must be the same for all title IV, HEA programs. An institution may not establish a SAP policy that treats grades on transferred credits one way for ACG and National SMART Grant recipients, but another way for recipients of other title IV aid.

Changes: None.

Prior Enrollment in a Postsecondary Educational Program

Comments: Several commenters believed that students who attended postsecondary programs while completing high school should be considered first-year students for ACG eligibility purposes. Two commenters noted that some colleges offer the opportunity for a high school student to earn an associate's degree while completing high school. One commenter stated that it was possible for some of these students to enroll in college programs that only accept some of the credits the student has earned while in high school and, given the institution's definition of an academic year, the student may qualify as a first-year student. The commenter believed that, if the institution was treating the student as a first-year student, the student should be eligible for a first-year ACG.

One commenter asked the Secretary to clarify whether a student who attended a postsecondary institution as part of a State-recognized dual-enrollment program is considered to have been enrolled as a regular student for purposes of determining prior enrollment. A few commenters asked for clarification of the Secretary's policy on prior enrollment. One commenter requested clarification as to whether a student who earned an associate's degree at the same time as he or she earned a high school diploma would be eligible for a second-year ACG, provided the transfer credits were less than what would be required to establish the student as a junior. The commenter also wanted to know if the same student would be eligible for a first-year ACG if he or she did not earn the associate's degree, and the transfer credits were less than what would be required to establish the student as a sophomore.

Several commenters believed these final regulations should reflect guidance from the Department that prior enrollment in an undergraduate program after completion of high school would not affect a student's first year eligibility for an ACG and asked the Secretary to specify an effective date for this guidance.

Discussion: The Secretary agrees that the regulations should be clarified to reflect that only enrollment as a regular student in an eligible program while in secondary school disqualifies a student from receiving a first-year ACG in the student's first academic year of postsecondary education. Under the Department's interpretation of section 401A(c)(3)(A), the term ''previously'' in the phrase ''previously enrolled in a program of undergraduate education'' in section 401A(c)(3)(A)(ii) relates to completion of a rigorous secondary school program of study in section 401A(c)(3)(A)(i).

A student is considered to have been previously enrolled in an eligible program if the student was admitted into that program as a regular student while still enrolled in a secondary school program of study. A regular student is a person who is enrolled or accepted for enrollment at a postsecondary educational institution for the purpose of obtaining a degree, certificate, or other recognized postsecondary educational credential offered by that institution. Therefore, a high school student who was enrolled in a dual-enrollment program with the purpose of obtaining an associate's degree is considered to have been enrolled as a regular student, whether the student actually earned the associate's degree or not. Thus, the student was previously enrolled in an eligible program of undergraduate education and is not eligible for a first-

year ACG. Such a student may be eligible for a second-year ACG if his or her transfer credits were less than what would be required to establish the student as enrolled for the student's third title IV, HEA academic year. However, if an otherwise eligible student took courses that were part of an associate's degree program, but was not enrolled for the purpose of obtaining the associate's degree (*i.e.*, was not a regular student), the student would be eligible for a first-year ACG.

Changes: Section 691.15(b)(1)(ii)(B) has been revised to clarify that a student is not eligible for a first-year ACG if the student was previously enrolled as a regular student in an eligible program while still enrolled in a secondary school program of study.

Documenting Completion of a Rigorous Secondary School Program of Study

Comments: Many commenters expressed concern that the requirements for determining and documenting a student's completion of a rigorous secondary school program of study are too onerous. Several commenters asserted that it is unduly burdensome for institutions to determine by means of a postgraduation high school transcript whether a student has met the definition of a rigorous secondary school program of study under § 691.16(d). Commenters noted that this requirement will be a substantial new undertaking for institutions and they will have to come up with the resources or processes to comply.

Several commenters noted that many community colleges do not collect high school transcripts as part of their admissions process; instead, they use testing to determine readiness. Other commenters noted that the transcripts they are evaluating for ACGs reflect only six or seven semesters of high school coursework. These commenters were concerned that there would be a problem with the timing of admissions decisions and initial financial aid package offers, which occur in the winter or spring prior to enrollment in the fall, because there may be uncertainty about whether a student would complete a rigorous secondary school program of study. The commenters proposed several options to ameliorate the burden of documenting completion of a rigorous secondary school program of study. The commenters suggested adding an option for defining a rigorous secondary school program of study that could be applied at the midpoint of a student's final year in high school, noting that this option would provide greater assurance that the initial financial aid award package for the student would materialize for the student when the final high school transcripts are reviewed and also would provide some measure of administrative ease for colleges when evaluating the final secondary school transcripts. One commenter noted that, in the few cases when the student substantially deviates from the level of academic achievement on the partial transcript, institutions could withdraw the admissions offer. In addition, one commenter suggested adding an option to define a rigorous secondary school program of study as a total of 16 subject years of study within the five defined subject areas. The commenter noted that this definition would reflect a higher subject year count than the current minimum course requirements and a broader curriculum than the AP and IB option demonstrates by requiring certain scores in only two courses. The commenter believed that this alternative would be acceptable if coupled with confirmation of graduation and successful completion of senior year courses. Similarly, one commenter asked that an institution whose academic policy required the same coursework from all admitted students that the Secretary requires for rigorous secondary school programs of study under § 691.16(d) be permitted to assume that an otherwise-eligible student had completed a rigorous secondary school program of study, without requiring the institution to retrieve and review every transcript.

One commenter requested clarification as to whether there is a minimum score required for rigorous programs like AP and, if so, whether it is the minimum required by, for example, the institution or the State. Finally, one commenter asked for clarification as to whether it is necessary to have documentation such as for AP scores in the Financial Aid office or if maintaining documentation at the Admissions or Registrar's Office would be acceptable.

Discussion: The Secretary believes the current regulations appropriately balance statutory requirements with institutional burdens raised by commenters. While the Secretary agrees that there is a concern with respect to the timing of the availability of complete high school transcripts and admissions and financial aid package offers for first-year ACGs, section 401A(c)(3)(A)(i) and (c)(3)(B)(i) of the HEA requires a student to complete, and graduate from, a rigorous secondary school program of study in order to be eligible for an ACG. The Secretary believes that a rigorous secondary school program of study continues through a student's fourth year of high school.

Institutions do not always withdraw admissions offers when a student's final high school transcript differs significantly from the partial transcript. In the case of an ACG, the purpose of the transcript is to document the completion of a rigorous secondary school program of study. The Secretary does not regulate the admissions standards of postsecondary institutions. When a student substantially deviates from the level of academic achievement on the partial transcript, the Secretary cannot regulate to require institutions to withdraw their admissions offers. The Secretary's concern, for purposes of awarding an ACG, would be that the transcript documented the student's completion of a rigorous secondary school program of study.

While institutions are responsible for maintaining documentation at the institution, no specific location is required. If an institution requires the same coursework that the Secretary requires for a rigorous secondary school program of study from an admitted student, and the financial aid office is certain that the transcript or equivalent document confirming completion of a rigorous secondary school program of study is kept at the admissions office or some other part of the institution, it could assume a student met the rigorous secondary school program of study criterion.

Finally, it should be noted that the minimum scores for AP exams were published in § 691.16(d)(5) of the interim final regulations.

Changes: None.

Declaring an Eligible Major

Comments: One commenter believed that the Federal Government should not insert itself into the process of determining when a student declares a major as this action usurps an institution's prerogative to establish its own academic requirements. Another commenter requested clarification on how to document intent to declare an eligible major and how to determine when a student is no longer displaying an intent to declare an eligible major. One commenter suggested that, when an institution's academic requirements do not allow a student to declare an eligible major in time to qualify for a National SMART Grant, the student should be allowed to meet the declaration of eligible major requirement by enrolling in the courses deemed by the institution to be consistent with fulfilling the requirements of an intended eligible major and declaring an intention to

complete a major in an eligible field of study.

Discussion: The Secretary does not agree that the regulations intrude on an institution's prerogative to establish its own academic requirements. In addition, the Secretary believes that documentation of intent to declare an eligible major should be determined by institutional policy. The regulations permit a student to fulfill the requirement that he or she declare an eligible major by enrolling in the courses deemed by the institution to be consistent with fulfilling the requirements of an intended eligible major and declaring an intention to complete a major in an eligible field of study if that is the institutional policy.

Changes: None.

Section 691.16 Recognition of a Rigorous Secondary School Program of Study

Comments: A few commenters supported the multiple options for demonstrating completion of a rigorous secondary school program of study, while other commenters believed that additional secondary school programs of study should be recognized as rigorous. One commenter believed that the recognized State secondary school programs of study should be the single standard for a rigorous secondary school program of study, as it would greatly reduce the administrative burden for institutions. A few commenters believed that the minimum course requirements in § 691.16(d)(2) are too strict and would unfairly eliminate from eligibility students who should be eligible for an ACG. Two commenters believed that some students who meet their admissions requirements but who do not or cannot take the required courses in high school should not be eliminated from eligibility. For example, one commenter noted that advanced students who reduce their high school classes, such as English, during their last year of high school to take college classes may not qualify, even though their secondary school programs of study were quite rigorous. Another commenter gave the example of a student who otherwise qualified as a student who had completed a rigorous secondary school program of study, but who attended a high school that did not offer physics.

One commenter believed that the Secretary should ensure that all approved State programs use wording consistent with the minimum course requirements under § 691.16(d)(2) to the extent possible so that institutions will know that differences are not just semantic. For example, the commenter questioned whether a particular State standard requiring three years of math (at the algebra I level or higher) is intended to be different from the Federal standard requiring three years of math (including algebra I and a higher level course such as algebra II, geometry, or data analysis and statistics). A few commenters were concerned with the lack of uniformity in secondary school course descriptions, noting that States often combine courses into one general course; such as combining algebra I and geometry into a math I course offered over two academic years. The commenters believed that it is unreasonable to expect an institution to be familiar with the graduation requirements for all school districts in order to determine whether a student's courses meet the definition of a rigorous secondary school program of study.

One commenter believed that the rigorous secondary school programs of study established by States and recognized by the Secretary should not be revised annually as significant changes would create confusion for students and undue burden for institutions.

Discussion: Section 401A(f) of the HEA requires the Secretary to recognize at least one rigorous secondary school program of study in each State. As there is no statutory requirement for States to submit programs for recognition, the Secretary believed it was necessary to develop additional options for completion of a rigorous secondary school program of study that would ensure that students in each State have the opportunity to qualify for an ACG. The Secretary believes that the breadth of the options provides the vast majority of students for whom this grant program was intended with sufficient means to demonstrate eligibility for an ACG. To the extent that these options do not provide sufficient means to demonstrate eligibility, the Secretary encourages individuals, high schools, and postsecondary institutions to work together with States so that States may submit additional or revised programs for recognition. As for an advanced student who reduces his or her high school classes to take college classes, the Secretary reminds commenters that completion of college courses that meet the minimum course requirements for a rigorous secondary school program of study count toward completion of a rigorous secondary school program of study if they are accepted toward the student's high school diploma.

The Secretary understands the commenters' concerns with inconsistent wording in State programs and a lack of clarity of course descriptions. However, the Secretary does not believe that it is appropriate to establish a national standard for the wording of State submissions of rigorous secondary school programs of study or course descriptions and recommends that concerns with consistency of wording be taken up with States and secondary schools.

The Secretary believes it is imperative that there be an annual opportunity for States to submit changes to their rigorous programs of study because, to the extent that these changes result in a more rigorous program of study, students from that State graduating in that year would be held to the new standard when applying for an ACG. If, however, these changes result in a less rigorous program of study, the Secretary may deny recognition if the Secretary determines the level of rigor has fallen below the HEA's intended level.

Changes: None.

Comments: A few commenters questioned whether coursework taken prior to high school counts toward the minimum course requirements under § 691.16(d)(2). Specifically, one commenter asked whether a student who is otherwise eligible under § 691.16(d)(2), and who took a foreign language in 8th grade but did not take one later is eligible for an ACG.

Another commenter noted that many students take algebra I prior to high school; therefore, it does not appear on the student's high school transcript. The commenter asked the Secretary to clarify under what circumstances such a student can be considered to have completed algebra I for the minimum mathematics course requirements under § 691.16(d)(2). In particular, the commenter wanted to know if an institution may assume that a student has completed algebra I if it is not included on the transcript, but geometry, algebra II, or calculus are included.

Discussion: If a student completed the secondary school curriculum in a school system in which the high school does not include other secondary school grades, *e.g.*, the high school does not include grade eight or nine, institutions should use their normal processes for determining whether coursework completed in earlier grades is included. However, an institution may make certain assumptions, as appropriate, based on its knowledge of a school system's curriculum. For example, if a high school transcript covering only grades 10–12 shows completion of three years of English, the institution may assume that the student completed a year of English in the ninth grade.

Changes: None.

Comments: One commenter recommended that the minimum science course requirements in § 691.16(d)(2) be changed to recognize other challenging science coursework. The commenter believed that a student who completed physical science in ninth grade, biology in tenth grade, environmental science in eleventh grade and anatomy and physiology in twelfth grade should be considered to have met the minimum science course requirement.

Discussion: The Secretary believes that the minimum coursework requirements in the regulation are appropriate. These standards are patterned after the recommendations for the essentials of a strong curriculum in the National Commission on Excellence in Education's report, A Nation at Risk: The Imperative for Educational Reform available on the Department's Web site at *http://www.ed.gov/pubs/NatAtRisk/index.html.* As previously noted, to the extent that these options do not provide sufficient means to demonstrate eligibility, the Secretary encourages individuals, high schools, and postsecondary institutions to work together with States so that States may submit additional or revised programs for recognition.

Changes: None.

Comments: One commenter recommended that an exception be made to the foreign language course requirement under § 691.16(d)(2) for students with physical limitations such as hearing loss. The commenter noted that, because of language deficits that accompany hearing loss, most deaf students do not take languages other than English as a part of their secondary programs, and few schools for the deaf require or encourage foreign language as a part of their curriculum. The commenter added that even if American Sign Language (ASL) meets the definition of a foreign language, most deaf students are already ASL users and do not need to study it in secondary school.

Discussion: While the Secretary understands the concerns raised by the commenters, she believes that a change to this requirement is unnecessary. The Secretary considers one year of ASL to meet the requirement of one year of a language other than English necessary to meet the minimum course requirements under § 691.16(d)(2). Also, as stated previously, the Secretary believed it was necessary to develop additional options for completion of a rigorous secondary school program of study that would ensure that students in States that did not submit programs for recognition have the opportunity to qualify for an ACG. The Secretary believes that the breadth of the options, including participation in honors programs established by States or completion of AB or IB courses and the earning of a minimum score on the exams for those courses, provides the vast majority of students for whom this grant program was intended with sufficient means to demonstrate eligibility for the ACG.

Changes: None.

Comments: One commenter questioned whether students attending an institution with a ''bridging year'' program and completing their senior year of high school at the postsecondary institution would be eligible for a second year ACG if they do not receive a high school diploma, but instead earn a General Education Development (GED) certificate. One commenter believed that the Department was interpreting the regulations to mean that a student who obtains a GED is automatically ineligible for an ACG or National SMART Grant simply because he or she has obtained a GED. The commenter noted that some home-schooled students, who otherwise qualify as having completed a rigorous secondary school program of study, are advised to take the GED to meet college admission requirements. The commenter asked the Department to make clear that such students who obtain the GED are not automatically ineligible.

Discussion: A student who obtained a GED is not automatically ineligible for an ACG or National SMART Grant. However, a student who obtains a GED in lieu of a high school diploma cannot use the GED, alone, to demonstrate completion of a rigorous secondary school program of study. The Department believes that completion of a GED program alone does not demonstrate the academic achievement of a rigorous secondary school program of study. Such a student can nonetheless qualify for an ACG with a GED by completing one of the rigorous secondary school programs of study recognized under § 691.16.

Changes: None.

Comments: Two commenters asked the Department to clarify which level of IB examination, standard or higher, a student must take to qualify for an ACG. One commenter believed that the regulations confuse the IB Diploma program with a stand-alone IB course. The commenter believed that the regulations should be changed to make clear that a student is considered to have completed a rigorous secondary school program of study if he or she completes and achieves the required minimum score for the exam on at least two IB courses, whether or not they are part of an IB Diploma Program.

Discussion: A score of ''4'' or higher on either the standard level or higher level IB examination for at least two IB courses meets the exam portion of the IB standard for completion of a rigorous secondary school program of study. The Secretary agrees that a student who completes and achieves the required minimum score for the exam on at least two IB courses, whether or not they are part of an IB Diploma Program, should be considered to have completed a rigorous secondary school program of study.

Changes: Section 691.16(d)(4) has been changed to clarify that a student who completes and achieves the required minimum score for the exam on at least two IB courses, whether or not they are part of an IB Diploma Program, is considered to have completed a rigorous secondary school program of study.

Comments: One commenter believed that high scores on standardized achievement tests, such as the SAT and ACT, should be recognized as a rigorous secondary school program of study. The commenters believed that this recognition would be consistent with the inclusion of completion of IB or AP courses with high test scores as rigorous programs because they establish that a student has attained a level of ability in completing his or her secondary school program that is commensurate with completing a rigorous secondary school program of study. The commenter believed that this proposal would reduce burden on institutions, as these test scores are readily accessible. The commenter believed that States and test owners could work together to determine the qualifying test score.

Discussion: The Secretary does not agree that high scores on standardized achievement tests should be recognized as a rigorous secondary school program of study. Unlike the IB and AP tests, there are no specific courses or curriculum that correspond to the standard achievement tests. The Secretary believes that both components are necessary to demonstrate that a student has successfully completed a rigorous secondary school program of study.

Changes: None.

Section 691.17 Determination of Eligible Majors

Comments: Several commenters whose institutions do not offer programs in the eligible majors were concerned that their institutions were excluded from the National SMART Grant Program. In one case, the institution

offered majors with concentrations in the eligible fields. The commenter requested clarification on whether students in these types of programs would be eligible. In another case, the institution offered intensive instruction in math and science as part of a liberal arts degree. Two commenters from this institution requested that this institution be included among eligible institutions and one of these commenters also requested an alternative means for students whose institution does not offer eligible majors to qualify.

Discussion: Section 401A(c)(3)(C) of the HEA requires a student to pursue a major in the physical, life, or computer sciences, mathematics, technology, or engineering (as determined by the Secretary pursuant to regulations); or a critical foreign language in order to be eligible for a National SMART Grant. No alternative categories of majors are indicated in the HEA, and the Secretary does not have the authority to provide alternative categories through regulations in those cases where ineligible majors include concentrations in eligible fields or where liberal arts degrees do not provide eligible majors but do include some intensive instruction in eligible fields.

Changes: None.

Comments: Several commenters addressed the determination of eligible majors. One commenter expressed concern that a number of scientific fields were omitted and that the eligible languages were too narrowly identified for purposes of available undergraduate majors. Another commenter was concerned that Evolutionary Biology was omitted from the eligible majors list. One commenter was concerned that teaching degrees in the science and math fields were not included in the list of eligible majors. Another commenter suggested taking a more thorough look at the majors, especially in areas of national need, such as nursing and public health. Yet another commenter was concerned about the consultation process and thought that the Department should consult directly with organizations such as the National Academy of Sciences and other professional scientific organization to receive input on the determination of eligible majors.

One commenter recommended that, if the Department was unable to supply the list of eligible majors by February 1 preceding the academic year for which determinations of eligibility must be made, the Department should permit an institution to use the current list for first-time determinations of National SMART Grant eligibility. One commenter requested clarification on whether a student would still be eligible for a National SMART Grant if that student's major is removed from the list of approved majors at any time subsequent to the student's first National SMART Grant payment, when the student's payment was based on the student's intent to declare an eligible major as described in § 691.15(c)(2)(i)(B). Finally, one commenter requested clarification on an institution's responsibility to ensure that qualifying majors are being actively pursued.

Discussion: Section 401A(c)(3)(C) of the HEA specifies that a student must pursue a major in the physical, life, or computer sciences, mathematics, technology, or engineering (as determined by the Secretary pursuant to regulations); or a critical foreign language in order to be eligible for a National SMART Grant. Evolutionary Biology was omitted from the original list of eligible majors in error; a revised list including this major and Exercise Physiology, which was also omitted in error, has been posted.

The list of eligible majors will be reviewed annually; however, section 401A(c)(3)(C)(i)(II) of the HEA only requires consultation on the list of critical foreign languages with the Director of National Intelligence. The current list of critical foreign languages was developed in consultation with the Director of National Intelligence as required.

The Secretary will continue to identify a list of eligible majors, including critical foreign languages, annually for an award year to ensure that the most current information is used and will publish the list in time for institutions to plan awards accordingly. Because a student's intent to declare an eligible major as described in § 691.15(c)(2)(i)(B) serves as a proxy for actually declaring an eligible major until the declaration is permitted by an institution, under § 691.17(c) a student would still be eligible if a student's major is removed from the list of approved majors at any time subsequent to the student's first National SMART Grant payment, when the student's payment was based on the student's intent to declare an eligible major as described in § 691.15(c)(2)(i)(B) as well as when the student's payment was based on a declared eligible major under § 691.15(c)(2)(i)(A). Finally, it is the institution's responsibility to ensure that qualifying majors are being actively pursued. The institution is responsible for ensuring this active pursuit of eligible majors and may use any institutional process that it chooses to document this intent.

Changes: None.

Section 691.61 Submission Process and Deadline for a Student Aid Report or Institutional Student Information Record

Comments: One commenter noted that § 691.61(b) cross-referenced §§ 668.60 and 668.164 and that conforming changes were made to § 668.164, but that § 668.60 was not amended to include the ACG and National SMART Grant programs. Therefore, the commenter stated that it is unclear which provisions of § 668.60 apply to the ACG and National SMART Grant programs.

Discussion: The Secretary agrees that the requirements in § 668.60 that apply to the ACG and National SMART Grant programs need clarification.

Changes: Section 668.60 is revised to clarify how it applies to the ACG and National SMART Grant programs.

Comments: One commenter stated that § 691.61(a) appears to place the responsibility on institutions to review the record of all FAFSA filers to identify eligible students rather than just those FAFSA filers identified by the Secretary as potentially eligible students. The commenter suggested that the institution should be allowed to rely on information on the Student Aid Report (SAR) or ISIR as to whether the student is potentially eligible to receive an ACG or National SMART Grant. That is, if the student's SAR or ISIR does not indicate that the student is potentially eligible to receive an ACG or National SMART Grant, the institution would not be required to check its own records or take any other action to determine whether the student is potentially eligible. Rather, the institution could assume that the student is not eligible for the ACG or National SMART Grant and take no further action.

Discussion: To implement the ACG Program, the Secretary has instituted procedures for students to self-identify that they have completed a rigorous secondary school program of study and institutions, at their option, may generally rely on this self-identification process. Most potentially eligible students will have had an opportunity to self-identify through the FAFSA (application) process on this matter and will have a positive indication on their SAR or ISIR with regard to completion of a rigorous secondary school program of study. Under § 691.61, an institution is allowed to rely on the information on a student's SAR or ISIR as to whether the student is potentially eligible for an ACG, unless the institution has

information from another source indicating that the student is potentially eligible. For example, if a student whose SAR or ISIR does not indicate potential eligibility for the ACG (because the student has not yet self-certified as to his or her completion of a rigorous secondary school program of study) informs the institution that he or she has completed such a secondary school program of study, and is thus potentially eligible for the ACG, then the institution must follow up on that information and determine whether the student is eligible for the ACG.

Outside of the eligibility requirements common to both the ACG and the National SMART Grant programs found in § 691.15(a), *i.e.*, the general eligibility requirements from 34 CFR part 668, subpart C; U.S. citizenship; receiving a Federal Pell Grant; and being enrolled full-time, the primary eligibility requirements for receipt of a National SMART Grant relate to pursuit of an eligible major and having the requisite GPA. Information about these eligibility factors will not be found on the SAR or ISIR. Thus, for the National SMART Grant Program, there is not the same issue of determining eligibility for students who do not have eligibility information on their SAR or ISIR as there is for the ACG Program. However, it should be noted that an institution does have to determine whether its students meet the eligibility requirements for the National SMART Grant Program, including which of its students are in eligible majors, and award those students, if otherwise eligible, a National SMART Grant.

Changes: None.

Section 691.62 Calculation of a Grant

Ratable Reduction

Comments: Two commenters expressed concern over the potential for ratable reductions to the awards. One of the commenters inquired as to when award maximums would be considered final for the year. The other commenter offered multiple suggestions for avoiding ratable reductions.

Discussion: Section 401A(d)(1)(B)(ii) of the HEA requires the Secretary to ratably reduce the maximum grant amounts for both programs when the funds available for a given award year are less than the amount needed to fund full awards for all eligible students. The Secretary establishes the ACG and National SMART Grant Scheduled Awards based on the availability of funds appropriated and the anticipated number of eligible students. Scheduled Awards for the ACG and National SMART Grant programs will be announced annually in conjunction with the announcement of Scheduled Award amounts for the Federal Pell Grant Program. Historically, these announcements have occurred between December and February prior to the beginning of the award year.

The Secretary uses multiple data sources to best predict the number of eligible recipients for the ACG and National SMART Grant programs and will monitor disbursements from both programs based on current year reports received from postsecondary institutions. Every effort will be made to avoid ratable reductions. However, if ratable reductions are necessary, the Secretary will notify the community promptly of the new Scheduled Awards and the procedures for ratably reducing the ACG and National SMART Grant awards.

Changes: None.

Packaging

Comments: Several commenters objected to the requirement that the amount of an ACG or National SMART Grant for an academic year, in combination with the student's EFC and any other student financial assistance available to the student, cannot exceed the student's cost of attendance for that academic year. One commenter suggested that grants from both programs be awarded, similar to Federal Pell Grants, without regard to either the student's financial need or the amount of other student financial assistance received. Another commenter proposed that the grants be allowed to replace EFC, but not to exceed the student's cost of attendance when combined with other student financial assistance received.

An additional set of commenters requested that a $300 overaward threshold be added to the ACG and National SMART Grant programs, similar to the threshold allowed under § 673.5(d) for the campus-based programs. One of these commenters also believed that there is confusion over which definition of estimated financial assistance applies to the ACG and National SMART Grant programs. Yet another commenter requested that Chapter 31 veterans' education benefits be excluded from all definitions of estimated financial assistance.

Discussion: The Secretary believes that the packaging requirement is appropriate. As noted in the preamble to the interim final regulations, ACGs and National SMART Grants are need-based grants in that the HEA requires recipients to be eligible for Federal Pell Grants. Section 471 of the HEA defines the amount of need of any student as cost of attendance minus EFC minus estimated financial assistance. Need-based grant assistance cannot replace a family's expected contribution toward a student's postsecondary expenses.

The overaward threshold allowed under the campus-based programs exists to assist institutions with the variations of earnings under the Federal Work-Study program and the estimates institutions must make in projecting utilization of Federal Perkins Loan and Federal Supplemental Educational Opportunity Grant funds as well as the bearing of collections on the availability of funds under the Federal Perkins Loan Program. Because these issues do not exist for the ACG and National SMART Grant programs, an overaward threshold is not necessary.

Regarding the confusion over which definition of *estimated financial assistance* applies to the ACG and National SMART Grant programs, the Secretary agrees that the differences among the three definitions can cause confusion. Because the definitions in §§ 682.200(b) and 685.102(b) have exclusions based on statutory language that does not apply to the ACG and National SMART Grant programs, we intend to modify the language in § 691.62(c) to reference the definition of *estimated financial assistance* in § 673.5(c).

Chapter 31 veterans' education benefits may not be excluded from the definition of *estimated financial assistance* because there is no statutory basis for exclusion of Chapter 31 benefits. Section 428(a)(2)(C)(ii) authorizes only Chapter 30 veterans' education benefits and AmeriCorps benefits and awards to be excluded when determining subsidized loan eligibility. Further, when determining a student's eligibility for an ACG or National SMART Grant, an institution may exclude from estimated financial assistance any portion of a subsidized Federal Stafford Loan that is equal to or less than the amount of the student's Chapter 30 veterans' education benefits and AmeriCorps education awards or post-service benefits.

Changes: Section 691.62(c) has been revised to provide that other student financial assistance is *estimated financial assistance* as defined in § 673.5(c).

Section 691.63 Calculation of a Grant for a Payment Period

Comments: One commenter suggested that the Department review the Federal Pell Grant formulas (and thus, these formulas in § 691.63) to simplify the payment period calculations. The commenter also asked the Secretary to

consider revising the academic year definition for clock hour programs from 30 weeks to 26 weeks due to the change made by the HERA.

Discussion: Given the time constraints associated with the development of regulations resulting from the enactment of the HERA (especially with respect to the implementation of the ACG and the National SMART Grant programs), the Secretary does not believe that it would be prudent to attempt to change formulas used in the calculation of grants for the Federal Pell Grant, the ACG, and the National SMART Grant programs at this time. While such a review and possible revision of those formulas may prove to be beneficial at a later time, the Secretary believes that, since the formulas have been used for a long time and are familiar to the financial aid community, it would be unwise to revise them now when the aid community already has to deal with the changes resulting from the HERA.

To reflect the change made by the HERA, a change to the definition of an *academic year* for programs offered in clock hours was made in previously published regulations. Section 668.3 now contains a definition of an academic year that provides that 26 weeks of instructional time is the minimum number of weeks of instructional time in an academic year for a clock hour program, while retaining 30 weeks of instructional time as the minimum number of weeks of instructional time for a credit hour program. That definition also retains the provision that, under certain conditions, the Secretary may approve an academic year with a minimum of 26 weeks of instructional time for a credit-hour program.

Changes: None.

Comments: One commenter believed that the determination of enrollment status is an eligibility criterion and not a factor in the calculation of the grant payment and that for payments for payment periods calculated under § 691.63(d), commonly referred to as Formula 3, it would seem much simpler just to direct the institution to use the same enrollment status determined for a Federal Pell Grant to determine eligibility for an ACG or National SMART Grant award. The commenter suggested that a cross-reference to the Federal Pell Grant Program regulations could be used to determine a student's enrollment status for an ACG or National SMART Grant.

Discussion: The Secretary believes that the public will benefit from a complete set of regulations to implement the ACG and National SMART Grant programs, rather than providing cross-references to the Federal Pell Grant Program regulations throughout the ACG and National SMART Grant regulations.

Changes: None.

Section 691.75 Determination of Eligibility for Payment

Comments: With respect to the institution's determination about whether a student is pursuing an eligible major at the beginning of a payment period, one commenter suggested changing ''is no longer pursuing a required major'' in § 691.75(b)(3) to ''is not pursuing a required major'' to cover not only those situations in which the student had at one time (before the beginning of the payment period) been pursuing an eligible major, but stopped doing so, but also situations in which the student had never pursued, and is still not pursuing, an eligible major.

Discussion: The Secretary agrees with the commenter's suggestion. With this change, all situations in which the institution determines that the student is not pursuing a required major at the beginning of the payment period will be covered. Then, as the regulations go on to address, if the institution reverses a determination before the end of the payment period, the institution may pay the student a National SMART Grant for the entire payment period.

Changes: Section 691.75(b)(3) and (c) has been revised to change ''is no longer pursuing a required major'' to ''is not pursuing a required major.''

Comments: One commenter asked how the financial aid office should deal with eligibility for a student for a National SMART Grant if the student was one hour short of being a junior at the beginning of one term, but reached junior status by the next term. The commenter asked if the aid office should start paying such a National SMART Grant in the middle of the academic year. The commenter also asked whether the aid office should pay a student for the spring and summer terms only, if the student does not have at least a 3.0 GPA before fall starts but does before spring. The commenter also asked about the National SMART Grant eligibility of a student who changed to an ineligible major. The commenter asked whether the aid office would stop paying the student at the point at which the student changed to an ineligible major or would retroactively take the National SMART Grant away from the student entirely.

Another commenter asked what should be done if a student has a 3.0 GPA when the fall term starts but drops below that average after (the previous term's) grades are posted. The commenter also wanted to know what would happen if the student's GPA was back up to at least 3.0 by the spring term. Another commenter asked how grades of incomplete are to be considered with respect to the GPA requirement. Another commenter asked for clarification of how an institution should determine GPA and academic year level when the institution first becomes aware of a student's prior postsecondary attendance after the student's transfer credits for fall attendance (for which no aid was received) are received late in the spring semester.

Finally, several commenters raised an issue related to eligible students who, in fact, did meet during the payment period in question with the eligibility requirements for an ACG or a National SMART Grant associated with the GPA or with the declaration of an eligible major, but for whom the institution erred when it determined that the students failed to meet those requirements and did not discover its mistake until after the end of that payment period. The commenters suggested that these students should receive a grant for the completed payment period.

Discussion: Section 691.75 addresses the factors that an institution must consider to determine that a student is eligible each time it makes a payment to a student of an ACG and a National SMART Grant. Section 691.75(a)(1) provides that the institution has to determine that the student meets the eligibility criteria listed in § 691.15. For a National SMART Grant, one of those eligibility criteria is that the student be in the third or fourth academic year of an eligible program. (Note that the third academic year of the student's program is not necessarily synonymous with the junior year of the student's program.) Nevertheless, if the student is one hour short of starting his or her third academic year at the beginning of a term (*e.g.*, the fall term), but begins the third academic year by the next term (the spring term) (presumably at the beginning of that term), then the student, if otherwise eligible, qualifies for a National SMART Grant for that spring term. The student would not qualify for a National SMART Grant payment for the fall term in this example but may qualify for any remaining second-academic-year ACG eligibility for this fall term. The institution would start paying the National SMART Grant in the middle of the institution's year, *i.e.*, at the beginning of the spring term. This issue is further clarified in § 691.63(h), which

provides that, in the case of a payment period with two academic years, an institution must calculate the payment for the payment period using the ACG or National SMART Grant Scheduled Award of the academic year being completed.

With regard to a student who does not have at least a 3.0 GPA (for the first academic year for a second-year ACG, and for the most recently completed payment period in the student's eligible program for a National SMART Grant) before fall starts, but does before spring, § 691.75(b)(2) and (3) indicates that the student, if otherwise eligible, can receive an ACG or National SMART Grant for the entire fall term if the institution determines that the student has the required minimum 3.0 GPA before the end of the fall term. On the other hand, if the institution does not make the determination that the student has at least a 3.0 GPA until after the end of the fall term, then, under § 691.75(c), the student cannot receive an ACG or National SMART Grant for the fall term.

With respect to an eligible student who is receiving a National SMART Grant, but then changes to an ineligible major (and does not change back to an eligible major), the institution may not make any additional National SMART Grant payments (for the payment period in which the change of majors took place or for future payment periods) to the student once the student has changed to the ineligible major, regardless of whether that change is made at the end of a payment period or during the payment period. However, any payments that were made to an eligible student before he or she changed to an ineligible major are legitimate payments and do not have to be repaid.

When a student has a 3.0 GPA when the fall term begins, but that GPA at that time does not include grades from the previous term, the institution may not have all of the information it needs to determine whether the student is eligible for an ACG or National SMART Grant. For the ACG for the second academic year of the student's eligible program, the HEA requires that the student have at least a 3.0 GPA for the first academic year of his or her eligible program. For the National SMART Grant, the requirement is that the student have at least a 3.0 GPA for his or her courses in the eligible program up through the most recently completed payment period (term in this example). For either program, if there are courses that have been taken in the previous term that are part of the coursework for which the student must have at least a 3.0 GPA and grades for those courses are not yet available, § 691.75(d) provides that the institution may make one interim disbursement for a payment period. However, when those grades become available, they must be factored into the GPA. At that time, if the student does not have the required GPA, the payment made by the institution before the student's GPA could be calculated becomes an overpayment that must be repaid by the institution. These provisions would apply, as well, to any applicable coursework for which the student initially received a grade of incomplete.

If information about a student's transfer of credit from another institution comes to the institution's attention late in, or after, a term, the institution may have already made a determination of eligibility that did not consider that information. If that information affects a student's GPA or academic year level and thus could affect the student's eligibility for an ACG or National SMART Grant, the institution must factor it into its determination of the student's eligibility and take appropriate action.

Regarding erroneous determinations by an institution that, for a particular payment period, an otherwise eligible student did not have the required GPA or had not declared an eligible major, if such a student in fact had satisfied those requirements during that payment period, that student would be eligible for a payment of the applicable grant regardless of whether the institution discovered its mistake before or after the completion of that payment period.

Section 691.78 Method of Disbursement—By Check or Credit to a Student's Account

Comments: Several commenters noted that § 691.78(b), which addresses the return of funds paid to a student who leaves the institution before the first day of classes, seems duplicative of § 668.21. In addition, the commenters also found references to award year in § 691.78(c) confusing, as ACG and National SMART Grant awards are determined on an academic year basis.

Discussion: The Secretary agrees that § 691.78(b) is redundant. The use of the term ''award year'' in § 691.78(c) is appropriate even though a particular student's eligibility is determined based on the student's completion of an academic year not an award year. Funds for the ACG and National SMART Grant are appropriated for an award year, which is separate and distinct from the eligibility determination. The language in § 691.78(c) addresses what actions must occur when delivering funds to a student during an award year.

Changes: The Secretary has removed § 691.78(b) and made a conforming change by removing the provision from § 690.78 of the Federal Pell Grant Program regulations.

Section 691.80 Redeterminations of Eligibility for a Grant Award

Comments: One commenter asked the Secretary to clarify how ACG and National SMART Grant funds should be handled if a student receives the funds prior to dropping to a less than full-time enrollment status. Specifically, the commenter wanted to know whether the institution must remove the funds from the student's account, or prorate the funds as an institution would be required to do with Federal Pell Grant funds.

Discussion: According to § 691.80(b), when there is a change in the student's enrollment status, the institution's policy for recalculating awards takes effect. For example, an institution's policy may establish a recalculation date at the end of its drop-add period (also known as a census date) by which the student's enrollment status for the term will be finalized. The enrollment status is, thus, defined as the number of credit hours the student is enrolled in at the census date. Under such a policy, if a student was enrolled full-time at the beginning of the term but, by the census date, the student had dropped to half-time enrollment status, the institution must use the half-time enrollment status to determine eligibility for the ACG or National SMART Grant. Because the HEA requires full-time enrollment, the student in this example would not be eligible for the ACG or National SMART Grant for that term, and any ACG or National SMART Grant funds disbursed for that term would have to be repaid by the student. On the other hand, if the student dropped below full-time enrollment after the recalculation date, his or her ACG or National SMART Grant award would be based upon full-time enrollment.

Situations in which information is received after a determination of eligibility has been made are governed by § 668.16(f), which states that an institution must identify and resolve discrepancies that arise from the institution's receipt of any information that has bearing on a student's eligibility for funds under the title IV, HEA programs. If that information affects the amounts and or types of title IV aid the student is receiving or may be eligible to receive, the institution must take appropriate actions.

Changes: None.

Section 691.83 Submission of Reports

Comments: Several commenters asked the Secretary to clarify whether the Secretary intends to include the academic year level of a grant in the payment data submitted by institutions. The commenters noted that, without this information in the National Student Loan Data System (NSLDS), an institution would not know whether a transfer student had already received grant funds at a given award level, as the grant level will not always be apparent from the award (for example, if the grant amount has been reduced to avoid an overaward).

Discussion: In addition to data similar to what is submitted to the Secretary through the Common Origination and Disbursement (COD) system, institutions will also provide the academic year for the award for both the ACG and National SMART Grant programs. This information will be available to institution through the NSLDS, which will reflect the academic year completed by the student.

Institutions will also provide information on the rigorous secondary school program of study that was used to confirm eligibility for an ACG and the student's academic major (using CIP codes) for a National SMART Grant. Specifications for this COD reporting has been posted to the Department's Information for Financial Aid Professionals Web site.

Changes: None.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Under section 3(f) of Executive Order 12866, the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(4) of Executive Order 12866. The Secretary accordingly has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

Need for Federal Regulatory Action

As noted above, these final regulations are needed to implement two programs created in the HERA. The ACG program provides need-based grants to encourage students to complete rigorous secondary school programs of study. The National SMART Grant Program provides need-based grants to encourage students to major in certain scientific and technical fields or foreign languages deemed vital to national security. Section 401A(c)(3)(B)(ii) and (3)(C)(ii) of the HEA specifically requires the Secretary of Education to issue regulations implementing these programs.

The Secretary had limited discretion in implementing these grant programs; the number of recipients and aid awarded is largely driven by statutory eligibility requirements such as that students be eligible to receive a Federal Pell Grant, be United States citizens, attend two-or four-year degree-granting institutions on a full-time basis, and, in some cases, maintain a 3.0 GPA. The Secretary has exercised discretion in the areas of program eligibility relating to the definition of a rigorous secondary school program of study in the case of the ACG Program and, for the National SMART Grant Program, the definition of qualifying fields of study. In both these cases, the Secretary has regulated to reflect clear congressional intent.

Benefits

By facilitating the implementation of these new programs, these final regulations will support the provision of over $4 billion in need-based student aid over the next five years. The ACG Program will benefit society by providing an incentive for students to complete a rigorous secondary school program of study, which research indicates increases the likelihood of successful completion of postsecondary education. The National SMART Grant Program will encourage students to major in technical fields or critical foreign languages. In the case of technical fields, these majors will benefit both national and individual competitiveness, increasing the nation's economic security. With respect to foreign languages, increases in the number of fluent speakers of Arabic, Farsi, Uzbek, and other critical languages would broaden understanding of important cultures and contribute significantly to ongoing efforts to combat international terrorism. In addition, awards under both programs serve to reduce a student's net cost of education. Research indicates that reduction in a student's cost of education correlates with increased student persistence and degree attainment. Data consistently show that postsecondary degree holders have substantially higher lifetime earnings than high school graduates.

Costs

These programs are supported with $4.5 billion in mandatory appropriations: $790 million for fiscal year 2006, $850 million for fiscal year 2007, $920 million for fiscal year 2008, $960 million for 2009, and $1,010 million for 2010. Funds not expended in one year may be carried forward to support awards in the subsequent year. If the estimated number of recipients exceeds the available funding for a given fiscal year, award levels would be ratably reduced.

TABLE 1.—ESTIMATED PROGRAM PARTICIPATION

	Estimated number of recipients	Estimated avg. award	Total amount of aid awarded (expected) (in millions)
Award Year 2006–2007:			
AC Grants—1st year	310,000	$657	$200
AC Grants—2nd year	110,000	1,245	140
National SMART Grants—3rd year	40,000	3,718	150

TABLE 1.—ESTIMATED PROGRAM PARTICIPATION—Continued

	Estimated number of recipients	Estimated avg. award	Total amount of aid awarded (expected) (in millions)
National SMART Grants—4th year	40,000	3,875	160
Award Year 2007–2008:			
AC Grants—1st year	330,000	682	230
AC Grants—2nd year	130,000	1,255	160
National SMART Grants— 3rd year	40,000	3,718	150
National SMART Grants—4th year	40,000	3,875	160

The average awards displayed in Table 1 are less than the statutory maximum awards due to the cost of attendance limit on ACG and National SMART Grant awards. In addition, average awards also reflect students who are eligible for an ACG or National SMART Grant for less than the full award year. Figures in Table 1 may not add due to rounding.

Because these programs are title IV, HEA programs and eligibility for these programs is linked to Federal Pell Grant eligibility, participating institutions must already meet Federal student aid institutional eligibility requirements. In addition, the delivery system and many program operational requirements for the new programs are patterned after those that institutions are already using for Federal Pell Grants. Accordingly, institutions wishing to participate in the new programs have already absorbed most of the administrative costs related to implementing these final regulations. Marginal costs over this baseline are primarily related to initial, and ongoing eligibility determinations are minimal. Most data needed to make these determinations, such as student citizenship, full-time status, major, and GPA, are generally already available to institutions.

In response to the public comment on the interim final regulations, the Department has made changes in these final regulations. The only significant change with economic impact is to permit students to receive an ACG or National SMART Grant for a payment period during which they are not receiving a Federal Pell Grant. This change will enable 32,000 more students to receive grants in 2006. It will also increase the cost of the programs by $27 million in 2006 and by $145 million between 2006–2010. The Secretary requested comments on the regulatory impact analysis in the interim final regulations, but received none.

Assumptions, Limitations, and Data Sources

Because these final regulations largely restate statutory requirements that would be self-implementing in the absence of regulatory action, cost estimates provided above reflect a prestatutory baseline in which the ACG and National SMART Grant programs do not exist. Given the limited data available, estimates for 2007–2008 do not assume program benefits will induce increased student participation. Costs have been quantified for only two years because the Secretary plans to revise these final regulations through negotiated rule-making, after which more comprehensive cost analyses for subsequent years will be developed.

In developing these estimates, data from the 2004 National Postsecondary Student Aid Survey was used to derive the percentage of students meeting initial eligibility requirements for ACG and National SMART Grant awards, including enrollment status, Federal Pell Grant eligibility, citizenship, academic major, and GPA. The 1994 National Education Longitudinal Study, 1996 Beginning Postsecondary Student Survey, and 2000 National Assessment of Educational Progress High School Transcript Study were used to derive the percentage of students otherwise eligible for an ACG who had successfully completed a rigorous secondary school program of study. All these studies were conducted by the National Center for Education Statistics.

Regulatory Alternatives Considered

In defining eligibility requirements, particularly those related to rigorous secondary school programs of study, these final regulations strike a balance between complete State discretion, which could create confusion and regional inequalities and result in overly generous criteria that dramatically reduce award levels, and an overly prescriptive national determination that would significantly alter the traditional State role in determining secondary school curricula.

More specifically, in considering the definition of a rigorous secondary school program of study, the Secretary considered a variety of combinations of coursework and other possible measures. For example, at the time of the release of the President's fiscal year 2007 budget, preliminary estimates assumed a rigorous program of study would consist of four English, three social science, three science, three mathematics, and two foreign language courses. Under this scenario, an estimated 439,000 students would receive $400 million in ACG awards in 2006–2007—compared with $340 million to 420,000 students under these final regulations. In subsequently considering the recognition of rigorous secondary school programs, the Secretary determined it would be more appropriate to include as one option secondary school programs of study with specific coursework requirements, such as, for mathematics, algebra I and a higher level course such as algebra II, geometry, or data analysis and statistics, and for science, at least two years with one year each of biology, chemistry or physics, as well as an advanced or honors program. In addition, the Secretary included students who complete secondary school programs and receive specified scores on the Advanced Placement or International Baccalaureate examinations. The latter provisions offer additional flexibility to individual students attending private or home schools.

This approach is consistent with the programs' statutory purpose of creating incentives for certain student behaviors. To achieve this purpose, the grant level must be large enough to provide a meaningful incentive, yet at the same time, program flexibility must be sufficient to allow States and participating institution to recognize broad differences in secondary school and higher education academic structures.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated

with information collection requirements. See the heading Paperwork Reduction Act of 1995.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the increase in Federal student aid payments as a result of these final regulations. All expenditures are classified as transfers to postsecondary students.

TABLE 2.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[in millions]

Category	Transfers
Annualized Monetized Transfers.	$694.
From Whom To Whom?	Federal Government To Postsecondary Students.

Paperwork Reduction Act of 1995

We received no comments on the Paperwork Reduction Act portion of the interim final rule.

OMB has approved the information collection requests identified in the interim final regulations and has assigned the following numbers to the collection of information in these final regulations: 1845–0001, 1845–0039, 1845–0078.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Numbers: 84.375 Academic Competitiveness Grants; 84.376 National SMART Grants)

List of Subjects in 34 CFR Parts 668, 690, and 691

Colleges and universities, Elementary and secondary education, Grant programs—education, Student aid.

Dated: October 25, 2006.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 668, 690, and 691 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.2 [Amended]

■ 2. Section 668.2 is amended in paragraph (b) in the definition of ''Valid institutional student information report'' by removing the word ''report'' and adding in its place the word ''record'' each place it appears.

§ 668.51 [Amended]

■ 3. Section 668.51 is amended in paragraph (a) by adding the words ''ACG, National SMART Grant,'' immediately after the words ''Federal Pell Grant,''.

■ 4. Section 668.52 is amended by:

■ A. Revising the definition of ''Institutional student information report''.

■ B. Revising the definition of ''Student aid application.''

The revisions read as follows:

§ 668.52 Definitions.

* * * * *

Institutional student information record as defined in 34 CFR 690.2 and 691.2 for purposes of the Federal Pell Grant, ACG, National SMART Grant, Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, and William D. Ford Federal Direct Loan programs.

Student aid application means an application approved by the Secretary and submitted by a person to have his or her EFC determined under the Federal Pell Grant, ACG, National SMART Grant, Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, or William D. Ford Federal Direct Loan programs.

* * * * *

§ 668.54 [Amended]

■ 5. Section 668.54 is amended in paragraph (a)(2)(i) by adding the words ''ACG, National SMART Grant,'' immediately after the words ''Federal Pell Grant,''.

§ 668.55 [Amended]

■ 6. Section 668.55 is amended by:

■ A. In the introductory text to paragraph (c), adding the words ''ACG, National SMART Grant,'' immediately after the words ''Federal Pell Grant,''.

■ B. In paragraph (c)(1), adding the words '', ACG, National SMART Grant,'' immediately after the words ''Federal Pell Grant''.

■ C. In paragraph (c)(2), adding the words '', ACG, National SMART Grant,'' immediately after the words ''Federal Pell Grant''; and by removing the punctuation '','' after the word ''campus-based''.

§ 668.58 [Amended]

■ 7. Section 668.58 is amended by:

■ A. In paragraph (a)(1)(i), adding the words '', ACG, National SMART Grant,'' immediately after the words ''Federal Pell Grant''.

■ B. In paragraph (a)(2)(i), adding the words ''ACG, National SMART Grant, or'' immediately after the words ''Federal Pell Grant,''.

■ C. In paragraph (a)(2)(ii)(A), adding the words ''ACG, National SMART Grant,'' immediately after the words ''Federal Pell Grant,''.

§ 668.59 [Amended]

■ 8. Section 668.59 is amended by:

■ A. In the introductory text to paragraph (a), removing the words ''Federal Pell Grant Program'' and adding, in their place, the words ''Federal Pell Grant, ACG, and National SMART Grant programs''.

■ B. In paragraph (a)(1)(i), adding the words ‘‘, ACG, or National SMART Grant’’ immediately after the words ‘‘Federal Pell Grant’’.

■ C. In paragraph (a)(2) introductory text, adding the words ‘‘, ACG, or National SMART Grant’’ immediately after the words ‘‘Federal Pell Grant’’.

■ D. In the introductory text to paragraph (b), removing the words ‘‘Federal Pell Grant Program’’ and adding, in their place, the words ‘‘Federal Pell Grant, ACG, and National SMART Grant programs’’.

■ E. In paragraph (b)(1), adding the words ‘‘, ACG, or National SMART Grant’’ immediately after the words ‘‘Federal Pell Grant’’.

■ F. In paragraph (b)(2)(i)(B), adding the words ‘‘, ACG, or National SMART Grant’’ immediately after the words ‘‘Federal Pell Grant’’.

■ G. In paragraph (b)(2)(ii)(A), adding the words ‘‘, ACG, or National SMART Grant’’ immediately after the words ‘‘Federal Pell Grant’’.

§ 668.60 [Amended]

■ 9. Section 668.60 is amended by:

■ A. In the introductory text to paragraph (c), removing the words ‘‘Federal Pell Grant Program’’ and adding, in their place, the words ‘‘Federal Pell Grant, ACG, and National SMART Grant programs’’.

■ B. In paragraph (c)(1), adding the words ‘‘and 691.61’’ immediately after the regulatory citation ‘‘690.61’’.

■ C. In paragraph (c)(2)(i), adding the words ‘‘, ACG, or National SMART Grant’’ immediately after the words ‘‘Federal Pell Grant’’.

■ D. In paragraph (c)(2)(ii), adding the words ‘‘, ACG, or National SMART Grant’’ immediately after the words ‘‘Federal Pell Grant’’.

■ E. In paragraph (d) by adding the words ‘‘ACG, or National SMART Grant program assistance,’’ immediately after the words ‘‘Federal Pell Grant,’’.

§ 668.61 [Amended]

■ 10. Section 668.61 is amended in paragraph (a)(2)(ii)(B) by adding the words ‘‘ACG, National SMART Grant,’’ immediately after the words ‘‘Federal Pell Grant,’’.

PART 690—FEDERAL PELL GRANT PROGRAM

■ 11. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

§ 690.78 [Amended]

■ 12. Section 690.78 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

PART 691—ACADEMIC COMPETITIVENESS GRANT (ACG) AND NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT GRANT (NATIONAL SMART GRANT) PROGRAMS

■ 13. The authority citation for part 691 continues to read as follows:

Authority: 20 U.S.C. 1070a–1, unless otherwise noted.

■ 14. Section 691.6 is amended by revising paragraphs (a) and (b) to read as follows:

§ 691.6 Duration of student eligibility—undergraduate course of study.

(a) A student is eligible to receive up to one ACG Scheduled Award during each of the student’s first and second academic years of enrollment over the course of the student’s undergraduate education in all eligible programs as defined in § 691.2(d).

(b) A student is eligible to receive up to one National SMART Grant Scheduled Award during each of the student’s third and fourth academic years of enrollment over the course of the student’s undergraduate education in all eligible programs as defined in § 691.2(d).

* * * * *

■ 15. Section 691.15 is amended by:

■ A. In paragraph (a)(2), removing the words ‘‘for the same payment period’’ and adding, in their place, the words ‘‘in the same award year’’.

■ B. Revising paragraph (b)(1)(ii)(B).

■ C. In paragraph (b)(1)(iii)(C), removing the words ‘‘at least’’.

■ D. In paragraph (c)(3), removing the words ‘‘at least’’.

The revision reads as follows:

§ 691.15 Eligibility to receive a grant.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) Has not previously been enrolled as a regular student in an eligible program while enrolled in high school;

* * * * *

■ 16. Section 691.16 is amended in paragraph (d)(4) by removing the words ‘‘in the’’ and adding, in their place, the words ‘‘from an’’.

§ 691.62 [Amended]

■ 17. Section 691.62 is amended in paragraph (c) by removing the regulatory citations ‘‘, 682.200(b), and 685.102(b)’’.

§ 691.65 [Amended]

■ 18. Section 691.65 is amended in paragraph (a)(2) by removing the words ‘‘for the same payment period’’ and adding, in their place, the words ‘‘in the same award year’’.

§ 691.75 [Amended]

■ 19. Section 691.75 is amended by:

■ A. In paragraph (b)(3), removing the words ‘‘is no longer pursuing’’ and adding, in their place, the words ‘‘is not pursuing’’.

■ B. In paragraph (c), removing the words ‘‘is no longer pursuing’’ and adding, in their place, the words ‘‘is not pursuing’’.

§ 691.78 [Amended]

■ 20. Section 691.78 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

■ 21. Section 691.80(a) is revised to read as follows:

§ 691.80 Redetermination of eligibility for a grant award.

(a) Change in receipt of Federal Pell Grant. If, after the beginning of an award year, a student otherwise eligible for an ACG or a National SMART Grant begins or ceases to receive a Federal Pell Grant in that award year, the institution must redetermine the student’s eligibility for an ACG or a National SMART Grant in that award year.

* * * * *

[FR Doc. E6–18197 Filed 10–31–06; 8:45 am]

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Federal Register

Wednesday,
November 1, 2006

Part V

Department of Housing and Urban Development

24 CFR Part 291

Disposition of HUD-Acquired Single Family Property; Good Neighbor Next Door Sales Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR–4712–F–03]

RIN 2502–AH72

Disposition of HUD-Acquired Single Family Property; Good Neighbor Next Door Sales Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for HUD's new Good Neighbor Next Door (GNND) Sales Program. The requirements for the new program are closely modeled on those for HUD's Officer Next Door (OND) and Teacher Next Door (TND) Sales Programs. The GNND Sales Program replaces and builds upon the success of these two existing sales programs. The purpose of the GNND Sales Program is to improve the quality of life in distressed urban communities by encouraging law enforcement officers, teachers, and firefighters/emergency medical technicians, whose daily responsibilities represent a nexus to the needs of the community, to purchase and live in homes in these communities. This final rule follows publication of a September 8, 2005, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* December 1, 2006.

FOR FURTHER INFORMATION CONTACT: Laurie A. Maggiano, Acting Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A vital part of HUD's mission is to promote homeownership and the revitalization of cities. In support of these goals, HUD permanently established the OND Sales Program on July 2, 1999 (64 FR 36210). The OND Sales Program enables full-time law enforcement officers to purchase HUD-acquired homes located in revitalization areas at a 50 percent discount from list prices. The success of the OND Sales Program led to the establishment of the TND Sales Program on December 7, 1999, which encourages eligible teachers to purchase HUD-acquired homes located in HUD-designated revitalization areas at a 50 percent discount from list prices.

In June 2004, HUD completed an evaluation of the success of the OND and TND Sales Programs. The evaluation supported the view that an influx of police officers as homeowners results in a decrease in crime in a target neighborhood. HUD's evaluation of the OND/TND Sales Programs is available for download at *www.huduser.org.*

II. The September 8, 2005, Proposed Rule and Federal Register Notice

On September 8, 2005, HUD published a proposed rule to establish regulations for a new GNND Sales Program to replace and build upon the success of the OND and TND Sales Programs (70 FR 53479). While many of the requirements in the GNND Sales Program are similar, HUD proposed various modifications and improvements to the OND and TND requirements. The objective of the GNND program is to improve the quality of life in distressed urban communities by encouraging law enforcement officers, teachers, and firefighters/emergency medical technicians, whose daily responsibilities reflect a high level of public service commitment and represent a nexus to the needs of the community, to purchase and live in homes in these communities. An overview of the GNND Sales Program and HUD's proposed regulatory changes can be found in the preamble to the September 8, 2005, proposed rule.

Also on September 8, 2005, in addition to the publication of the proposed rule, HUD also published a notice announcing the eligibility of firefighters and emergency medical technicians to immediately participate in the OND Sales Program (70 FR 53488). This expansion of the OND Sales Program was designed to help more firefighters and emergency medical technicians become homeowners and to advance the goals of the program to accelerate the revitalization of America's cities by promoting the integration of dedicated role models and mentors into the community. The September 8, 2005, notice authorized firefighters and emergency medical technicians to participate under, and be subject to, the regulations for the OND Sales Program.

III. This Final Rule; Significant Changes to the September 8, 2005, Proposed Rule

This final rule follows publication of the September 8, 2005, proposed rule, and takes into consideration the public comments received on the proposed rule. The regulations for the GNND Sales Program would be codified at 24 CFR part 291, subpart F, which currently contains the regulations for the OND Sales Program. After careful review of the public comments, HUD has made the following changes to the proposed rule:

1. *Financing of 203(k) rehabilitation costs.* The final rule has been revised to provide for the inclusion of rehabilitation costs in the mortgage used to purchase the home, where such purchase is being financed with an FHA-insured 203(k) mortgage.

2. *Providing for two backup bids in the event that the original purchaser fails to reach closing.* The final rule has been revised to provide for two backup purchasers, if sufficient bids are received, as alternatives should the first purchaser fail to complete the home purchase.

3. *Clarification of eligible teachers under the GNND Sales Program.* The final rule has been revised to clarify that only full-time teachers employed at state-accredited public and private schools serving students from the area where the home is located qualify as eligible participants under the GNND Sales Program. Other persons employed by an accredited public or private school are not eligible to participate in the GNND Sales Program.

4. *Properties Available for Sale under the GNND Sales Program.* The final rule clarifies that the properties available for sale under the GNND Sales Program will be the same types of properties eligible for purchase under the OND and TND programs. Specifically, the final rule clarifies that occupied properties, properties located in Asset Control Areas, and properties that HUD determines will be sold through an alternative sales method will not be made available for purchase under the GNND Sales Program. The new regulatory language does not revise existing policies, but rather codifies existing practices of the OND and TND programs. Regulatory codification of the types of properties made available for sale will help provide the public with greater understanding and clarity of the process followed by HUD in the administration of the GNND Sales Program.

5. *Clarification of the terms ''closing costs,'' ''selling broker commissions,''*

and ''downpayment.'' This final rule continues to provide that HUD will not pay a buyer's closing costs on the purchase of a property through the GNND Sales Program. Further, HUD has revised the rule to specify that in no event will HUD pay selling broker commissions. The addition of this phrase clarifies that the purchaser is wholly responsible for paying closing costs and selling broker commissions in a transaction under this program. The closing costs are expenses borne by the purchaser to complete the sale. The selling broker's commission is one component of the closing costs owed by the purchaser.

The revision also serves to clarify that closing costs and selling broker commissions are not properly considered to be part of a required downpayment. The downpayment is a financial outlay made by the purchaser to acquire equity in the property and does not include closing or other costs that do not represent an investment in equity.

IV. Discussion of Public Comments Received on the September 8, 2005, Proposed Rule

The public comment period on the proposed rule closed on November 7, 2005. HUD received 16 public comments in response to the proposed rule. Comments were received from a realtor's association, a state home program, a mortgage corporation, a law enforcement labor organization, a non-profit organization, teachers, a firefighter, realtors, and individual citizens. This section of the preamble presents a summary of the significant issues raised by the public commenters on the September 8, 2005, proposed rule, and HUD's responses to those issues.

Comment: A statement clarifying how real estate broker commissions are to be applied at closing to the purchase price is needed so that closing procedures will be uniformly interpreted and implemented. Two commenters wrote that given the number of different players involved in the disposition of the HUD single-family properties, written procedures for contracts and settlement statements are necessary to avoid confusion. The commenters asked for clarification as to how commissions and closing costs apply at closing to the purchase price, and specifically whether the seller or the buyer (OND/TND) is responsible for paying the broker's commission and closing costs.

HUD Response. HUD is revising the rule in response to these comments. Specifically, HUD has revised § 291.545(c) to specify that in no event will HUD pay selling broker commissions. The addition of this phrase clarifies that the purchaser is wholly responsible for paying closing costs and selling broker commissions in a transaction under this program. The final rule continues to provide that in no event will HUD pay a buyer's closing costs on the purchase of a property through the GNND Sales Program. However, a purchaser using a mortgage insured by the Federal Housing Administration (FHA) to finance the purchase of a home through the GNND Sales Program may include reasonable and customary closing costs within the amount borrowed with the FHA-insured mortgage. The revision also serves to clarify that closing costs and selling broker commissions are not properly considered to be part of a required downpayment. The downpayment is a financial outlay made by the purchaser to acquire equity in the property and does not include closing or other costs that do not represent an investment in equity.

Comment: The requirement that purchasers submit bids on GNND homes through a participating real estate broker unnecessarily imposes the additional cost of a commission and should be eliminated. One commenter wrote that since the regulations do not specify that brokers must waive their normal commission, participants would incur an additional cost they may not be able to afford. The commenter wrote that brokers are unnecessary because HUD is governing the disposition of these homes. The commenter also wrote that this requirement could result in a special pool of brokers that would unfairly funnel GNND business to this select group.

HUD Response. HUD has not revised the rule in response to this comment. The use of brokers benefits participants because they have specialized knowledge and can facilitate the home buying process. HUD disagrees that the requirement would result in the establishment of a select group of brokers. Any real estate broker who has agreed to comply with HUD requirements may participate in the GNND Sales Program. Due to continued competition among brokers, the commission charged by brokers will have to be responsive to purchasers' ability and willingness to pay, and be commensurate with the services provided.

Comment: Support for GNND Sales Program. Several commenters wrote in support of the GNND Sales Program. In particular, the commenters expressed strong support for expanding eligibility to include firefighters and emergency medical technicians. The commenters wrote that the rule would make buying a home for GNND Sales Program participants feasible by significantly reducing the cost of housing.

HUD Response. HUD appreciates the support expressed by the commenters for the GNND Sales Program. The final rule will benefit participating law enforcement officers, teachers, firefighters, and emergency medical technicians, as well as the communities that they serve. The regulatory requirements established by this final rule will help to ensure that the inventory of available homes is distributed to most effectively realize the goals of the program.

Comment: As formulated, the success of the GNND Sales Program is in jeopardy because the universe of eligible participants has been expanded while the number of properties available for purchase has been reduced. One commenter objected to the regulatory cap on sales of HUD-acquired homes under the GNND Sales Program to no greater than 5 percent of the number of ''Part A'' mortgage insurance conveyance claims paid by HUD in the immediately preceding fiscal year. The commenter wrote that the cap would force law enforcement officers, teachers, and firefighters/emergency medical technicians to compete against each other. The commenter wrote that this will make it much more difficult to achieve the desired goal of improving the quality of life in distressed urban communities. The commenter also wrote that relying on a lottery system to award properties on which there are multiple bids shows an indifference to the success of the OND Sales Program. The commenter recommended that the OND Sales Program remain a program separate from the GNND Sales Program.

HUD Response. HUD has not revised the rule in response to this comment. HUD continues to believe that expanding eligibility to include firefighters and emergency medical technicians will bring justifiable added benefit to the communities to be served by the GNND Sales Program. Neither the increased number of eligible participants nor the cap on the volume of properties available will result in a diminished supply of homes available for sale through the program. The purpose of the cap is to provide control over properties in the event there is an unanticipated surge in the number of foreclosures in revitalization areas, which in turn would result in a surge in payments of FHA insurance. HUD does not anticipate the cap as having any practical effect on the supply of homes available because the volume of

recorded sales in recent years has consistently been substantially below the proposed cap. Additionally, the rule provides HUD with the authority to adjust the percentage of the cap for any fiscal year should adjustment be warranted.

Comment: The revision to the definition of law enforcement officer would exclude federal law enforcement and other officers, thereby reducing the number of law enforcement officers who are eligible to participate in the program. One commenter wrote that the narrowing of the definition of ''law enforcement officer'' would exclude federal law enforcement officers employed in a law enforcement capacity by governmental agencies that are not separate, specific law enforcement agencies. The commenter recommended revising the rule so that such federal law enforcement officers can participate. The commenter also wrote that the definition should continue to include law enforcement officers employed by public and private universities and colleges. The commenter, relying on the evaluation report of the OND Sales Program, wrote that it is the presence of officers in distressed communities that has a positive impact and not whether or not they have authority to make arrests.

HUD Response. HUD has not revised the rule in response to this comment. One of the purposes of the OND Sales Program was to revitalize distressed communities by deterring the commission of crimes with the presence of law enforcement officers in these areas. The GNND Sales Program continues to focus on traditional law enforcement officers with general arrest authority, because their work and presence in the community most closely relates to this policy.

Comment: First responders employed by nongovernmental entities should be eligible for the GNND Program. One commenter wrote that since first responders have to be employed by a governmental agency in order to be eligible to participate in the GNND Sales Program, responders providing the same services through a private entity are being excluded unfairly. The commenter wrote that all emergency medical technicians and paramedics should be included since they save lives in all communities.

HUD Response. HUD has not revised the rule in response to this comment. HUD recognizes that firefighters and emergency medical technicians employed by private entities sometimes perform similar services as those employed by governmental entities. However, the inclusion of privately employed firefighters and emergency medical technicians would create ambiguity in assessing an individual's eligibility to participate. This broader, more ambiguous approach would also result in a costly administrative burden for HUD to determine eligibility and increase the risk of awarding properties to ineligible individuals. To assure that the purposes of the GNND Sales Program can be fulfilled in a cost-effective and efficient manner, HUD has not revised the rule in response to this comment.

Comment: The eligibility requirements of not having previously owned any residential real property for one year prior to the date of submitting a bid and not having previously purchased a home under the GNND Sales Program should not apply to law enforcement officers. The commenter wrote that this new restriction fails to consider that law enforcement officers choosing to participate in the program may move from their current home to a distressed community to become more involved in the community they serve, or may participate or have participated in the OND Sales Program and then transfer or have since been transferred to another jurisdiction that has GNND properties available.

HUD Response. HUD has not revised the rule in response to this comment. The eligibility requirements referred to by the commenter support increasing the overall number of participants who can benefit from the program while avoiding opportunistic behavior by repeat participants. Further, in the past, allowing current homeowners to submit bids has been a source of problems in reaching closing with those purchasers. This new requirement better aligns with the Department's interest in increasing the number of homeowners and opening up homeownership to new families.

Comment: The amount a purchaser can borrow to finance the purchase of a home using an FHA-insured mortgage should depend on the type of FHA-insured mortgage issued. Two commenters wrote that § 291.545(b) of the rule, which establishes the maximum amount of an FHA-insured mortgage used to purchase a GNND home, should be revised to reflect 203(k) rehabilitation loans. Under the proposed rule, the amount of the FHA-insured mortgage may not exceed the discounted sales price of the home plus the closing costs and pre-paid items. However, under the 203(k) program, a borrower may also finance the costs of rehabilitation of the property along with the purchase cost of the home. The commenter suggested that § 291.545(b) be revised to permit the financing of rehabilitation costs where the purchase of the home is being financed with an FHA-insured 203(k) mortgage.

HUD Response. HUD agrees that the amount of financing available to the participant should depend on the type of FHA-insured mortgage being utilized. Participants utilizing an FHA-insured mortgage may finance the discounted sales price plus reasonable closing costs. Additionally, rehabilitation expenses may be incorporated into the FHA-insured mortgage if the purchase of the home is being financed with an FHA-insured 203(k) mortgage. The Section 203(k) program is HUD's primary program for the rehabilitation and repair of single family properties. As such, it is an important tool for community and neighborhood revitalization and for expanding homeownership opportunities, which HUD agrees should be available to GNND Sales Program participants. Accordingly, HUD has modified § 291.545(b) to explicitly provide for the inclusion of rehabilitation costs financed with an FHA-insured 203(k) loan.

Comment: Creating a distinction as to closing costs between conventional and FHA-insured mortgages unfairly penalizes participants who choose not to use an FHA-insured mortgage. One commenter wrote that participants choosing conventional mortgages will have to pay closing costs out-of-pocket while those with an FHA-insured mortgage may be able to finance reasonable and customary closing costs.

HUD Response. HUD is not altering the final rule in response to this comment.

The scope of HUD's regulatory authority extends to FHA-insured mortgages. HUD is empowered to set the terms and conditions of FHA-insured mortgages. Since conventional mortgages are not subjected to HUD's regulatory authority, such mortgages pose additional risk. Regardless of the type of financing used by a purchaser, HUD will not pay any closing costs. With regard to the downpayment, purchasers using an FHA-insured mortgage may make a downpayment of $100.

Comment: Forfeiture of an earnest money deposit upon the failure of the participant to close, without regard to the underlying circumstances, is overly burdensome. One commenter recommended that a provision be included to ensure that earnest money deposits be returned if extenuating circumstances occur that keep a sale from closing.

HUD Response. HUD has not revised the rule in response to these comments. The requirement that a potential purchaser make a minimal earnest

money deposit (which will never exceed $2,000) helps to ensure that prospective purchasers are acting in good faith and are willing and able to proceed to closing on the purchase of the home.

Comment: Disqualifying a potential participant on the basis that his/her spouse previously owned residential property or participated in the GNND Program could result in unintended consequences. One commenter wrote that participant eligibility should be determined on an individual basis. The commenter wrote that evaluating eligibility as proposed will entice people to divorce in order to take advantage of this program, resulting in weaker families and communities.

HUD Response. HUD has not revised the rule in response to this comment. The spousal eligibility requirement is consistent with the policy of permitting one-time participation in the GNND Sales Program and supports HUD's interest in promoting homeownership opportunities to first-time homebuyers.

Comment: GNND participants should not be required to make an earnest money deposit. One commenter wrote that the GNND Sales Program should operate like the existing OND and TND Sales Programs and not require a downpayment. Another commenter questioned having to put up any money when the quality of the homes is substandard and would only agree to make such a deposit if it would ensure better quality homes and locations. A third commenter also wrote that the GNND Sales Program should not require an earnest money deposit of up to $2,000 so that the Program continues to make purchasing a home affordable for teachers and officers serving their communities.

HUD Response. HUD has not revised the rule in response to these comments. The amount of the required earnest money deposit will not impose an undue financial burden on potential home purchasers. The required deposit is equal to one percent of the list price, but no more than $2,000. This minimal earnest money deposit helps to ensure that purchasers are acting in good faith and are willing and able to proceed to closing on the purchase of the home.

Comment: Nonprofit organizations should continue to be allowed to purchase properties through the GNND Sales Program. One commenter wrote that nonprofit entities should continue to be allowed to purchase properties under the GNND Sales Program so that they can rehabilitate the properties and then sell them to eligible participants at the discounted rate. The commenter wrote that participating nonprofit organizations could enable more GNND transactions to reach closing, thereby reducing the number of homes that go to open bidding.

HUD Response. HUD has not adopted the change suggested by the commenter. The inclusion of nonprofit organizations unnecessarily inserts a third party between the ultimate program beneficiary and HUD. The Department believes that limiting participation in the GNND Sales Program to the ultimate purchasers—law enforcement officers, teachers, and firefighters/emergency medical technicians—will better focus the program and help to ensure that the GNND Sales Program accomplishes its goals.

Comment: The rule should provide for additional backup bids. One commenter wrote that HUD should select more than one backup bid in the event that the winning bidder is unable to close on the purchase of the property. Specifically, the commenter recommended that HUD select up to seven backup bids.

HUD Response. HUD has modified the final rule in response to this comment. Recognizing the programmatic goal of bringing community-minded service professionals into distressed communities, HUD acknowledges that it may be necessary to allow for multiple backup bids from eligible officers, teachers, firefighters, or emergency medical technicians in the event that a winning bidder is unable to proceed to closing. Two backup purchasers will be given the opportunity to proceed to closing. If these purchasers fail to complete the closing on the property, it will then be made available for sale to other purchasers. While the commenter suggested that seven backup bids be considered, HUD believes that doing so is unnecessarily administratively burdensome and could delay the availability of HUD acquired homes for purchase. In settling on two backup bids, HUD believes that it has struck an equitable balance between providing eligible participants with the maximum opportunity to purchase inventoried properties and enabling efficient management to effectively move unsold properties to the open market.

V. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a significant regulatory action as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Hearing- and speech-impaired persons may access the telephone number listed above via TTY by calling the Federal Information Relay Service at (800) 877–8339.

Information Collection Requirements

The information collection requirements contained in this final rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0306. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments, or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section

102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Hearing- and speech-impaired persons may access the telephone number listed above via TTY by calling the Federal Information Relay Service at (800) 877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule promotes safe neighborhoods by enabling law enforcement officers, teachers, and firefighters/emergency medical technicians to purchase HUD-acquired single-family homes at a significant discount. The final rule places restrictions on the use of a home purchased through the GNND Sales Program, which affects the individual purchasing the home. This rule, however, does not place restrictions on any small entities involved in any transactions related to the GNND Sales Program. Accordingly, the undersigned certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number for the Officer Next Door Program is 14.198. The Catalog of Federal Domestic Assistance Number for the Teacher Next Door Initiative is 14.310.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 291 as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

■ 1. The authority citation for 24 CFR part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

■ 2. Subpart F is revised to read as follows:

Subpart F—Good Neighbor Next Door Sales Program

Sec.

291.500 Purpose.
291.505 Definition of ''unit of general local government.''
291.510 Overview of the GNND Sales Program.
291.515 Purchaser qualifications.
291.520 Eligible law enforcement officers.
291.525 Eligible teachers.
291.530 Eligible firefighter/emergency medical technicians.
291.535 Earnest money deposit.
291.540 Owner-occupancy term.
291.545 Financing purchase of the home.
291.550 Second mortgage.
291.555 Refinancing.
291.560 Ineligibility of multiple-unit properties.
291.565 Continuing obligations after purchase.

Subpart F—Good Neighbor Next Door Sales Program

§ 291.500 Purpose.

This subpart describes the policies and procedures governing the Good Neighbor Next Door (GNND) Sales Program. The purpose of the GNND Sales Program is to improve the quality of life in distressed urban communities. This is to be accomplished by encouraging law enforcement officers, teachers, and firefighters/emergency medical technicians, whose daily responsibilities and duties represent a nexus to the needs of the community, to purchase and live in homes in these communities.

§ 291.505 Definition of ''unit of general local government.''

For purposes of this subpart, the term *unit of general local government* means a county or parish, city, town, township, or other political subdivision of a state.

§ 291.510 Overview of the GNND Sales Program.

(a) *General.* The GNND Sales Program enables a full-time law enforcement officer, teacher, or firefighter/emergency medical technician to purchase a specifically designated HUD-acquired home located in a HUD-designated revitalization area:

(1) At a 50 percent discount from the list price; and

(2) With a downpayment of $100, but only if the law enforcement officer, teacher, or firefighter/emergency medical technician finances the home through a Federal Housing Administration (FHA) insured mortgage.

(b) *Eligible properties.* Under the GNND Sales Program, single-unit properties acquired by HUD located in HUD-designated revitalization areas (except occupied properties), those located in Asset Control Areas, or those that HUD has determined will be sold through an alternative sales method will be made available to interested law enforcement officers, teachers, and firefighters/emergency medical technicians prior to listing the properties for sale to other purchasers.

(c) *Multiple bids.* In the event that several bids are received on a single property, HUD will randomly select a winning offer by lottery and will also randomly select two backup bids, to be utilized in the order selected, in the event the winning purchaser is unable to close on the property. If both of the backup purchasers are also unable to close on the property, the property will then be made available for sale to purchasers through other sales methods.

(d) *Real estate brokers.* Law enforcement officers, teachers, and firefighters/emergency medical technicians must submit bids through a participating real estate broker. Any real estate broker who has agreed to comply with HUD requirements may participate in the GNND Sales Program. Real estate brokers may submit unlimited numbers of bids on an individual property provided each bid is from a different prospective purchaser.

(e) *Cap on sales.* The number of HUD-acquired homes sold under the GNND Sales Program in a fiscal year shall not exceed 5 percent of the number of ''Part A'' mortgage insurance conveyance claims paid by HUD in the prior fiscal year. The cap shall apply on a national basis, but HUD reserves the right to geographically apportion the cap to address regional or local differences in the number of homes sold through the GNND Sales Program. Additionally, HUD may adjust the percentage of the cap for any fiscal year. Any HUD determination to geographically distribute the cap, change a current geographic distribution, or adjust the percentage of the cap will be announced by HUD through publication of a notice in the **Federal Register** at least 30 days before the revision takes effect.

§ 291.515 Purchaser qualifications.

To qualify to purchase a home through the GNND Sales Program:

(a) The person must be employed as a law enforcement officer (as described in § 291.520), teacher (as described in § 291.525), or firefighter/emergency medical technician (as described in § 291.530) at the time he/she submits a bid to purchase a home through the program and at the time of closing on the purchase of the home;

(b) The person must certify to his/her good faith intention to continue employment as a law enforcement officer (as described in § 291.520), teacher (as described in § 291.525), or firefighter/emergency medical technician (as described in § 291.530) for at least one year following the date of closing;

(c) The person must make an earnest money deposit at the time of signing the contract for purchase of the home, as described in § 291.535;

(d) The person must agree to own, and live in as his/her sole residence, the home for the entire duration of the owner-occupancy term, as described in § 291.540, and to certify to that occupancy, as described in § 291.565;

(e) The person must agree to execute a second mortgage and note on the home, as described in § 291.550, for the difference between the list price and the discounted selling price;

(f) Neither the person (nor his/her spouse) may have owned any residential real property during the year prior to the date of submitting a bid on the home being acquired through the GNND Sales Program;

(g) Neither the person (nor his/her spouse) must ever have purchased another home under the GNND Sales Program or under the predecessor Officer Next Door Sales and Teacher Next Door Sales Programs; and

(h) Although both spouses, if otherwise eligible, may submit a bid on a single home made available for sale under the GNND Sales Program, HUD will approve a bid from only one spouse.

§ 291.520 Eligible law enforcement officers.

A person qualifies as a law enforcement officer for the purposes of the GNND Sales Program if the person is:

(a) Employed full-time by a law enforcement agency of the federal government, a state, a unit of general local government, or an Indian tribal government; and

(b) In carrying out such full-time employment, the person is sworn to uphold, and make arrests for violations of, federal, state, tribal, county, township, or municipal laws.

§ 291.525 Eligible teachers.

A person qualifies as a teacher for the purposes of the GNND Sales Program if the person is:

(a) Employed as a full-time teacher by a state-accredited public school or private school that provides direct services to students in grades pre-kindergarten through 12; and

(b) The public or private school where the person is employed as a teacher serves students from the area where the home is located in the normal course of business.

§ 291.530 Eligible firefighter/emergency medical technicians.

A person qualifies as a firefighter/emergency medical technician for the purposes of the GNND Sales Program if the person is employed full-time as a firefighter or emergency medical technician by a fire department or emergency medical services responder unit of the federal government, a state, unit of general local government, or an Indian tribal government serving the area where the home is located.

§ 291.535 Earnest money deposit.

(a) *General.* The earnest money deposit is the sum of money that must be paid by the law enforcement officer, teacher, or firefighter/emergency medical technician at the time of submitting a bid to purchase a property under the GNND Sales Program. Each bid must be accompanied by a certification from the real estate broker that the earnest money deposit has been deposited in the broker's escrow account.

(b) *Amount of earnest money deposit.* The amount of the earnest money deposit required is an amount equal to one percent of the list price, but no less than $500 and no more than $2,000.

(c) *Acceptance or rejection of offer.* If an offer is accepted, the earnest money deposit will be credited to the purchaser at closing. If the offer is rejected, the earnest money deposit will be returned. Earnest money deposits are subject to total forfeiture for failure of the participant to close a sale.

§ 291.540 Owner-occupancy term.

(a) *General.* The owner-occupancy term is the number of months a participant in the GNND Sales Program must agree to own, and live in as his/her sole residence, a home purchased through the GNND Sales Program.

(b) *Start of owner-occupancy term.* The owner-occupancy term is 36 months, commencing either:

(1) Thirty days following closing if HUD determines that the home requires no more than $10,000 in repairs prior to occupancy;

(2) Ninety days following closing if HUD determines that the home requires more than $10,000, but not more than $20,000 in repairs prior to occupancy; or

(3) One hundred and eighty days following closing if HUD determines that the home requires more than $20,000 in repairs prior to occupancy.

(c) *Interruptions to owner-occupancy term*—(1) *General.* HUD may, at its sole discretion, allow interruptions to the 36-month owner-occupancy term if it determines that the interruption is necessary to prevent hardship, but only if the law enforcement officer, teacher, or firefighter/emergency medical technician submits a written and signed request to HUD containing the following information:

(i) The reason(s) why the interruption is necessary;

(ii) The dates of the intended interruption; and

(iii) A certification from the law enforcement officer, teacher, or firefighter/emergency medical technician that:

(A) The law enforcement officer, teacher, or firefighter/emergency medical technician is not abandoning the home as his/her permanent residence; and

(B) The law enforcement officer, teacher, or firefighter/emergency medical technician will resume occupancy of the home upon the conclusion of the interruption and complete the remainder of the 36-month owner-occupancy term.

(2) *Timing of written request to HUD.* The written request for approval of an interruption to the owner-occupancy term must be submitted to HUD at least 30 calendar days before the anticipated interruption. Military service members protected by the Servicemembers Civil Relief Act need not submit their written request to HUD 30 days in advance of an anticipated interruption, but should submit their written request as soon as practicable upon learning of a potential interruption, in order to ensure timely processing and approval of the request.

§ 291.545 Financing purchase of the home.

(a) *Purchase using conventional financing.* If the law enforcement officer, teacher, or firefighter/emergency medical technician uses conventional financing to purchase a home under the GNND Sales Program, the amount of the mortgage may not exceed the discounted sales price of the home.

(b) *Purchase with FHA-insured mortgage.* (1) A law enforcement officer, teacher, or firefighter/emergency medical technician using an FHA-insured mortgage to finance purchase of

the home may finance reasonable and customary closing costs with the FHA-insured mortgage.

(2) The amount of the FHA-insured mortgage may not exceed the discounted sales price of the home plus:

(i) The closing costs; and

(ii) The costs of rehabilitating and/or improving the home, where purchase of the home is being financed with an FHA-insured 203(k) rehabilitation loan (see 24 CFR part 203).

(c) *Closing costs and selling broker's commissions.* In no event will HUD pay a buyer's closing costs on the purchase of a property or a selling broker's commission through the GNND Sales Program.

§ 291.550 Second mortgage.

(a) *General.* The second mortgage is a mortgage and note, payable to HUD, on the home purchased through the GNND Sales Program in the amount of the difference between the list price of the home and the discounted selling price.

(b) *Second mortgage term.* The term of the second mortgage is equal to the owner-occupancy term (36 months) plus 30, 90, or 180 days, as provided in § 291.540(b). The amount of the second mortgage will be reduced by 1/36th on the last day of each month of occupancy following the occupancy start date. At the end of the 36th month of occupancy, the amount of the second mortgage will be zero.

(c) *Sale or vacancy of home.* If the law enforcement officer, teacher, or firefighter/emergency medical technician sells his/her home or stops living in the home as his/her sole residence prior to the expiration of the owner-occupancy term, he/she will owe HUD the amount due on the second mortgage as of the date the property is either sold or vacated.

§ 291.555 Refinancing.

(a) *General.* A law enforcement officer, teacher, or firefighter/emergency medical technician may refinance the mortgage and note used to purchase the home. However, the total of the refinanced mortgage and the remaining principal balance of the second mortgage may not exceed 95 percent of the value of the property, as appraised at the time of the refinancing. Unless HUD permits subordination pursuant to paragraph (b) of this section, the second mortgage described in § 291.550 must hold a superior lien position to the refinanced mortgage.

(b) *Subordination of second mortgage.* HUD may permit subordination of the second mortgage to the refinanced mortgage, but only if HUD, at its sole discretion, determines that the refinancing will satisfy one of the following:

(1) Will result in a lower annual percentage rate (APR) on the first mortgage;

(2) Will be undertaken pursuant to HUD's Section 203(k) Rehabilitation Loan Insurance Program in order to rehabilitate or repair the home; or

(3) Is necessary to prevent the law enforcement officer, teacher, or firefighter/emergency medical technician from defaulting on the first mortgage.

§ 291.560 Ineligibility of multiple-unit properties.

Only single-unit properties are eligible for the GNND Sales Program.

§ 291.565 Continuing obligations after purchase.

To remain in compliance with the GNND Sales Program, the law enforcement officer, teacher, or firefighter/emergency medical technician must, for the entire duration of the owner-occupancy term:

(a) Continue to own, and live in as his/her sole residence, the home purchased through the GNND Sales Program; and

(b) Certify initially and once annually thereafter during and at the conclusion of the owner-occupancy term that he/she was at all times fully in compliance with paragraph (a) of this section.

Dated: October 25, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E6–18456 Filed 10–31–06; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Wednesday,
November 1, 2006

Part VI

The President

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2006–25 of September 26, 2006

Presidential Determination With Respect to Foreign Governments' Efforts Regarding Trafficking in Persons

Memorandum for the Secretary of State

Consistent with section 110 of the Trafficking Victims Protection Act of 2000 (Division A of Public Law 106–386), as amended, (the ''Act''), I hereby:

• Make the determination provided in section 110(d)(1)(A)(i) of the Act, with respect to Burma, Venezuela, and Zimbabwe, not to provide certain funding for those countries' governments for fiscal year 2007, until such government complies with the minimum standards or makes significant efforts to bring itself into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110(b) of the Act;

• Make the determination provided in section 110(d)(1)(A)(ii) of the Act, with respect to Cuba, the Democratic People's Republic of Korea, Iran, and Syria, not to provide certain funding for those countries' governments for fiscal year 2007, until such government complies with the minimum standards or makes significant efforts to bring itself into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110(b) of the Act;

• Make the determination provided in section 110(d)(3) of the Act, concerning the determinations of the Secretary of State with respect to Belize and Laos;

• Determine, consistent with section 110(d)(4) of the Act, with respect to Iran, that funding for educational and cultural exchange programs described in section 110(d)(1)(A)(ii) of the Act that include educators, municipal leaders, religious leaders, journalists, economists, or sports or cultural figures would promote the purposes of the Act or is otherwise in the national interest of the United States;

• Determine, consistent with section 110(d)(4) of the Act, with respect to Saudi Arabia, that provision to Saudi Arabia of all programs, projects, or activities of assistance described in sections 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States;

• Determine, consistent with section 110(d)(4) of the Act, with respect to Sudan, that provision to Sudan of all programs, projects, or activities of assistance described in sections 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States;

• Determine, consistent with section 110(d)(4) of the Act, with respect to Syria, that funding for educational and cultural exchange programs described in section 110(d)(1) (A)(ii) of the Act that include educators, municipal leaders, religious leaders, journalists, economists, or sports or cultural figures would promote the purposes of the Act or is otherwise in the national interest of the United States;

• Determine, consistent with section 110(d)(4) of the Act, with respect to Uzbekistan, that provision to Uzbekistan of all programs, projects, or activities of assistance described in sections 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States;

• Determine, consistent with section 110(d)(4) of the Act, with respect to Venezuela, for all programs, projects, or activities of assistance for victims of trafficking in persons or to combat such trafficking, or for strengthening the democratic process, including strengthening political parties and supporting electoral observation and monitoring and related programs, or for public diplomacy, that provision to Venezuela of the assistance described in sections 110(d) (1)(A)(i) and 110(d)(1)(B) of the Act for such programs, projects, or activities would promote the purposes of the Act or is otherwise in the national interest of the United States;

• Determine, consistent with section 110(d)(4) of the Act, with respect to Zimbabwe, for all programs, projects, or activities of assistance for victims of trafficking in persons or to combat such trafficking, for the promotion of health or good governance, or which would have a significant adverse effect on vulnerable populations if suspended, that provision to Zimbabwe of the assistance described in sections 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act for such programs, projects, or activities would promote the purposes of the Act or is otherwise in the national interest of the United States;

• Determine, consistent with section 110(d)(4) of the Act, that assistance to Venezuela or Zimbabwe described in section 110(d)(1)(B) of the Act that:

(1) is a regional program, project, or activity under which the total benefit to Venezuela or Zimbabwe does not exceed 10 percent of the total value of such program, project, or activity; or

(2) has as its primary objective the addressing of basic human needs, as defined by the Department of the Treasury with respect to other, existing legislative mandates concerning U.S. participation in the multilateral development banks; or

(3) is complementary to or has similar policy objectives to programs being implemented bilaterally by the United States Government; or

(4) has as its primary objective the improvement of the country's legal system, including in areas that impact the country's ability to investigate and prosecute trafficking cases or otherwise improve implementation of a country's anti-trafficking policy, regulations, or legislation; or

(5) in engaging a government, international organization, or civil society organization, and that seeks as its primary objective(s) to: (a) increase efforts to investigate and prosecute trafficking in persons crimes; (b) increase protection for victims of trafficking through better screening, identification, rescue/removal, aftercare (shelter, counseling) training and reintegration; or (c) expand prevention efforts through education and awareness campaigns highlighting the dangers of trafficking or training and economic empowerment of populations clearly at risk of falling victim to trafficking

would promote the purposes of the Act or is otherwise in the national interest of the United States.

The certification required by section 110(e) of the Act is provided herewith.

You are hereby authorized and directed to submit this determination to the Congress and to publish it in the **Federal Register**.

THE WHITE HOUSE,
Washington, September 26, 2006.

[FR Doc. 06–9027
Filed 10–31–06; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2007–1 of October 11, 2006

Presidential Determination on FY 2007 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), respectively, of the Immigration and Nationality Act, and Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act, as Amended

Memorandum for the Secretary of State

In accordance with section 207 of the Immigration and Nationality Act (the ''Act'') (8 U.S.C. 1157), as amended, and after appropriate consultations with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 70,000 refugees to the United States during FY 2007 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 2007 with Federal refugee resettlement assistance under the Amerasian immigrant admissions program, as provided below. The ceiling shall be construed as a maximum not to be exceeded, and not a minimum to be achieved.

The 70,000 admissions shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations; provided, however, that the number of admissions allocated to the East Asia region shall include persons admitted to the United States during FY 2007 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100–202 (Amerasian immigrants and their family members); provided further that the number of admissions allocated to the former Soviet Union shall include persons admitted who were nationals of the former Soviet Union, or in the case of persons having no nationality, who were habitual residents of the former Soviet Union prior to September 2, 1991:

Africa	22,000
East Asia	11,000
Europe and Central Asia	6,500
Latin America/Caribbean	5,000
Near East/South Asia	5,500
Unallocated	20,000

The 20,000 unallocated refugee admissions shall be allocated to regional ceilings as needed. Upon providing notification to the Judiciary Committees of the Congress, you are hereby authorized to use unallocated admissions in regions where the need for additional admissions arises.

Additionally, upon notification to the Judiciary Committees of the Congress, you are further authorized to transfer unused admissions allocated to a particular region to one or more other regions, if there is a need for greater admissions for the region or regions to which the admissions are being transferred. Consistent with section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, I hereby determine that assistance to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the

foreign policy interests of the United States and designate such persons for this purpose.

Consistent with section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)) and after appropriate consultation with the Congress, I also specify that, for FY 2007, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

a. Persons in Vietnam
b. Persons in Cuba
c. Persons in the former Soviet Union
d. In exceptional circumstances, persons identified by a United States Embassy in any location

You are authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.

THE WHITE HOUSE,
Washington, October 11, 2006.

[FR Doc. 06–9028
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Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2007–2 of October 13, 2006

Presidential Determination on Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization (PLO) Office

Memorandum for the Secretary of State

Pursuant to the authority and conditions contained in section 534(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006, Public Law 109–102, I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months from the date hereof. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

THE WHITE HOUSE,
Washington, October 13, 2006.

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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 "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 2006

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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Nov 2	Nov 17	Dec 4	Dec 18	Jan 2	Jan 31
Nov 3	Nov 20	Dec 4	Dec 18	Jan 2	Feb 1
Nov 6	Nov 21	Dec 6	Dec 21	Jan 5	Feb 5
Nov 7	Nov 22	Dec 7	Dec 22	Jan 8	Feb 5
Nov 8	Nov 24	Dec 8	Dec 26	Jan 8	Feb 6
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Nov 16	Dec 1	Dec 18	Jan 2	Jan 16	Feb 14
Nov 17	Dec 4	Dec 18	Jan 2	Jan 16	Feb 15
Nov 20	Dec 5	Dec 20	Jan 4	Jan 19	Feb 20
Nov 21	Dec 6	Dec 21	Jan 5	Jan 22	Feb 20
Nov 22	Dec 7	Dec 22	Jan 8	Jan 22	Feb 20
Nov 24	Dec 11	Dec 26	Jan 8	Jan 23	Feb 22
Nov 27	Dec 12	Dec 27	Jan 11	Jan 26	Feb 26
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