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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 60

[Docket Number LS–03–04]

RIN 0581–AC26

Mandatory Country of Origin Labeling of Fish and Shellfish

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule; reopening of comment period.

SUMMARY: The Agricultural Marketing Service (AMS) is reopening the comment period for 90 days for the interim final rule for mandatory country of origin labeling (COOL) for fish and shellfish covered commodities that was published in the **Federal Register** on October 5, 2004 (69 FR 59708). The interim final rule for fish and shellfish became effective on April 4, 2005. The interim final rule imposes requirements on certain retailers and their suppliers to notify their customers of the country of origin and the method of production (wild and/or farm-raised) of specified fish and shellfish products. The interim final rule also specifies recordkeeping responsibilities for affected retailers and their suppliers. AMS requests general comment on the costs and benefits of the interim final rule as well as the specific questions that are listed in this document. All affected persons are hereby given notice of the opportunity to submit written data and views concerning the economic impacts of the interim final rule. AMS will review the submitted comments and information as it promulgates a final rule for mandatory COOL for fish and shellfish. Comments received on issues that are outside the scope of the costs and benefits of the interim final rule will not be considered.

DATES: Comments must be submitted on or before February 26, 2007, to be assured of consideration.

ADDRESSES: Send written comments to: Country of Origin Labeling Program, Room 2607-S; Agricultural Marketing Service (AMS), USDA; STOP 0254; 1400 Independence Avenue, SW., Washington, DC 20250–0254, or by facsimile to (202) 720–1112, or by e-mail to *cool@usda.gov.* Comments can also be submitted on the Internet at: *http://www.regulations.gov.* Comments received will be posted to the AMS Web site at: *http://www.ams.usda.gov/cool/.* Comments sent to the above location that specifically pertain to the information collection and recordkeeping requirements should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Martin O'Connor, Chief, Standards, Analysis and Technology Branch, Livestock and Seed Program, AMS, USDA, by telephone on (202) 720–4486, or via e-mail to: *martin.oconnor@usda.gov.*

SUPPLEMENTARY INFORMATION: The Farm Security and Rural Investment Act of 2002 (Farm Bill)(Pub. L. 107–171) and the 2002 Supplemental Appropriations Act (Appropriations Act)(Pub. L. 107–206) amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) by adding 7 U.S.C. 1638–1638d to direct the Secretary of Agriculture to promulgate regulations by September 30, 2004, requiring retailers to notify their customers of the country of origin of covered commodities. On October 30, 2003, AMS published a proposed rule for mandatory COOL for beef, lamb, pork, fish, perishable agricultural commodities, and peanuts (68 FR 61944). Subsequently, the FY 2004 Consolidated Appropriations Act (Pub. L. 108–199) delayed the applicability of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2006. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2006 (Pub. L. 109–97) further delayed the applicability of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2008. On October 5, 2004, AMS published an interim final rule (69 FR 59708) for the mandatory country of origin labeling program for fish and shellfish. The interim final rule became effective on April 4, 2005. Comments were requested and were to be submitted on or before January 3, 2005.

In preparation for promulgating a final rule for mandatory COOL for fish and shellfish, AMS seeks comment only on the economic impacts of the interim final rule at this time. Given that the interim final rule has been in effect for more than a year and a half, affected retailers and their suppliers now have considerable experience in complying with the its requirements. AMS invites affected persons to comment on the costs and benefits of the interim final rule. Results of independent studies and analyses are also invited. AMS is particularly interested in written data, views, and facts pertaining to initial costs to implement the requirements of the interim final rule, ongoing costs to maintain compliance, the burden of the information collection and recordkeeping requirements, and any concomitant benefits resulting from the mandatory COOL program. Comments and information received on these issues, to the extent relevant, will be reviewed in connection with any final regulatory action on a mandatory COOL program for any of the other covered commodities. Comments received on issues that are outside the scope of the costs and benefits of the interim final rule will not be considered.

While AMS welcomes all comments relating to the economic impacts of the implementation of the interim rule, comments addressing the following questions are of special interest:

Implementation Costs

What costs were incurred by affected retailers and their suppliers to become compliant with the interim rule? What, if any, changes in operational procedures were required to implement the requirements of the interim rule?

What, if any, capital costs were incurred to become compliant with the interim rule? Did the interim rule require the purchase of additional computer systems, labeling systems, or other equipment?

How many labor hours were required to become compliant with the interim rule, and what types of labor were required? What types of labor activities were required (*e.g.*, strategic planning, software and systems development, training), and how much time was spent on each activity? What categories of personnel were required, and what were costs for each category of labor? What total labor costs were incurred?

Maintenance Costs

What costs are incurred annually by affected retailers and their suppliers to maintain compliance with the interim rule? What, if any, changes in operational procedures are required to maintain compliance the requirements of the interim rule?

What capital replacement costs are incurred?

How many labor hours are incurred annually? What activities are performed (*e.g.*, label application, data entry, software maintenance, training), and how much time is spent on each activity? What categories of personnel are required, and what are costs for each category of labor? What total labor costs are incurred?

Benefits

What economic benefits have resulted from implementation of the interim rule?

Has there been any overall demand response as a result of the labeling requirements for country of origin and method of production of fish and shellfish?

What product selection and purchase responses from customers have been observed as a result of the labeling program? Do customers seek and act on the country of origin and method of production information?

Have customers modified their purchase decisions based on the country of origin for labeled fish and shellfish products? If so, how?

Have customers modified their purchase decisions based on the method of production (farm-raised and/or wild) for labeled fish and shellfish products? If so, how?

Net Economic Impact

What are the net economic impacts resulting from implementation of the interim final rule? Are the benefits greater or less than the costs of implementation?

Authority: 7 U.S.C. 1621 *et seq.*

Dated: November 20, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–19962 Filed 11–24–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24814; Directorate Identifier 2006–NM–093–AD; Amendment 39–14833; AD 2006–24–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 767 airplanes. This AD requires repetitive detailed and high frequency eddy current (HFEC) inspections of the station (STA) 1809.5 bulkhead for cracking and corrective actions if necessary. This AD results from fatigue cracks found in the forward outer chord and horizontal inner chord at STA 1809.5. We are issuing this AD to detect and correct cracking in the bulkhead structure at STA 1809.5, which could result in failure of the bulkhead structure for carrying the flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane.

DATES: This AD becomes effective January 2, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 2, 2007.

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

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

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 767 airplanes. That NPRM was published in the **Federal Register** on May 22, 2006 (71 FR 29275). That NPRM proposed to require repetitive detailed and high frequency eddy current (HFEC) inspections of the station (STA) 1809.5 bulkhead for cracking and corrective actions if necessary.

Comments

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

Support for the NPRM

Boeing and Continental Airlines agree with the NPRM, while the Air Transport Association (ATA) agrees with the intent of the NPRM.

Request To Add Terminating Action

The Air Transport Association (ATA) of America, on behalf of Delta Airlines, requests that we revise the NPRM to allow accomplishment of certain actions in the applicable Boeing structural repair manual (SRM) as terminating action for the repetitive inspections. Although the NPRM proposes to require accomplishing the SRM repair only if cracking is found, Delta would like to accomplish the SRM repair at its next heavy maintenance visit, regardless of inspection findings. Delta also requests that, if the SRM repair is accomplished before finding any cracking, certain actions called out in the SRM, such as cutting out damaged areas and installing filler, not be required as part of the terminating action.

We agree to revise the requirements of this AD. The repetitive actions required by this AD may be terminated by accomplishing certain actions in Repair 9 or Repair 10, both dated April 15, 2006, of Chapter 53–80–08 of Boeing 767–200 SRM, Document D634T201; Boeing 767–300 SRM, Document

D634T210; Boeing 767–300F SRM, Document D634T215; or Boeing 767–400 SRM, Document D634T225; as applicable. Operators should note that to maintain the type certification of the airplane after accomplishing the SRM repair, the supplemental inspections specified in the SRM must also be accomplished. These supplemental inspections are outside of the requirements of this AD. We have added a new paragraph (h) to this AD to provide an optional terminating action.

Repair 9 describes procedures for repairing a forward outer chord between S–4 and S–8 and doing repetitive supplemental inspections. The supplemental inspections are a (1) Detailed inspection of the repair angles, fillers, skin bulkhead web and visible parts of the bulkhead outer chord, and a 2.0-inch-wide zone around the repair internally and externally and (2) low frequency eddy current inspection of the forward outer chord internally through a certain angle. Repair 10 describes procedures for repairing a horizontal inner chord at approximately water line (WL) 257 and buttock line (BL) 28 and doing repetitive supplemental inspections. The supplemental inspection is a detailed inspection of the repair angles, fillers, visible parts of the bulkhead inner chord, adjacent structure, and a 2.0-inch-wide zone around the repair internally.

Request for Credit for Previously Accomplished Repairs

The ATA, on behalf of Delta Airlines, also requests that we add a note stating that repairs accomplished previously in accordance with the applicable SRM, as referenced by Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006, terminate the requirements of this AD. Delta states that neither the NPRM nor the service bulletin addresses SRM repairs accomplished before the effective date of this AD. Delta also states if no note is added to the NPRM, an operator may feel obliged to obtain an alternative method of compliance (AMOC) for previously accomplished repairs.

We agree to provide credit for a previously accomplished repair if the repair was done after finding cracking. Accomplishment of Repair 9 for a forward outer chord or Repair 10 for a horizontal inner chord before the effective date of this AD, in accordance with the applicable SRM, is acceptable for compliance with the inspections and corrective actions required by paragraph (f) of this AD for that area only. Operators must accomplish all of the actions in Repair 9 or Repair 10, as applicable. We have added a new paragraph (i) to this AD to provide credit.

Request To Provide Repair Data

The ATA, on behalf of US Airways, requests that, before we issue the AD, Boeing either revise Alert Service Bulletin 767–53A0131 to include instructions for repairing cracking, or include them in the SRM. US Airways states that the service bulletin does not contain instructions for repairing cracking found in the fuselage skin; instead, the service bulletin specifies contacting Boeing for repair instructions. (The service bulletin and referenced SRMs only contain instructions to repair cracking found in a forward outer chord or horizontal inner chord.) The commenter states that providing the FAA-approved repair data will reduce the administrative burden between an operator and the Boeing Commercial Airplanes Delegation Option Authorization Organization, regarding repair approvals. The commenter also states that providing the repair data would expedite repairs and return airplanes to revenue service in a timely manner.

We do not agree to publish FAA-approved repair data for cracking found in the fuselage skin. We acknowledge that the service bulletin and applicable SRM do not contain instructions to repair fuselage skin cracking. However, the time needed to develop and approve fuselage skin repairs would delay addressing the unsafe condition in the forward outer chord and horizontal inner chord of the STA 1809.5 bulkhead. To delay this action would be inappropriate, since we have determined that an unsafe condition exists and that inspections and repair, if necessary, must be conducted to ensure continued safety. We have not revised this AD in this regard.

Conclusion

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

Costs of Compliance

There are about 903 airplanes of the affected design in the worldwide fleet. This AD affects about 405 airplanes of U.S. registry. The required actions take about 12 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $388,800, or $960 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–24–04 Boeing: Amendment 39–14833. Docket No. FAA–2006–24814; Directorate Identifier 2006–NM–093–AD.

Effective Date

(a) This AD becomes effective January 2, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from fatigue cracks found in the forward outer chord and horizontal inner chord at station (STA) 1809.5. We are issuing this AD to detect and correct cracking in the bulkhead structure at STA 1809.5, which could result in failure of the bulkhead structure for carrying the flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane.

Compliance

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

Repetitive Inspections and Corrective Actions

(f) Before the accumulation of 15,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever is later: Do the detailed and high frequency eddy current (HFEC) inspections for cracking as specified in Parts 1, 2, 3, and 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006; and do all corrective actions before further flight; by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006, except as provided by paragraph (g) of this AD. Repeat the inspections thereafter at intervals not to exceed 6,000 flight cycles. Accomplishing the corrective action for the inspections specified in Part 1, 2, 3, or 4 of the service bulletin, as applicable, terminates the repetitive inspections for that area only.

Exception to Service Bulletin

(g) If any cracking is found in the skin or in any structure other than the forward outer chord or horizontal inner chord, during any inspection required by this AD, and Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

Optional Terminating Action

(h) If no cracking is found during the most recent detailed and HFEC inspections for a specified area as required by paragraph (f) of this AD: Modification of a specified area according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, terminates the repetitive inspections required by paragraph (f) of this AD for that area only. For a forward outer chord, one approved method is accomplishment of the actions in Steps 4.A through 4.C and 4.G through 4.P of Repair 9, dated April 15, 2006, of Chapter 53–80–08 of the Boeing 767–200 Structural Repair Manual (SRM), Document D634T201; Boeing 767–300 SRM, Document D634T210; Boeing 767–300F SRM, Document D634T215; or Boeing 767–400 SRM, Document D634T225; as applicable. For a horizontal inner chord, one approved method is accomplishment of the actions in Steps 4.A, 4.B, and 4.F through 4.P of Repair 10, dated April 15, 2006, of Chapter 53–80–08 of the Boeing 767–200 SRM, Document D634T201; Boeing 767–300 SRM, Document D634T210; Boeing 767–300F SRM, Document D634T215; or Boeing 767–400 SRM, Document D634T225; as applicable.

Credit for Previously Accomplished Repairs

(i) Repair of a forward outer chord done before the effective date of this AD in accordance with Repair 9, dated April 15, 2006, of Chapter 53–80–08 of the Boeing 767–200 SRM, Document D634T201; Boeing 767–300 SRM, Document D634T210; Boeing 767–300F SRM, Document D634T215; or Boeing 767–400 SRM, Document D634T225; as applicable; is acceptable for compliance with the requirements of paragraph (f) of this AD for that area only. Repair of a horizontal inner chord before the effective date of this AD in accordance with Repair 10, dated April 15, 2006, of Chapter 53–80–08 of the Boeing 767–200 SRM, Document D634T201; Boeing 767–300 SRM, Document D634T210; Boeing 767–300F SRM, Document D634T215; or Boeing 767–400 SRM, Document D634T225; as applicable; is acceptable for compliance with the requirements of paragraph (f) of this AD for that area only.

Alternative Methods of Compliance (AMOCs)

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

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

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

Material Incorporated by Reference

(k) You must use Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on November 9, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19797 Filed 11–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26388; Directorate Identifier 2006–NM–234–AD; Amendment 39–14834; AD 2006–24–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747 airplanes. This AD requires repetitive inspections for any cracking of the fuselage skin in section 41 of the airplane, and related investigative and corrective actions if necessary. This AD results from a report of fatigue cracks found in the skin in section 41 of the fuselage, on an in-service Model 747 airplane. We are issuing this AD to detect and correct fatigue cracks at the fastener rows of the fuselage skin in section 41, which could

join together and cause a loss of structural integrity and rapid decompression of the airplane.

DATES: This AD becomes effective December 12, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 12, 2006.

We must receive comments on this AD by January 26, 2007.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We have received a report indicating that fatigue cracks were found in the skin in section 41 of the fuselage, on an in-service Model 747 airplane. A 10-inch skin crack and numerous smaller skin cracks in multiple adjacent fastener rows were found immediately aft of the left number 1 main entry door. The cracks occurred less than 7,000 flight cycles after the terminating action required by AD 2006–20–02, (described below), had been done. The fatigue cracks are the result of cyclic loading during cabin pressurization and de-pressurization. Skin cracks at the fastener rows in section 41 of the fuselage, if not detected and corrected in a timely manner, could join together and result in a loss of structural integrity and rapid decompression of the airplane.

Related AD

On September 14, 2006, we issued AD 2006–20–02, amendment 39–14771 (71 FR 56861, September 28, 2006) (which superseded AD 96–23–02, amendment 39–9807 (61 FR 57991, November 12, 1996)), for certain Boeing Model 747 airplanes. That AD requires inspections to detect disbonding, corrosion, and cracking at the longitudinal rows of fasteners in the bonded skin panels in section 41 of the fuselage, and repair, if necessary. That AD also requires inspections of airplanes that may have Alodine-coated rivets installed. That AD resulted from a report of cracking discovered in a skin lap joint that was previously inspected using the eddy current method. We issued that AD to prevent rapid decompression of the airplane due to disbonding and subsequent cracking of the skin panels.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2675, dated October 12, 2006. The alert service bulletin describes procedures for repetitive inspections for any cracking of the fuselage skin in section 41 of the airplane, reports of inspection findings to Boeing, and related investigative and corrective actions if necessary. Repetitive inspections for any cracking of the fuselage skin includes using surface high-frequency eddy current (HFEC) inspections or, as a short-term alternative to surface HFEC inspections, external detailed inspections of the skin panel around fastener heads; and open-hole HFEC inspections or, as a short-term alternative to open-hole HFEC inspections, external surface low-frequency eddy current (LFEC) inspections of the skin at the edge row fasteners common to an external doubler and a bonded internal doubler. Related investigative and corrective actions may involve using a surface HFEC, or an open-hole HFEC inspection, as applicable, on all the affected fuselage skin in section 41; and repairing any crack damage as given in the applicable Boeing 747 Structural Repair Manual, or by contacting Boeing for repair data.

The alert service bulletin also specifies the following initial compliance times for the inspections: Within 150 flight cycles after the date on the alert service bulletin; before the accumulation of 8,000 total flight cycles; or within 2,000 flight cycles after the last HFEC inspection, Method 1 (external Ultrasonic) or Method 2 (internal detailed) disbond inspection as given in Boeing Alert Service Bulletin 747–53A2409 (which is referenced in AD 2006–20–02 as the appropriate source of service information for doing the actions for that AD); whichever occurs last. The inspections must be repeated at intervals not to exceed 2,000 flight cycles for the HFEC inspections, and not to exceed 150 flight cycles for the alternative detailed and LFEC inspections that are also not to be repeated more than nine times before the applicable HFEC inspection is started.

FAA's Determination and Requirements of this AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to detect and correct fatigue cracks at fastener rows, which could join together and cause a loss of structural integrity and rapid decompression of the airplane. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the AD and the Alert Service Bulletin.'' The AD also requires sending the inspection results of each inspection to the manufacturer.

Difference Between the AD and the Alert Service Bulletin

The alert service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this AD requires you to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the FAA to make those findings.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a new inspection program that will expand the size of the inspection area and add repetitive inspections that will address the unsafe condition addressed by this AD and AD 2006–20–02. Once this new inspection program is developed, approved, and available, we may consider additional rulemaking.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before

issuing this AD are impracticable, and that good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–26388; Directorate Identifier 2006-NM–234-AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–24–05 Boeing: Amendment 39–14834. Docket No. FAA–2006–26388; Directorate Identifier 2006–NM–234–AD.

Effective Date

(a) This AD becomes effective December 12, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2675, dated October 12, 2006.

Unsafe Condition

(d) This AD results from a report that fatigue cracks were found in the skin in section 41 of the fuselage, on an in-service Model 747 airplane. We are issuing this AD to detect and correct fatigue cracks at the fastener rows of the fuselage skin in section 41, which could join together and cause a loss of structural integrity and rapid decompression of the airplane.

Compliance

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

Repetitive Inspections, Investigative and Corrective Actions

(f) At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2675, dated October 12, 2006, do the applicable inspection for any cracking of the fuselage skin in the section 41 area, and do all applicable related investigative and corrective actions, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2675, dated October 12, 2006, except as provided by paragraphs (g) and (h) of this AD. Repeat the applicable inspection at intervals not to exceed those specified in paragraph 1.E. of the service bulletin. If any crack is found, do all applicable related investigative and corrective actions before further flight.

(g) Where Boeing Alert Service Bulletin 747–53A2675, dated October 12, 2006, recommends an initial inspection threshold relative to the date on the service bulletin, this AD requires the initial inspection threshold relative to the effective date of this AD.

(h) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–53A2675, dated October 12, 2006, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

Inspection Reports

(i) Submit a report of the findings (both positive and negative) of the inspections required by paragraph (f) of this AD to Boeing Commercial Airplanes Group, Attention: Manager, Airline Support, P.O. Box 3707, Seattle, Washington 98124–2207, at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the inspection results, a description of any discrepancies/crack found, the airplane serial

number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) For each inspection done after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) For each inspection accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

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

Material Incorporated by Reference

(k) You must use Boeing Alert Service Bulletin 747–53A2675, dated October 12, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on November 13, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19805 Filed 11–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–26111; Airspace Docket No. 06–AAL–32]

RIN 2120–AA66

Amendment to Jet Route and Colored Federal Airways; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Jet Route 510 (J–510), and Colored Federal Airways Amber 2 (A–2), Amber 15 (A–15), and Green 8 (G–8), Alaska. Specifically, the FAA is re-designating J–510 as J–512 because of duplication with a Canadian Jet Route number, causing problems with the Flight Data processors during route validation at the Anchorage Air Route Traffic Control Center. Additionally, portions of A–2, and A–15, and G–8 are discontinuous between fixes, causing flight processing software problems, and will be re-designated.

DATES: Effective Date: 0901 UTC, January 18, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Because of limitations in the Oceans 21 Advanced Technologies and Oceanic Procedures (ATOP) system scheduled for operation at Anchorage Center, several route numbers were identified that were either duplicated in the National Airspace System or discontinuous between fixes. This rule is necessary to smooth the transition to ATOP at the Anchorage Center.

Alaskan Jet Routes and Colored Federal airways are published in paragraph 2004 and 6009 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Federal Airways listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by re-designating J–510 as J–512 because the J–510 designation is duplicated by a Canadian Jet Route and causes problems with the Flight Data processors during route validation at Anchorage Air Route Traffic Control Center. A–2, and A–15 are discontinuous between the Delta Junction Non-directional Beacon (NDB) and the Chena NDB, which also causing flight processing software problems. They will be re-designated as A–9 and A–17 respectively. G–8 is discontinuous between Kachemak NDB and Campell Lake NDB and will be re-designated as G–11. The route number change will coincide with the effective date of this rulemaking action.

Accordingly, this action merely involves editorial change in the route number of the legal description of a colored Federal airway, and does not involve a change in the dimensions or operating requirements of that airway, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Polices and Procedures.'' This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–510 [Remove]

* * * * *

J–512 [New]

From; Emmonak, AK; Unalakleet, AK; to Galena, AK

* * * * *

Paragraph 6009 (a) Green Federal airways.

* * * * *

G–8 [Revised]

From Shemya, AK, NDB, 20 AGL; Mount Moffet, AK, NDB, 20 AGL; Dutch Harbor, AK, NDB, 20 AGL; INT Dutch Harbor NDB 041° and Elfee, AK, NDB 253° bearings, 20 AGL; Elfee, AK, NDB, 20 AGL; Saldo, AK, NDB; INT Saldo, AK, NDB 054° and Kachemak, AK, NDB 269° bearings; to Kachemak NDB, AK.

* * * * *

G–11 [New]

From Campbell Lake, AK, NDB; INT Campbell Lake, AK, NDB 031° and Glenallen, AK, NDB 255° bearings; Glenallen, AK, NDB; INT Glenallen, AK, 052° and Nabesna, AK, NDB 252° bearings; to Nabesna, AK, NDB.

* * * * *

Paragraph 6009 (c) Amber Federal airways.

* * * * *

A–2 [Revised]

From Beaver Creek, YT, Canada, NDB; Nebesna, AK, NDB; to Delta Junction, AK, NDB. The airspace within Canada is excluded.

* * * * *

A–9 [New]

From Browerville, AK, NDB.; Evansville, AK, NDB; to Chena, AK, NDB

* * * * *

A–15 [Revised]

From Ethelda, BC, Canada, NDB; Nichols, AK, NDB; Sumner Strait, AK, NDB; Coghlan Island, AK, NDB; Haines, AK, NDB; Burwash, YT, Canada, NDB; Beaver Creek, YT, Canada, NDB; Nabesna, AK, NDB; to Delta Junction, AK, NDB. The airspace within Canada is excluded.

* * * * *

A–17 [New]

From Chena, AK, NDB; Chandalar Lake, AK, NDB; to Put River, AK, NDB.

* * * * *

Issued in Washington, DC, on November 16, 2006.

Ellen Crum,

Acting Manager, Airspace and Rules.

[FR Doc. E6–19834 Filed 11–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738 and 740

[Docket No. 061101286–6286–01]

RIN 0694–AD85

Addition of ''Montenegro'' and ''Serbia'' as Separate Countries in the Export Administration Regulations Based on U.S. Recognition of Montenegro as a Sovereign State

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to add ''Montenegro'' and ''Serbia'' as separate countries in the EAR and to establish separate export licensing requirements for Montenegro and Serbia. BIS is taking this action to update the EAR to reflect the United States' recognition of Montenegro as a sovereign state by the United States.

EFFECTIVE DATE: This rule is effective November 27, 2006.

ADDRESSES: Although this is a final rule, comments are welcome and should be sent to *publiccomments@bis.doc.gov,* by fax to (202) 482–3355, or to Jeffery Lynch, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Please refer to regulatory identification number (RIN) 0694–AD85 in all comments, and in the subject line of email comments. Comments on the collection of information should be sent to David Rostker, Office of Management and Budget (OMB) by e-mail to *David_Rostker@omb.eop.gov,* or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Joan M. Maloney-Roberts, Foreign Policy Division, Office of Nonproliferation Treaty Compliance, Bureau of Industry and Security, *Telephone:* (202) 482–4196.

SUPPLEMENTARY INFORMATION: This final rule deletes ''Serbia and Montenegro'' and adds ''Montenegro'' and ''Serbia'' as separate entries on the Commerce Country Chart in Supplement No. 1 to part 738 of the EAR for export licensing purposes. In a press release dated June 13, 2006, the U.S. Department of State announced that the United States recognized Montenegro as a sovereign state based on an internationally recognized May 21, 2006 referendum. *See* Press Release, U.S. Department of State, U.S. Recognizes Montenegro as Independent State (June 13, 2006), *available at http://www.state.gov/secretary/rm/2006/67839.htm.* Previously, the EAR referred to ''Serbia and Montenegro'' as one country. This final rule also updates references to ''Serbia and Montenegro'' in part 740 of the EAR to reflect Montenegro's legal separation from the state union of Serbia and Montenegro.

Specifically, this rule amends the EAR as follows:

1. In Supplement No. 1 to part 738 of the EAR, the Commerce Country Chart is amended by removing ''Serbia and Montenegro'' and by adding ''Montenegro'' and ''Serbia.'' This amendment does not affect any of the license requirements indicated on the Commerce Country Chart, since the Commerce Control List based license requirements that apply to ''Montenegro'' and ''Serbia'' are the same as those that applied to ''Serbia and Montenegro'' prior to the publication of this rule.

2. In Supplement No. 1 to part 740 of the EAR (Country Groups), Country Group B is amended by removing ''Serbia and Montenegro'' and adding ''Montenegro'' and ''Serbia''.

3. Section 740.7(d)(1) of the EAR (Computer Tier 3 destinations) is amended by removing ''Serbia and Montenegro'' and adding ''Montenegro'' and ''Serbia'' for License Exception APP purposes.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (August 7, 2006), has continued the Export Administration Regulations in

effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has previously been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. This rule is not expected to result in any change for collection purposes. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

3. This rule does not contain policies with Federalism implications as this term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to *publiccomments@bis.doc.gov*, by fax to (202) 482–3355, or to Jeffery Lynch, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 738 and 740 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

Supplement No. 1 to Part 738 [Amended]

■ 2. Supplement No. 1 to Part 738 is amended by removing the entry for ''Serbia and Montenegro'' and by adding, in alphabetical order, new entries for ''Montenegro'' and ''Serbia'' to read as follows:

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

[Reason for control]

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
	*		*			*		*		*		*		*		
Montenegro ...	X	X	.....	X	.....	X	X	X	X	X	.....	X	X	X	.....	.....
	*		*			*		*		*		*		*		
Serbia	X	X	.....	X	.....	X	X	X	X	X	.....	X	X	X	.....	.....
	*		*			*		*		*		*		*		

PART 740—[AMENDED]

■ 3. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

§ 740.7 [Amended]

■ 4. In Section 740.7, paragraph (d)(1) is amended by revising the phrase ''Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Serbia and Montenegro, Saudi Arabia, Serbia Tajikistan'' to read ''Mongolia, Montenegro, Morocco, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Serbia, Tajikistan,''.

Supplement No. 1 to Part 740 [Amended]

■ 5. In Supplemental No. 1 to part 740, Country Group B is amended by removing ''Serbia and Montenegro'' and by adding, in alphabetical order, ''Montenegro'' and ''Serbia''.

Dated: November 16, 2006.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. 06–9414 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 42

[Docket No. RM06–8–001; Order No. 681–A]

Long-Term Firm Transmission Rights in Organized Electricity Markets

November 16, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on Rehearing and Clarification.

SUMMARY: The Federal Energy Regulatory Commission is issuing an order on rehearing and clarification of *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, 71 FR 43564 (Aug. 1, 2006). The order on rehearing denies rehearing and upholds Order No. 681 in all respects, and grants certain limited clarifications.

DATES: *Effective Date:* Order No. 681 became effective on August 31, 2006.

FOR FURTHER INFORMATION CONTACT: Udi E. Helman (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8080.

Roland Wentworth (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8262.

Harry Singh (Technical Information), Office of Enforcement, Division of Energy Market Oversight, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6341.

Jeffery S. Dennis (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6027.

Heidi Werntz (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8910.

SUPPLEMENTARY INFORMATION:

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

1. On July 20, 2006, the Commission issued a Final Rule in this proceeding.[1] In the Final Rule, the Commission amended its regulations to require each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy each of the guidelines established by the Commission in this Final Rule. We took this action pursuant to section 1233 of the Energy Policy Act of 2005 (EPAct 2005), which added new section 217 to the Federal Power Act (FPA).[2] The Final Rule required each transmission organization subject to its requirements to file with the Commission, no later than January 29, 2007, either (1) tariff sheets and rate schedules that make available long-term firm transmission rights that satisfy each of the guidelines set forth in the final regulations, or (2) an explanation of how its current tariff and rate schedules already provide for long-term firm transmission rights that satisfy each of the guidelines. A transmission organization approved by the Commission for operation after January 29, 2007 will be required to satisfy the requirements of the Final Rule.

2. The guidelines adopted in the Final Rule give transmission organizations the flexibility to propose designs for long-term firm transmission rights that reflect regional preferences and accommodate their regional market designs, while also ensuring that the objectives of Congress expressed in new section 217(b)(4) of the FPA are met. The Commission allowed regional flexibility in setting the terms of the rights, but required that long-term firm transmission rights be made available with terms (and/or rights to renewal) that are sufficient to meet the reasonable needs of load serving entities to support long-term power supply arrangements used to satisfy their service obligations.

3. In this order, the Commission denies rehearing and upholds its determinations in the Final Rule. We also offer certain clarifications.

[1] *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, 71 FR 43564 (Aug. 1, 2006), FERC Stats. & Regs. ¶ 31,226 (2006) (Final Rule).

[2] Pub. L. No. 109–58, § 1233, 119 Stat. 594, 957 (2005) (to be codified at 16 U.S.C. § 824q).

I. Background

A. The Development of ISOs and RTOs

4. In both our Notice of Proposed Rulemaking (NOPR)[3] and the Final Rule, we discussed the development of Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs). In Order No. 888, the Commission found that undue discrimination and anticompetitive practices existed in the provision of electric transmission service in interstate commerce.[4] Accordingly, the Commission required all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to file open access transmission tariffs (OATTs) containing certain non-price terms and conditions and to ''functionally unbundle'' wholesale power services from transmission services.[5] In addition, the Commission found in Order No. 888 that ISOs had the potential to aid in remedying undue discrimination and accomplishing comparable access.[6]

5. In light of the creation of ISOs and other changes in the electric industry, the Commission issued Order No. 2000.[7] In that order, the Commission concluded that traditional management of the transmission grid by vertically integrated electric utilities was inadequate to support the efficient and reliable operation of transmission facilities necessary for continued development of competitive electricity

[3] *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Notice of Proposed Rulemaking, 71 FR 6693 (Feb. 9, 2006), FERC Stats. & Regs. ¶ 32,598 (2006) (NOPR).

[4] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 at 31,682 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12274 (March 14, 1997), 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).

[5] Under functional unbundling, the public utility is required to: (1) Take wholesale transmission services under the same tariff of general applicability as it offers its customers; (2) state separate rates for wholesale generation, transmission and ancillary services; and (3) rely on the same electronic information network that its transmission customers rely on to obtain information about the utility's transmission system. *Id.* at 31,654.

[6] Order No. 888 at 31,655; Order No. 888–A at 30,184.

[7] *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000–A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

markets,[8] and opportunities for undue discrimination continued to exist.[9] As a result, the Commission adopted rules to facilitate the voluntary development of RTOs. The Commission concluded that RTOs would provide several benefits, including regional transmission pricing, improved congestion management, and more effective management of parallel path flows.[10]

6. Most of the RTOs and ISOs now operate organized markets for energy and/or ancillary services in addition to providing transmission service under a single transmission tariff. Under the definitions adopted in the Final Rule, these RTOs and ISOs are transmission organizations with organized electricity markets subject to the regulations adopted in this proceeding.

7. Most of the organized electricity markets operated by transmission organizations utilize a congestion management system based on Locational Marginal Pricing (LMP). Congestion is defined as the inability to inject and withdraw additional energy at particular locations in the network due to the fact that the injections and withdrawals would cause power flows over a specific transmission facility to violate the reliability limits for that facility. The market operator manages congestion by scheduling and dispatching generators that can meet load in the presence of congestion. Financially, in LMP markets the price of congestion is measured as the difference in the cost of energy at two different locations in the network. When such price differences occur, a congestion charge is assessed to transmission users based on their injections and withdrawals at particular locations. These price differences can be variable and difficult to predict. In order to manage the risk associated with the variability in prices due to transmission congestion, these markets use various forms of financial transmission rights (FTRs),[11] which enable market participants who hold the rights to protect against such price risks. In most cases, these FTRs have terms of one year or less.[12] In general, load serving entities receive FTRs through either direct allocation or through a two-step process in which the load serving entity is first allocated auction revenue rights (ARRs) and then either uses those rights to purchase FTRs, or has the ability under the transmission organization tariff to convert them to FTRs.[13]

B. Interest in Long-Term Firm Transmission Rights

8. We noted in the Final Rule that in recent years, interest in long-term firm transmission rights in organized electricity markets has increased, stemming in large part from a desire of some market participants to obtain rights that replicate the transmission service that was available to them prior to the formation of the organized electricity markets and remains available today in regions without organized electricity markets. The principal concern of these market participants is the inability to obtain a fixed, long-term level of service under pricing arrangements that hedge the congestion cost risk that they face in the organized electricity markets.[14]

9. There are several important differences between transmission service under the Order No. 888 *pro forma* OATT and transmission rights in organized electricity markets that use LMP and FTRs.[15] However, the differences that are most relevant for purposes of the Final Rule concern the management of congestion, the recovery of congestion costs, and the availability of long-term service arrangements. These differences are discussed in the Final Rule.[16]

C. Energy Policy Act of 2005

10. On August 8, 2005, EPAct 2005 [17] became law. As noted above, section 1233 of EPAct 2005 added a new section 217 to the FPA, which provides:

> The Commission shall exercise the authority of the Commission under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.[18]

Section 1233(b) of EPAct 2005 requires:

> Within 1 year after the date of enactment of this section and after notice and an opportunity for comment, the Commission shall by rule or order, implement section 217(b)(4) of the Federal Power Act in Transmission Organizations, as defined by that Act with organized electricity markets.[19]

D. Notice of Proposed Rulemaking

11. On February 2, 2006, the Commission issued a NOPR that proposed to amend its regulations to require each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy guidelines established by the Commission.[20] The NOPR proposed eight guidelines, and sought comments on various issues raised by the introduction of long-term firm transmission rights in the organized electricity markets.

E. Final Rule: Order No. 681

12. As noted above, in the Final Rule the Commission adopted regulations requiring public utilities that are transmission organizations with organized electricity markets (as defined in the Final Rule) to make available long-term firm transmission rights that satisfy each of the seven guidelines established by the Commission, which are set forth in the regulations. By adopting guidelines for the development of long-term firm transmission rights, the Commission gave transmission organizations the flexibility to propose designs for long-term firm transmission rights that reflect regional preferences and accommodate regional market designs, while ensuring that the objectives of Congress expressed in new section 217(b)(4) of the FPA are met.[21]

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[8] Order No. 2000 at 30,992–93 and 31,014–15.

[9] *Id.* at 31,015–17.

[10] *Id.* at 31,024.

[11] While ''FTR'' is sometimes used to refer to ''firm transmission rights,'' in this Final Rule we use this acronym to refer to the various forms of financial transmission rights that exist in organized electricity markets. In some markets, these are referred to as congestion revenue rights or transmission congestion contracts.

[12] In May 2005, the Commission released a Staff Paper that provided background and solicited comments on whether long-term transmission rights were needed in the ISO and RTO markets, and if so, how to implement them. Notice Inviting Comments On Establishing Long-Term Transmission Rights in Markets With Locational Pricing and Staff Paper, Long-Term Transmission Rights Assessment, Docket No. AD05–7–000 (May 11, 2005) (Staff Paper). There, the current FTR situation was discussed. *See id.* at 1 (stating that, as of the date of issuance ''the longest term FTR offered in any of the RTO or ISO markets is one year'').

[13] For a more detailed discussion, *see* NOPR at P 27. As we noted in the NOPR, ARRs confer the right to collect revenues from the subsequent FTR auction.

[14] *See* Staff Paper at 1–2.

[15] A detailed discussion of transmission rights in traditional and organized markets was presented in the NOPR at P 15–33.

[16] Final Rule at P 7–10.

[17] Pub. L. No. 109–58, 119 Stat. 594.

[18] Pub. L. No. 109–58, § 1233, 119 Stat. 594, 958.

[19] *Id.* at 960. Transmission organization is defined in EPAct 2005 as ''a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.'' Pub. L. No. 109–58, § 1291, 119 Stat. 594, 985. In the Final Rule, we adopted this definition with slight modifications for the purposes of the Final Rule.

[20] *See supra* note 3.

[21] The Commission discussed the possibility that the flexible regional approach adopted in the Final Rule could create seams issues, and directed each

Continued

13. In adopting the Final Rule, the Commission explained that it sought to provide increased certainty regarding the congestion cost risks of long-term firm transmission service in organized electricity markets that will help load serving entities and other market participants make new investments and other long-term power supply arrangements. The Commission also stated that the guidelines adopted in the Final Rule are designed and intended primarily to ensure that the long-term firm transmission rights that are made available by transmission organizations that are subject to the rule have characteristics that will support long-term power supply arrangements.[22]

14. Additionally, the Final Rule made clear that, while it unequivocally requires transmission organizations to offer long-term firm transmission rights with characteristics that will support long-term power supply arrangements, in most cases, offering such rights should not require major changes in allocations or allocation procedures.[23] We noted that our intent with regard to the existing transmission system is that load serving entities be able to request and obtain transmission rights up to a reasonable amount on a long-term firm basis, instead of being limited to obtaining exclusively annual rights.[24] Moreover, we emphasized that offering such rights should not force transmission organizations to provide rights to the existing system that are infeasible, and that the Final Rule does not necessarily guarantee that a load serving entity will be able to obtain long-term firm transmission rights to hedge its entire resource portfolio or be able to obtain all the long-term firm transmission rights it requests.

15. The specific guidelines adopted by the Commission in the Final Rule, which the long-term firm transmission rights offered by transmission organizations must satisfy, are:

(1) The long-term firm transmission right should specify a source (injection node or nodes) and sink (withdrawal node or nodes), and a quantity (MW).

(2) The long-term firm transmission right must provide a hedge against day-ahead locational marginal pricing congestion charges or other direct assignment of congestion costs for the period covered and quantity specified. Once allocated, the financial coverage provided by a financial long-term right should not be modified during its term (the ''full funding'' requirement) except in the case of extraordinary circumstances or through voluntary agreement of both the holder of the right and the transmission organization.

(3) Long-term firm transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions.

(4) Long-term firm transmission rights must be made available with term lengths (and/or rights to renewal) that are sufficient to meet the needs of load serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation. The length of term of renewals may be different from the original term. Transmission organizations may propose rules specifying the length of terms and use of renewal rights to provide long-term coverage, but must be able to offer firm coverage for at least a 10 year period.

(5) Load serving entities must have priority over non-load serving entities in the allocation of long-term firm transmission rights that are supported by existing capacity. The transmission organization may propose reasonable limits on the amount of existing capacity used to support long-term firm transmission rights.

(6) A long-term transmission right held by a load serving entity to support a service obligation should be re-assignable to another entity that acquires that service obligation.

(7) The initial allocation of the long-term firm transmission rights shall not require recipients to participate in an auction.

In the preamble to the Final Rule, the Commission discussed each guideline in detail.

16. The Final Rule also required transmission organizations with organized electricity markets to explain how their transmission system planning and expansion policies will ensure that long-term firm transmission rights, once allocated, remain feasible over their entire term. Additionally, it required each transmission organization subject to the rule to make its planning and expansion practices and procedures publicly available, including both the actual plans and any underlying information used to develop the plans.

II. Discussion

A. Procedural Matters

17. Timely requests for rehearing and/or clarification were filed by the following entities: American Public Power Association (APPA), BP Energy Company (BP), Public Utilities Commission of the State of California (CPUC), California Department of Water Resources—State Water Project (DWR), Midwest ISO Transmission Owners (Midwest TOs), Modesto Irrigation District (Modesto), New York Independent System Operator, Inc. (NYISO), City of Santa Clara (Santa Clara), Sacramento Municipal Utility District (SMUD), and Transmission Access Policy Study Group (TAPS).

18. On September 13, 2006, Electric Power Supply Association (EPSA) filed supplemental comments, and PJM Interconnection, L.L.C. (PJM) filed a motion for leave to answer, as well an answer. SMUD and Modesto both moved to strike PJM's answer, while APPA and TAPS submitted a joint reply to PJM's answer.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[25] prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We are not persuaded to accept PJM's answer, EPSA's supplemental comments (which are in the form of an answer), or the responses to those answers, and will, therefore, reject them.

B. Requests for Rehearing and Clarification and Commission Conclusions

1. Definition of Load Serving Entity and Service Obligation

20. In the Final Rule, as proposed in the NOPR, the Commission adopted the definitions of load serving entity and service obligation exactly as Congress defined those terms in new section 217 of the FPA. Specifically, the Final Rule defines load serving entity as ''a distribution utility or electric utility that has a service obligation.''[26] The term ''service obligation'' is defined as ''a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State, or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.''[27] The Commission reasoned that using the definitions provided by Congress would most closely effectuate the intent of Congress in enacting section 217(b)(4) of the FPA. The Commission did, however, offer several clarifications. For example, the Commission clarified that non-public utilities are within the definition of load serving entity, provided they

transmission organization to explain in its compliance filing how its proposal addresses potential seams issues. Final Rule at P 107.

[22] Final Rule at P 16.

[23] As we discuss in more detail below, while we do not believe major changes to existing allocation procedures will be necessary, Congress did not intend to protect existing or future allocation methodologies from the implementation of section 217(b)(4) of the FPA. *See* new section 217(c) of the FPA, Pub. L. No. 109–58, § 1233, 119 Stat. 594, 958–959.

[24] Capacity available would be limited to that which is generally available and excludes capacity that is the exclusive right of a participant, *e.g.*, a participant that paid for such capacity and obtained FTRs for that payment.

[25] 18 CFR 385.213(a)(2) (2006).

[26] Final Rule at P 44; 18 CFR 42.1(b)(2); section 217(a)(2) of EPAct.

[27] Final Rule at P 44; 18 CFR 42.1(b)(3); section 217(a)(3) of EPAct.

have a service obligation.[28] The Commission also clarified that industrial customers who self-supply their own load are construed to be load serving entities under the Final Rule, even though some of these entities may not technically ''sell * * * electric energy.'' The Commission stated that this would ensure that Congress' objectives under the FPA are fulfilled.

Rehearing Requests

21. DWR states that the Commission erred in assuming that a water pumping entity under section 217(g) of the FPA necessarily has an electric service obligation as defined in section 217(a)(3) of the FPA and under 18 CFR 42.1. DWR asserts that the Final Rule misapprehends the nature of water pumping entities, who, unlike load serving entities, have no ''service obligation'' as defined in section 217(a)(3) of the FPA and the Final Rule. DWR asserts that new regulatory language in 18 CFR 42.1 is necessary to ensure compliance with section 217(g) of the FPA. Specifically, DWR argues that section 217(g) of the FPA expressly distinguishes water pumping entities from load serving entities, stating:

> Water Pumping Facilities—The Commission shall ensure that any entity described in section 201(f) that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to the facilities, protections for transmission service comparable to those provided to load-serving entities pursuant to this section.

Id. (emphasis added). DWR argues that, while the Final Rule clearly intends to implement section 217(g), it does so in an erroneous fashion, by conflating water pumping facilities—which have no electric service obligation—with load serving entities. DWR asserts that the Final Rule erroneously states that water pumping facilities, which are non-public utilities, already appear to be captured by the definition of load serving entity, ''provided of course, that they have a service obligation.'' [29] DWR points out that ''service obligation'' in the Final Rule is defined as ''a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.[30] DWR argues that this regulatory language makes no mention of the water pumping facilities as described by Congress in section 217(g) of the FPA.

22. DWR explains that it has put into place long-term transmission entitlements used ''to support its own water pumping facilities'' as provided in section 217(g). DWR states that, while it self-provides power to its own water pumping facilities, it does not provide electric service to end-users or to a distribution utility, as it must to qualify as a load serving entity under 18 CFR 42.1(b)(3). Rather, DWR is a water agency whose pumping facilities provide flood management, water deliveries, and other water related services to California. Therefore, DWR asks the Commission to revise section 42.1 of the regulations to ensure compliance with section 217(g) of the FPA.

23. BP also requests clarification of the scope of the Final Rule's definition of a load serving entity. BP states that it is concerned that the Final Rule does not consistently apply its definition of a load serving entity eligible for long-term firm transmission rights allocation priority. BP argues that the Final Rule discriminates against certain entities with binding contractual obligations to provide power to load serving entities, by denying them load serving entity status, while granting load serving entity status to other similarly situated entities. BP points out that Manitoba Hydro had argued that the priority allocation of long-term firm transmission rights should extend to entities that, through agreement with a load serving entity, have ''provided the transmission required by the load-serving entity to satisfy its service obligation and agreed to assume congestion risk.'' [31] BP states that Manitoba Hydro cited the Commission's assertion that it sought to help ''other market participants'' as well as load serving entities make new investments and other long-term power supply arrangements. BP reiterates Manitoba Hydro's example of a load serving entity unable to obtain transmission that utilizes another party's transmission rights in exchange for assumption of the congestion risk.[32] BP states that Manitoba Hydro requested the Commission to ensure that if a market participant other than a load serving entity has a contractual obligation to a load serving entity to provide transmission rights and to assume associated congestion risk, it too should have priority access to long term firm transmission rights in the same manner as a load serving entity.[33] In the same vein, BP similarly requests the Commission to clarify that, like those entities that self supply, entities that enter into long-term obligations to sell electric energy to load serving entities that have the option to self supply, be similarly construed as load serving entities for purposes of the Final Rule.[34]

Commission Conclusion

24. With respect to the issue raised by DWR concerning whether water pumping entities fall under the definition of load serving entities, we grant clarification. While water pumping entities do not come under the definition of load serving entities, we clarify that, to effectuate Congressional intent, water pumping entities as described in section 217(g) of the FPA should be treated as load serving entities. As DWR points out, section 217(g) of the FPA provides that the ''Commission shall ensure that any entity described in section 201(f) [of the FPA] that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to the facilities, protections for transmission service comparable to those provided to load-serving entities pursuant to this section.'' [35] From this provision, it is evident that Congress intended water pumping entities, such as DWR, to be on par with load serving entities with respect to protections for transmission services. Consequently, we clarify that water pumping entities and their obligation to provide water related services, as described in section 217(g), should be construed as meeting the definition of ''service obligation'' in 18 CFR 42.1(b)(3), and should be treated as load serving entities with service obligations for purposes of the Final Rule. This should effectuate Congressional intent that water pumping entities receive protections for transmission service comparable to those provided to load-serving entities.

25. Next, we deny BP's request to construe entities that enter into long-term obligations to sell electric energy to load serving entities that have the option to self supply as load serving entities. As we stated in the Final Rule (in the discussion of guideline (5)), we cannot allow certain entities that do not meet the strict definition of load serving entity to come under the definition of load serving entity and, consequently, receive priority in allocation of long-

[28] Final Rule at P 45.

[29] Request for Rehearing/Clarification of DWR at 5 (quoting Final Rule at P 48).

[30] *Id.* at 6 (citing 18 CFR 42.1(b)(3); section 217(a)(3) of EPAct).

[31] Request for Rehearing of BP at 7 (citing Manitoba Hydro Comments at 1).

[32] *Id.* (citing Manitoba Hydro Comments at 3).

[33] *Id.* at 8 (citing Manitoba Hydro Comments at 3–4).

[34] *Id.*

[35] EPAct 2005, Pub. L. No. 109–58, § 1233, 119 Stat. at 959.

term firm transmission rights.[36] Extending the definition as BP requests would likely defeat the purpose of the preference, which is to ensure that load serving entities have sufficient protection for transmission service. If, as BP requests, we were to construe a supplier of a load serving entity, such as a generator, to be a load serving entity, this could lead to a situation where multiple load serving entities are counting the same load as part of their load serving obligation.

26. Furthermore, we disagree with BP's contention that the Final Rule does not consistently apply the definition of load serving entity. In the Final Rule, we construed large industrial customers who self-supply their own load to be load serving entities for purposes of the Final Rule, in order to ensure fulfillment of Congress's objectives in section 217 of the FPA.[37] While a large industrial customer is not technically a ''distribution utility'' or an ''electric utility,'' like a traditional load serving entity it provides electricity to serve its ''load,'' *i.e.*, its industrial facilities, on an ongoing basis from either its own generation or through a direct purchase from another generator. Contrary to BP's assertion, large industrial customers who self-supply their own load are not similarly situated to entities, such as generators, with contractual obligations to serve load serving entities. Entities that enter into long-term obligations to supply load serving entities are at least one step removed from load serving entities, insofar as they have a contractual obligation to serve an entity (the load serving entity) that subsequently has the service obligation. Consequently, we deny BP's request to construe as load serving entities those entities that enter into long-term obligations to supply load serving entities.

27. While we reject BP's requested clarification, we nevertheless emphasize that, even though suppliers of load serving entities are not treated as load serving entities under the statute, this does not mean that they will be deprived of long-term firm transmission rights. On the contrary, consistent with section 217 of the FPA, once load serving entities have received their allocated long-term firm transmission rights, those rights and any additional long-term firm transmission rights available from existing system capacity can be offered to such non-load serving entities (as well as other load serving entities) through a secondary auction, bilateral trades or another method of allocation.[38] The load serving entity could sell or otherwise transfer its long-term firm transmission rights to its supplier. As noted in the Final Rule, a generator or any other entity that has a contract with a load serving entity can structure its contract with the load serving entity as necessary to attain the desired congestion cost risk sharing.[39]

2. Commission Interpretation of EPAct 2005

28. In several places in the Final Rule, the Commission offered interpretations of new section 217(b)(4) of the FPA and section 1233(b) of EPAct 2005. In particular, the Commission interpreted these provisions as containing two separate directives: (1) To exercise its authority to facilitate planning and expansion of transmission facilities; and (2) to enable load serving entities with long-term power supply arrangements used to meet their load serving obligations to obtain long-term firm transmission rights. We also interpreted these statutes to require, when existing capacity is limited, giving a preference to load serving entities vis-à-vis non-load serving entities to obtain long-term firm transmission rights from existing capacity. Further, we disagreed with interpretations of section 217(c) of the FPA suggesting that it immunizes existing market designs and transmission rights allocations from the effect of section 217(b)(4) of the FPA. Also, we disagreed with contentions that transmission organizations already provide long-term firm transmission rights consistent with section 217(b)(4), or that this section contained no requirement to offer transmission rights with longer terms than those that already exist.

Rehearing Requests

29. NYISO argues that the Commission misinterpreted section 217(b)(4) of the FPA and section 1233(b) of EPAct 2005. First, it contends that the Commission read section 217(b)(4) too broadly to establish that the existing financial transmission rights offered by ISO/RTOs do not provide load serving entities with sufficient price certainty and stability over a long enough term. NYISO asserts that nothing in section 217(b)(4) or section 1233(b) states that the rules for existing financial transmission rights are not sufficient or explicitly requires changes to those rules, and notes section 217(b)(4) in fact explicitly recognizes that ''tradable'' or ''financial'' rights can be equivalent to firm transmission rights. NYISO argues that the statute's express references to financial transmission rights (particularly in section 217(c)), and the fact that Congress was presumably aware of Commission orders finding such rights equivalent to firm transmission rights under Order No. 888, imply that Congress viewed these existing financial rights as acceptable in their current form. NYISO also suggests that since section 217(b)(4) does not define ''long-term,'' it is reasonable to assume that Congress was aware of the Commission's pre-existing definition of one-year or longer. NYISO also claims that no legislative history exists to support the Commission's interpretations. Further, NYISO describes as ''unreasonable'' the Commission's ''sweeping'' inference that section 1233(b)'s direction to implement section 217(b)(4) within one year amounts to a statement by Congress that existing transmission organizations do not meet the requirements.

30. NYISO contends that ''[a] more natural reading'' of section 217(b)(4) is that it only requires the Commission to ensure that the financial transmission rights offered by transmission organizations provide load serving entities with a reasonable opportunity to meet their long-term service obligations, and that the Commission ensure that transmission organization planning procedures adequately enable load serving entities to meet their reasonable needs. In short, NYISO argues, section 217(b)(4) leaves open the possibility that transmission organizations already satisfy its requirements. It contends that this reading is more in line with the entirety of section 217 than the Commission's reading.

31. Further, NYISO asserts that the Commission's interpretation of section 217(b)(4) of the FPA as requiring changes in existing transmission organization market design is erroneous because it nullifies section 217(c) of that statute. Section 217(c) provides, in pertinent part:

> Allocation of Transmission Rights-Nothing in subsections (b)(1), (b)(2), and (b)(3) of this section shall affect any existing or future methodology employed by a Transmission Organization for allocating or auctioning transmission rights if such Transmission Organization was authorized by the Commission to allocate or auction financial transmission rights on its system as of January 1, 2005, and the Commission determines that any future allocation is just, reasonable, and not unduly discriminatory or preferential. * * *

32. NYISO contends that the Commission's interpretation of section 217(b)(4) effectively reads section 217(c) out of the FPA because it nullifies the

[36] *See* Final Rule at P 326.

[37] *See id.*

[38] *See id.*

[39] *Id.*

protections that the latter provision provides for previously-approved transmission organization rules concerning the auction and allocation of transmission rights. As a result of this conflict, NYISO posits, the Commission must abandon its premise that section 217(b)(4) requires modifications to existing transmission organization auction and allocation rules.[40]

33. Given what NYISO views as the Commission's incorrect interpretation of section 217(b)(4), NYISO argues that the Commission should revise the Final Rule to eliminate certain features, including: (1) The requirement that existing transmission capacity be set aside to create new long-term firm transmission rights different from existing transmission rights; (2) the preference to existing capacity for load-serving entities with service obligations; (3) the prohibition on allocation of long-term firm transmission rights by auction; (4) the requirement that long-term firm transmission rights ''follow load'' and that tradable rights be ''recallable;'' and (5) any future requirement under the Final Rule that conflicts with section 217(c). Finally, NYISO argues that because the Commission lacked a statutory mandate to modify existing transmission organization rules for financial transmission rights, it could only require such modifications on the basis of substantial evidence under section 206 of the FPA. The Commission neither built a record to support its requirements nor invoked section 206, NYISO concludes.

Commission Conclusion

34. We deny NYISO's rehearing request regarding our interpretation of section 217(b)(4) of the FPA and section 1233(b) of EPAct 2005. NYISO argues first that nothing in section 217(b)(4) or section 1233 states that existing transmission organizations' financial transmission rights are deficient. While NYISO is correct that these sections do not explicitly declare that existing transmission rights are insufficient, Congress did direct *explicitly* that the Commission implement section 217(b)(4) within one year in transmission organizations with organized electricity markets. As we reasoned in the Final Rule, this explicit direction to a specific segment of the industry strongly suggests that Congress believed the existing transmission rights offered by transmission organizations with organized electricity markets may not be of a sufficient length to be ''long-term'' and support long-term power supply arrangements. Under this direction, we concluded that the current one-year financial rights offered by transmission organizations, which are subject to financial proration during their term, did not meet the requirement of section 217(b)(4) that the Commission enable load-serving entities to secure long-term firm transmission rights to support long-term power supply arrangements. As a result, we acted in the Final Rule as directed by Congress in section 1233(b) of EPAct 2005, and issued regulations requiring transmission organizations with organized electricity markets to make available long-term firm transmission rights.

35. The references to ''equivalent tradable or financial rights'' in section 217(b)(4) and the references to financial transmission rights in other parts of section 217 do not lead to the conclusion that the existing financial transmission rights offered by transmission organizations are sufficient. These references only suggest that financial transmission rights can satisfy the requirements of the statute if, in this instance, they are sufficiently long-term and sufficiently firm to support long-term power supply arrangements. This is particularly true under section 217(b)(4), where Congress referred to financial rights in comparison to ''firm transmission rights.'' Moreover, we again reiterate that if Congress believed the existing financial rights offered by transmission organizations were sufficient, it is unclear why Congress would have made such an explicit direction to the Commission to act within one year in transmission organizations with organized electricity markets. Likewise, with regard to NYISO's argument that Congress was surely aware of the Commission's existing definition of ''long-term,'' we are unclear why Congress would have acted in the manner it did and with specific direction to the Commission if it believed all the current transmission organizations offered sufficient transmission rights to meet the requirements of section 217(b)(4).

36. NYISO posits that a better reading of the statute at issue here is that it ''requires the Commission to ensure that the rules governing financial rights in [transmission organization] markets provide [load serving entities] with a reasonable opportunity to meet their 'long-term' service obligation,'' and that it leaves open the possibility that transmission organizations already comply.[41] We disagree with NYISO's reading that section 217(b)(4) only requires that we ensure that the current financial transmission rights give load serving entities a reasonable opportunity to meet their long-term service obligations; the statute says directly that the Commission must exercise its authority in a manner that ''enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned'' to meet service obligations.[42] This language in the statute does not comport with NYISO's reading. We agree with NYISO, however, that section 217(b)(4) leaves open the possibility that the transmission rights offered by an existing transmission organization already comply. The regulations adopted in the Final Rule recognize this, in fact, and provide that a transmission organization may submit a compliance filing explaining ''how its current tariff and rate schedules already provide for long-term firm transmission rights that satisfy each of the guidelines'' set forth.[43] As we have noted elsewhere, the guidelines we adopted in the Final Rule are intended to ensure that long-term firm transmission rights will support long-term power supply arrangements used to satisfy native load service obligations, as Congress directed. The guidelines and the discussion of them in the Final Rule focus on the current short-term transmission rights predominately offered by transmission organizations, but do not rule out the possibility that an existing transmission organization might currently offer rights that already satisfy the guidelines.

37. NYISO also asserts that our reading of section 217(b)(4) nullifies section 217(c). We disagree. First, we must reiterate that section 217(c) expressly, and quite starkly, omits reference to section 217(b)(4), while referencing all other provisions of section 217(b). This express omission strongly suggests that Congress did not intend for the protections of section 217(c) to trump implementation of section 217(b)(4). Further, the Final Rule does not require that transmission organizations ignore the protections of section 217(c) or any other part of section 217 when implementing section 217(b)(4), and repeatedly states the Commission's belief that section 217(b)(4) can be implemented within

[40] NYISO notes that abandoning this interpretation would not nullify section 217(b)(4), as some have claimed, because that section would still require the Commission to assess whether transmission organizations were fulfilling their planning obligations and adequately supporting long-term power supply arrangements.

[41] Request for Rehearing of NYISO at 7–8.

[42] Pub. L. No. 109–58, § 1233, 119 Stat. 594, 958.

[43] 18 CFR 42.1(c)(1)(ii) (2006).

existing allocation and auction mechanisms. The Final Rule appropriately recognizes, however, Congress's decision, in enacting section 217, to omit reference to section 217(b)(4) when providing the protections of section 217(c). As a result, we explained in the Final Rule that if implementing long-term firm transmission rights cannot be accomplished without changes to existing allocation or auction methodologies, section 217(c) does not bar such changes.

38. For all of these reasons, we believe our interpretation of section 217(b)(4) of the FPA is reasonable and comports with Congress's intent. Accordingly, we will not modify or eliminate the features identified by NYISO as conflicting with its interpretation of the statute. Moreover, we reject NYISO's claim that we have not acted in accordance with the FPA in requiring transmission organizations to comply with the Final Rule. Contrary to NYISO's claim, the Commission is not overturning its existing precedents accepting transmission organization allocation and auction rules. Instead, we are requiring, consistent with the dictates of section 217(b)(4) of the FPA and section 1233(b) of EPAct 2005, that transmission organizations offer long-term firm transmission rights. The Final Rule explains why certain existing transmission organization rules for allocating transmission rights may not be compatible with long-term rights, but does not find those rules (or the short-term rights that are currently available) unjust and unreasonable. It simply explains what it will take to comply with section 217(b)(4), now included in the FPA (which it was not when the current rules were approved), and establishes guidelines to ensure that long-term firm transmission rights have properties that will allow them to support long-term power supply arrangements used to satisfy service obligations, as section 217(b)(4) requires. Finally, we reiterate, as noted above, that under the regulations adopted in the Final Rule, a transmission organization may seek to support its current allocation and auction rules as satisfying each of the guidelines in the Final Rule. The regulations specifically allow a transmission organization to explain ''how its current tariff and rate schedules already provide for long-term firm transmission rights that satisfy each of the guidelines'' set forth.[44]

[44] *Id.*

3. Seams Issues

39. In the Final Rule, the Commission addressed comments on the NOPR that noted the potential for the flexible approach proposed by the Commission to create seams issues both between transmission organizations, as well as between transmission organization regions and non-transmission organization regions. The Commission agreed with commenters that transmission organizations should consider these issues when complying with the Final Rule, and directed each transmission organization to explain in its compliance filing how its proposal addresses potential seams issues, particularly with regard to the term of the long-term rights offered and the procedures and timelines for obtaining such rights.[45] Concerning potential seams between transmission organizations, the Commission directed each transmission organization to explain why it has or has not elected to revise any seams agreement it has with another transmission organization.[46]

Request for Rehearing

40. APPA notes that the Commission, in requiring transmission organizations to address potential seams issues in their compliance filings, primarily discusses seams between transmission organizations, within the context of existing seams agreements between transmission organizations. It states that the Commission, in an apparent unintended oversight, makes no mention of seams issues arising between transmission organizations and non-transmission organizations. It asks the Commission to explicitly require transmission organizations, in their compliance filings, to address seams issues between transmission organizations and non-transmission organizations on their borders, in addition to addressing seams between neighboring transmission organizations.

Commission Conclusion

41. In response to APPA's seams concerns, we clarify that each transmission organization should explain in its compliance filing how its proposal addresses potential seams issues between itself and neighboring non-transmission organization transmission providers, as well as between itself and neighboring transmission organizations. While our discussion in the Final Rule focused in particular on existing seams agreements between transmission organizations, it was our intent, consistent with the comments received, that transmission organizations would consider both types of potential seams. As we stated in the Final Rule, in both cases, transmission organizations should, in particular, explain how their proposals address seams issues with regard to the term of the long-term rights offered and the procedures and timelines for obtaining such rights.[47]

[45] Final Rule at P 107.

[46] *Id.*

4. Full Funding of Long-Term Firm Transmission Rights

42. As adopted in the Final Rule, guideline (2) provides in part that ''once allocated, the financial coverage provided by a financial long-term transmission right should not be modified during its term (the full funding requirement) except in the case of extraordinary circumstances or through voluntary agreement of both the holder of the right and the transmission organization.'' [48] We determined that the full funding requirement was necessary to satisfy Congress' directive in section 217(b)(4) that load serving entities with service obligations be able to obtain ''firm'' transmission rights or their equivalent on a long-term basis.[49] We explained that full funding provided one aspect of such firmness, increased certainty in the revenue stream from the rights over time. The Final Rule did not require a particular method to provide for full funding, thus allowing transmission organizations and their stakeholders discretion to determine methods appropriate to regional circumstances.[50] However, we did note that certain approaches could lead to unreasonable outcomes, and we discussed those approaches.[51]

Requests for Rehearing and/or Clarification

43. Midwest TOs argue that the Commission erred first by interpreting section 217(b)(4) to require that long-term firm transmission rights be fully funded, and second by then suggesting that allocation of uplift to support full funding could be done in ways that, in their view, violate cost causation principles. On the first issue, Midwest TOs make several arguments. First, Midwest TOs assert that the Commission has not justified its interpretation of section 217(b)(4) as requiring full funding. Midwest TOs argue that the statutory language does not provide ''absolute guarantees'' for long-term firm transmission rights, but

[47] *Id.*

[48] *Id.* at P 169.

[49] *Id.* at P 170.

[50] *Id.* at P 175.

[51] *See id.* at P 171, 176–77.

provides instead for ''reasonable needs,'' which suggests no guarantee of full funding.[52] Second, the Commission concluded in the Final Rule that full funding would assist in financing of generation investments,[53] but Midwest TOs argue that there are other means of assisting in financing, such as consumers hedging risks. Also, Midwest TOs posit, the Final Rule provides no evidence that full funding is necessary to obtain financing. Third, Midwest TOs insist that the Final Rule does not adequately address the potential negative incentives from full funding. Nor, in their opinion, does the Final Rule adequately reflect the difficulties in planning for full funding of the rights over the long-term. Fourth, Midwest TOs argue that the full funding requirement runs contrary to principles of hedging energy costs, which are reflected in LMP-based congestion prices, and which require parties to pay for a hedge. Midwest TOs state that the Final Rule did not explain why holders of long-term rights should not, therefore, be required to pay a premium for the rights.

44. The Midwest TOs' second general argument is that the Final Rule violates principles of cost causation because it does not also require full funding of short-term rights, and because it appears to endorse the prospect that holders of long-term rights would not always be fully responsible for all uplift charges associated with full funding. Hence, holders of short-term rights could be required to pay uplift to support full funding of long-term rights that they do not benefit from. This creates a substantial potential future exposure, as it is difficult to accurately project events over the long term.

45. BP supports full funding of long-term firm transmission rights and suggests that the methodology for such funding should be set by stakeholder groups. It also supports extension of full funding to short-term transmission rights. However, it seeks clarification that the Commission's findings in the Final Rule—that full funding of both durations of firm transmission rights is permissible under the law, and that any shortfall should be uplifted to all firm transmission rights holders—set a baseline for what is fair, equitable, and nondiscriminatory, and that anything less is impermissible and will be rejected by the Commission. BP is particularly concerned that, due to biases in the stakeholder processes, any uplift rules for full funding not result in outcomes that create subsidies, preferences or competitive advantages. As a result, BP argues that the Commission acted arbitrarily and capriciously and failed to engage in reasoned decision-making by failing to mandate explicitly that stakeholders follow the Commission's methodologies for full funding of firm transmission rights. BP asserts that, in the event that the Commission fails to grant its requested clarifications, the Commission erred in its Final Rule.

Commission Conclusion

46. We disagree with Midwest TOs' assertion that the Commission incorrectly interpreted section 217(b)(4) to require full funding. As we noted in the Final Rule, while section 217(b)(4) does not explicitly use the term ''full funding,'' it does state that the long-term transmission rights must be firm.[54] We considered what the equivalent of the term ''firm'' (in a physical rights context) would mean in the context of the financial transmission rights found in organized electricity markets, and found that it corresponded to (a) the expectation that once allocated, the quantity of rights allocated would remain constant for the term of the right, and (b) the expectation that, once assigned or acquired, transmission rights do not experience volatility in the actual financial coverage that they provide relative to congestion charges associated with the same points of injection and withdrawal (although there might be some volatility experienced in the uplift charges that support full funding).[55] Midwest TOs have not offered an alternative interpretation of section 217(b)(4)'s requirement that the rights be firm. Instead, they focus on section 217(b)(4)'s requirement of ''reasonable needs.'' We have interpreted that requirement in the Final Rule as pertaining to the quantity of long-term rights that a load-serving entity is entitled to receive, rather than relating to their firmness.[56] Hence, Midwest TOs have not provided an alternative interpretation of section 217(b)(4) that considers both statutory requirements—firmness and reasonable needs—and we do not find their argument sufficiently persuasive to merit granting rehearing and eliminating the full funding requirement.

47. Next, we disagree with Midwest TOs' assertion that we did not consider the prospect of having parties that are allocated long-term rights pay more for such rights. Indeed, we expressly noted that such rights may command a premium.[57] Midwest TOs argue that we did not explain why we did not require additional payment for long-term rights, since, according to them, requiring such a premium would be consistent with cost causation. We conclude, however, that requiring a premium may or may not be consistent with cost causation, depending on the source and scope of the revenue insufficiency. For example, it would not be consistent with cost causation principles to require load serving entities that hold long-term rights to pay a premium to cover revenue insufficiency caused by another utility, such as by a transmission owner that does not adequately maintain its transmission system. For this reason, we chose not to simply impose a blanket premium payment requirement, but rather pointed out that there could be justification for imposing such a premium, based on stakeholder agreement and consistency with regional preferences for transmission pricing.[58]

48. Finally, with regard to Midwest TOs' concern that parties holding short-term rights could be unfairly exposed to uplift charges that support full funding for long-term rights if both types of rights are not put on equal footing with regard to full funding, we agree that, under some conditions, such concerns may be justified. This is one reason why in the Final Rule we encourage extension of full funding to both types of rights, even though section 217(b)(4) does not require it.[59] Because section 217(b)(4) and this rulemaking concern long-term transmission rights, however, we believe this issue falls outside the scope of this proceeding. Moreover, Midwest TOs have failed to capture in their argument the fact that the Final Rule explicitly recognizes that the question of fair allocation of full funding uplift is a matter of degree, and hence must be evaluated by the Commission on a case-by-case basis.[60] While we did state that if only a small group of load serving entities holds long-term rights, assigning the full funding uplift directly to them would largely undercut the requirement of full funding,[61] we also stated that ''if most load serving entities in a region opted for long-term rights (up to their eligibility), then the distribution of uplift charges over the set of rights holders would have a lesser impact and

[52] Request for Rehearing of Midwest TOs at 7.

[53] *See* Final Rule at P 171.

[54] *Id.* at P 170.

[55] *Id.*

[56] *See id.* at P 323 (discussing guideline (5)); *see also id.* at P 273 and 318.

[57] *See id.* at P 172.

[58] *Id.*

[59] *Id.* at P 179.

[60] *See id.* at P 171–173.

[61] *See* Final Rule at P 177.

could be reasonable from all parties' perspective.''[62] Therefore, to know whether the full funding requirement would lead to unreasonable cost-shifts unrelated to cost causation, we would need to know, among other factors, whether the organized market has opted to cover both short- and long-term rights with full funding, and whether the size of the set of load serving entities expected to request long-term rights is sufficient to restrict full funding uplift to that set. For that reason, we reject Midwest TOs argument that the provisions of the Final Rule inherently violate cost causation principles and deny rehearing of our determination that we must evaluate each compliance filing on a case-by-case basis.

49. With respect to BP's request, we disagree with its suggestion that the Final Rule did not state that the allocation of uplift to support full funding should be just and reasonable and nondiscriminatory. First, transmission organizations are required to make compliance filings to implement the guidelines set forth in the Final Rule, and there are legal criteria—including, importantly the just and reasonable standard—for approving any compliance filing that comes before the Commission. Moreover, in the Final Rule, we mentioned these requirements several times. For example, we noted that for the allocation of uplift costs to support full funding, ''certain options proposed by commenters could result in unreasonable outcomes'' and then proceeded to evaluate some alternatives in light of those concerns.[63] We also stated that applying the full funding requirement to short-term rights as well as long-term rights would be a ''potentially reasonable approach,'' with the implication that such a proposal could be approved by the Commission as just and reasonable.[64] Further, we concluded that, with respect to allocation of such uplift to transmission owners, ''the Commission will allow regional discretion on these options and will examine the reasonableness of such proposals on a case-by-case basis.''[65] Hence, we believe that we provided sufficiently explicit criteria short of enumerating every possible uplift allocation method and considering how they might be adapted to the existing market designs in the organized markets. Also, we believe that it is sufficiently clear that a reasonableness standard is incorporated into our criteria for evaluating possible uplift allocation methods. Furthermore, our discussion of various options for allocating any uplift necessary to support full funding was not intended to set a baseline for what the Commission will find just and reasonable, as BP suggests in its clarification request; our discussion was only intended to be illustrative of some of the options and the issues associated with those options.

50. Regarding concerns about biases in the stakeholder processes, as we stated in the Final Rule, addressing any such alleged flaws in these processes is outside the scope of this rule.[66]

5. Allocation Priority for Load Serving Entities With Long-Term Power Supply Arrangements

51. Guideline (5), as proposed in the NOPR, stated that load serving entities with long-term power supply arrangements to meet a service obligation must have priority over existing transmission capacity that supports long-term firm transmission rights requested to hedge such arrangements. However, in the Final Rule, we revised this guideline to eliminate the preference for load serving entities with long-term power supply arrangements and replaced it with a general preference for load serving entities vis-à-vis non-load serving entities. We also revised the guideline to allow the transmission organization to place reasonable limits on the amount of existing transmission capacity that it will make available for long-term firm transmission rights.

52. In the Final Rule, we concluded that, although section 217(b)(4) of the FPA would support a preference for load serving entities with long-term power supply arrangements, it should not be construed to require that a preference be given to this class of load serving entities at the expense of load serving entities that prefer short-term power supply arrangements, or are precluded from entering into long-term arrangements. We stated that a broader preference for load serving entities in general vis-à-vis non-load serving entities is fully supported by the statute and better meets the needs of today's organized electricity markets. Indeed, we stated that we did not believe that Congress intended to disadvantage entities that prefer short-term power supply arrangements when it enacted section 217 of the FPA, particularly given the statute's overall focus on protecting the transmission rights of load serving entities with service obligations.

53. We noted that, as adopted, guideline (5) neither requires nor prohibits the consideration of power supply arrangements in determining the allocation priority for long-term firm transmission rights; it only requires that load serving entities have priority over non-load serving entities. In this regard, we noted that the transmission organizations must make long-term firm transmission rights available to all market participants; the priority established by guideline (5) serves only as a ''tiebreaker'' between load serving entities and non-load serving entities when existing transmission capacity is limited. We also noted that eliminating the priority for load serving entities with long-term power supply arrangements makes it possible for the transmission organization to propose an allocation method that requires neither the transmission organization nor the load serving entity to verify that the load serving entity holds a qualifying long-term power supply arrangement.

54. We noted that, because of uncertainty regarding load growth, changes in power flows and other factors, the transmission organization may be reluctant to commit all of its existing capacity to long-term firm transmission rights. Also, commenters suggested that the principal need for long-term firm transmission rights is to support long-term power supply arrangements for base load generation, not peaking or intermediate generation. Therefore, we concluded that the transmission organization and its stakeholders should have flexibility to determine the level at which a load serving entity may nominate long-term firm transmission rights, as long as that level does not fall below the ''reasonable needs'' of the load serving entity.

Rehearing Requests

55. The CPUC, TAPS and APPA state that the Commission erred in revising guideline (5) to eliminate the preference for load serving entities with long-term power supply arrangements in the allocation of long-term firm transmission rights and to replace it with a general preference for load serving entities vis-à-vis non-load serving entities. TAPS and APPA also state that the Commission erred in finding that although section 217(b)(4) supports a preference for load serving entities with long-term power supply arrangements in the allocation of long-term firm transmission rights, ''a broader preference for load serving entities in general vis-à-vis non-load serving entities is fully supported by the statute and indeed better meets the

[62] *Id.*

[63] *See* Final Rule at P 175.

[64] *Id.* at P 177.

[65] *Id.* at P 178.

[66] *Id.* at P 106.

needs of today's organized electricity markets.'' [67]

56. The CPUC requests rehearing of the Final Rule's elimination of priority for load serving entities with long-term power supply arrangements because, in the CPUC's view, it is contrary to EPAct 2005 and violates the FPA. The CPUC claims that, by allowing load serving entities that do not have any obligation or contract to serve load to be allocated long-term firm transmission rights, the Final Rule prevents load serving entities with contracts or statutory obligations to serve load from being allocated those transmission rights. In the CPUC's view, such a result directly contradicts the Commission's duties under section 217(b)(4) of the FPA.

57. TAPS asserts that guideline (5) and/or guideline (1) should be modified to restore the connection between long-term firm transmission rights allocated under the Final Rule and the specific resources and loads of load serving entities that seek such rights. TAPS argues that, if the Commission were correct that the change in priority will not significantly affect load serving entities with long-term power supply arrangements, then there would be no need for the Commission to eliminate the NOPR's proposed priority. Instead, that priority could simply be supplemented with a second-tier priority for load serving entities that prefer to rely on short-term transactions vis-à-vis non-load serving entities.

58. TAPS adds that, in broadening the language of guideline (5), the Commission has decoupled the guideline's priority from any specific power supply arrangement, long-or short-term, and from the load serving entity's obligation to serve load. TAPS states that, as adopted, guideline (5) would allow load serving entities to nominate long-term firm transmission rights completely unrelated to their loads and power supply arrangements and to use a generic load serving entity priority to obtain first preference to those long-term firm transmission rights. TAPS claims that a load serving entity that is located in a load pocket and needs long-term firm transmission rights to hedge the long-term power supply arrangements it uses to meet its service obligation could be crowded out by speculators attracted to the financial value of long-term firm transmission rights over the constrained interface.

59. TAPS states that there are several ways to remedy this problem. First, TAPS' preferred solution is to modify the first sentence of guideline (5) to give priority to load serving entities for long-term firm transmission rights with sources and sinks related to the resources and loads that are part of the load serving entity's long-term power supply arrangements. As an alternative, TAPS states that the same result could be achieved by modifying guideline (1) to clarify that the sources and sinks of any long-term firm transmission rights allocated under the Final Rule must be related to the resources and loads of the long-term power supply arrangements of the requesting load serving entity, whether in the transmission organization awarding the long-term firm transmission right or its neighbor.

60. Second, TAPS states that guideline (5) and/or guideline (1) could be modified to restore the connection between long-term firm transmission rights under the Final Rule and the specific resources and loads of the load serving entity, but without requiring a long-term power supply arrangement to qualify for a long-term firm transmission right. At a minimum, TAPS states that guideline (5) must be modified to limit the priority to load serving entities with load located at the long-term firm transmission right sink (or, if the sink is a transmission organization border, on the opposite side of the border). TAPS argues that, although this solution does not satisfy the full mandate of section 217(b)(4), it does tie long-term firm transmission rights to the load serving entity service obligations that the statute was designed to protect.

61. APPA states that, with regard to requiring a preference for load serving entities with long-term power supply arrangements, the statute could not be clearer: the Commission is to exercise its authority to enable load serving entities to secure long-term firm transmission rights ''for long-term power supply arrangements.'' APPA argues that the first two rationales that the Commission cites for its decision to expand the class to all load serving entities (*i.e.*, avoiding the disruption of current firm transmission right allocation mechanisms and obviating the need for transmission organizations to verify the long-term power supply arrangements of load serving entities) both are arguments of administrative convenience. However, APPA asserts that administrative convenience must give way to implementation of Congressional intent. According to APPA, this leaves the Commission with only its third rationale for revising guideline (5): That granting a preference only to load serving entities with long-term power supply arrangements would discriminate unduly against other load serving entities that ''prefer short-term power supply arrangements, or are precluded from entering into long-term arrangements.'' [68] However, APPA concludes that given the express language of FPA section 217(b)(4), it is difficult to argue, as a legal matter, that any such discrimination is undue.

62. APPA argues that, if load serving entities that wish to enter into new long-term power supply arrangements cannot fully hedge with long-term firm transmission rights the substantial risks of transmission congestion costs associated with their new long-term base load and renewable generation resources, many of them will not be able to obtain the financing and bond ratings required to support such projects. APPA adds that, if the Commission is concerned about the ability of load serving entities to obtain long-term firm transmission rights vis-à-vis non-load serving entities, it could specify on rehearing that if there are insufficient long-term firm transmission rights to meet all requests, transmission organizations could distribute long-term firm transmission rights first to load serving entities that show such long-term firm transmission rights would be used to support existing and new long-term power supply obligations needed to meet their service obligations, then to other load serving entities, and finally to non-load serving entities.

63. APPA also states that, because the Commission has expanded the universe of load serving entities eligible for long-term firm transmission rights on a preferred basis, its corollary decision to allow a transmission organization and its stakeholders to place ''reasonable limits on the amount of existing transmission capacity that it will make available'' for long-term firm transmission rights could unduly discriminate against load serving entities with long-term power supply arrangements, and endanger their ability to obtain sufficient long-term firm transmission right allocations to support those arrangements. In addition, APPA is concerned that, given the strategic nomination and gaming activity that it claims now occurs in the current distributions of firm transmission rights, the same problems will appear in the distributions of long-term firm transmission rights.

64. APPA concludes that the Commission must reinstate in guideline (5) the preference for load serving entities with long-term power supply arrangements needed to support their service obligations, or at least take concrete steps to assure that load serving entities with such arrangements get the long-term firm transmission

[67] Final Rule at P 319.

[68] Final Rule at P 322.

rights they need. According to APPA, among the possible ways the Commission could do this would be to require load serving entities seeking long-term firm transmission rights to demonstrate that they: (1) will indeed serve load at the delivery points covered by their long-term firm transmission rights and have power supplies committed to them at the requested receipt points; and (2) have an obligation to pay the embedded costs of their transmission provider's system, thus signaling their commitment to pay their allocated share of the transmission system's fixed costs.

Commission Conclusion

65. We deny the rehearing requests of the CPUC, TAPS and APPA to reinstate in guideline (5) a preference for load serving entities with long-term power supply arrangements in the allocation of long-term firm transmission rights. We retain the preference for load serving entities vis-à-vis non-load serving entities as adopted in the Final Rule. We reiterate that, in our view, a broader preference for load serving entities in general vis-à-vis non-load serving entities is fully supported by the statute and will achieve the statute's purposes. This feature of guideline (5), taken together with the other guidelines in the Final Rule, will enable load serving entities to obtain long-term firm transmission rights for long-term power supply arrangements to meet their service obligations, as section 217(b)(4) requires. However, as explained below, we clarify that, in cases where the transmission organization must limit the amount of existing capacity available for long-term firm transmission rights to a level that cannot support the ''reasonable needs'' of all load serving entities, guideline (5) allows the transmission organization to give priority to load serving entities with long-term power supply arrangements in allocating the scarce capacity.

66. First, in response to TAPS' and APPA's argument that the Final Rule does not satisfy the mandate of section 217(b)(4) of the FPA, as we stated in the Final Rule, while this section can be read to support a preference for load serving entities with long-term power supply arrangements, it does not require that a preference be given to this class of load serving entities at the expense of those that prefer short-term power supply arrangements. New section 217(b)(4) of the FPA requires the Commission to exercise its authority under the FPA ''in a manner that * * * enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet'' service obligations.[69] This language requires the Commission to enable load serving entities to secure a reasonable amount of long-term firm transmission rights that will support long-term power supply arrangements to meet their service obligations. We satisfied this directive by adopting guidelines in the Final Rule that require each transmission organization with an organized electricity market to design and offer to customers long-term firm transmission rights with basic properties that will support specific long-term power supply arrangements. These basic properties include, but are not limited to, the specification of source, sink and MW quantity (guideline 1), full funding (guideline 2), and sufficient term length (guideline 4). Guideline (5) is a measure to ensure that where existing transmission capacity is scarce, load serving entities will have priority over non-load serving entities to secure long-term firm transmission rights to satisfy their service obligations, as Congress intended. The language in new section 217(b)(4)[70] is sufficiently broad that it does not require, and does not prohibit, a narrower preference (like that proposed in the NOPR) for load serving entities with specific long-term power supply arrangements, either made or planned.

67. We believe that, as compared to the narrower preference proposed in the NOPR, the broader preference will equally enable load serving entities to obtain long-term firm transmission rights to support long-term power supply arrangements, while also taking into account the countervailing considerations discussed in the Final Rule. These considerations include the burden on transmission providers to verify long-term power supply arrangements, the potential for discrimination against load serving entities that are prohibited from entering into long-term power supply arrangements, and the need to accommodate load serving entities in retail access jurisdictions. Consequently, given new section 217(b)(4)'s relatively flexible statutory language, the countervailing considerations noted above, and the broader mandate of the FPA (under which we are required to implement section 217(b)(4)) to ensure that jurisdictional rates and services are just, reasonable and not unduly discriminatory,[71] the Commission chose in the Final Rule to adopt a broader preference in guideline (5). We conclude that this approach will ensure just and reasonable outcomes for all users of the grid.

68. Second, we note that, historically, the cost of constructing and maintaining the grid has largely been borne by load serving entities on an equitable basis without regard to the term of their power supply arrangements. It is primarily for this reason that we believe each load serving entity is entitled to an equitable allocation of the firm transmission rights, whether short-term or long-term, that are supported by existing capacity.

69. We agree with APPA that the issue of priority takes on greater significance if the transmission organization determines that, because of load growth uncertainty and other factors, it must limit the amount of existing transmission capacity that is committed to long-term firm transmission rights, as guideline (5) permits it to do. However, the fact that a transmission organization must limit the availability of long-term firm transmission rights in this manner does not undermine our decision to provide a broader preference for load serving entities vis-à-vis non-load serving entities. Indeed, as long as each load serving entity receives a ''reasonable'' allocation of long-term firm transmission rights (for example, a quantity sufficient to hedge the load serving entity's needs at its base load level), it arguably is receiving its fair share of long-term firm transmission rights, based on its historical cost responsibility.

70. While the Commission expects that, in general, the transmission organization will be able to allocate sufficient long-term firm transmission rights to hedge power supply arrangements used to meet base load, a transmission system may temporarily not have enough capacity to provide simultaneously feasible, long-term firm transmission rights to all load serving entities at this level. In such instances, a procedure is needed to allocate the scarce long-term firm transmission rights among load serving entities. We clarify that, in these circumstances, guideline (5) allows the transmission organization to propose an allocation rule that gives priority to load serving entities with longer-term power supply arrangements to meet a service obligation.[72] In this regard, we note the methods currently used by some

[69] Pub. L. No. 109–58, § 1233, 119 Stat. 594, 958.

[70] E.g., id. (''* * * *and enables* load-serving entities to secure firm transmission rights * * * on a long-term basis for long-term power supply *arrangements* made, *or planned,* to meet such needs'') (emphasis added).

[71] 16 U.S.C. 824d and 824e (2000).

[72] *See* Final Rule at P 321.

transmission organizations for the initial allocation of short-term firm transmission rights take explicit account of a load serving entity's current or historical loads and power supply arrangements. We believe that such methods offer a reasonable and appropriate solution to the problem of allocating scarce long-term firm transmission rights when the base load needs of all load serving entities cannot otherwise be met. Indeed, although we are providing flexibility to each transmission organization to propose allocation rules that are appropriate for its region, we expect that such rules will include adequate protections for load serving entities with long-term power supply arrangements.

71. In response to APPA's argument that guideline (5) would permit the same gaming activity that allegedly occurs in the distribution of firm transmission rights, the Commission noted in the Final Rule that tying the allocation of long-term firm transmission rights to long-term power supply arrangements could itself influence market behavior inappropriately. In particular, such a priority may induce load serving entities to bias their supply portfolio unduly in favor of long-term power supply contracts (or, perhaps, enter into sham contracts) simply because they are advantageous in the FTR allocation.

72. In response to TAPS' argument that guideline (5) would allow load serving entities to nominate long-term firm transmission rights unrelated to their loads and that speculators will crowd out others over constrained paths, we note that most transmission organizations now limit the flexibility that a load serving entity has to nominate firm transmission rights on valuable transmission paths when those paths do not include historical resources and loads of the load serving entity. We expect that similar rules will be developed for long-term firm transmission rights. Also, the Commission expects that the entities that are most likely to be speculators will be those that do not have a service obligation and, therefore, will not be entitled to a preference under guideline (5).

If it becomes apparent that load serving entities with long-term power supply arrangements are being crowded out of the allocation of long-term firm transmission rights, or if a compliance filing reveals the potential for such an outcome, the Commission will take appropriate steps to address the issue.

6. Allocation Priority for Load Serving Entities With Loads Outside the Transmission Organization's Boundaries

73. In the Final Rule, we stated that long-term firm transmission rights should be made available first to those entities that have an obligation to serve load within the transmission organization's service territory and are required to contribute to the embedded cost of the transmission organization's transmission system. We concluded that any entity that has neither an obligation to serve load on the transmission organization's transmission system, nor an obligation to pay the embedded costs of that system, should not be given a preference to acquire long-term firm transmission rights supported by the system's existing capacity.

Rehearing Requests

74. APPA and TAPS state that the Commission erred in holding that load serving entities with long-term power supply arrangements, but with loads that sink outside a transmission organization's boundaries, should not be given any preference in the allocation of long-term firm transmission rights supported by the transmission organization's existing transmission capacity. In APPA's view, it would be unduly discriminatory to favor, in the distribution of long-term firm transmission rights, load serving entities with loads sinking on the transmission organization's transmission system over load serving entities serving loads elsewhere. APPA asserts that FPA section 217(b)(4) says nothing about where the loads of a particular load serving entity must be located, so long as the load serving entity has long-term power supply arrangements to meet a service obligation to those loads. APPA states that if a load serving entity is obligated to pay the embedded transmission system fixed costs of the transmission organization from which it obtains a long-term firm transmission right under that transmission organization's Commission-approved rate design, and uses that long-term firm transmission right to support a long-term power supply agreement needed to meet its service obligation to its own loads, then that should be sufficient to qualify for the preference.

75. TAPS asserts that priority should not be limited to load serving entities within the transmission organization's footprint. In TAPS' view, transmission dependent utilities, many of whom have loads and resources split between transmission organizations and between transmission organization and non-transmission organization regions, are especially at risk from this decision. TAPS argues that restricting priority access to long-term firm transmission rights based on the transmission organization's footprint is unfair, given that it is the host transmission organization, not the transmission dependent utility, that makes decisions about whether to join a transmission organization or whether to withdraw. TAPS states that it will also exacerbate problems created by present and future transmission organization seams, undermining, for example, the Commission's efforts to foster a joint and common market between PJM and MISO. TAPS concludes that the Commission's decision to exclude load serving entities located outside the transmission organization from the priority of guideline (5) should be reversed, and that an exception to the obligation to support the fixed cost of the transmission organization issuing the long-term firm transmission right should be made where the Commission has authorized elimination of pancaked rates between transmission organizations (or transmission organizations and adjacent utility control areas), as in the case of PJM and MISO.

76. Modesto also requests that the Commission clarify that load-serving entities will receive priority over long-term firm transmission rights if such entities contribute to the embedded cost of the transmission organization's transmission rates or have an obligation to serve load within the control area of the transmission organization. Modesto argues that the language of the EPAct 2005 does not limit allocation of long-term firm transmission rights to load-serving entities located within the control area of a transmission organization. In Modesto's view, the extension of the logic in the language of EPAct 2005 would not support distinctions among load-serving entities along the lines indicated in the Final Rule.

77. SMUD asserts that the Final Rule properly concluded that transmission organizations must offer long-term service to ''all load serving entities that support the embedded costs of the transmission system.'' [73] SMUD asks the Commission to clarify that long-term firm transmission service must be made available whether or not the customer agrees to turn control of its transmission facilities over to the transmission organization.

[73] SMUD Rehearing Request at 2 (citing Final Rule at P 321) (emphasis added by SMUD).

Commission Conclusion

78. The Commission denies rehearing on this issue. A load serving entity is entitled to a preference in the allocation of long-term firm transmission rights within a transmission organization's region only to the extent that the transmission organization plans and constructs its transmission system to support the load of the load serving entity, and the load serving entity contributes to the cost that the transmission organization incurs for that purpose. It would be unreasonable to require a transmission organization to provide a load serving entity with a preference in the allocation of firm transmission rights for specific loads, either long-term or short-term, when the transmission organization has not planned and constructed its system to accommodate those loads, and when the loads have not contributed to the system's embedded costs.

79. We clarify, however, that in cases where a load serving entity has an existing agreement with the transmission organization to pay a share of the embedded costs of the transmission system on a long-term basis to support load outside the region, that load serving entity should be given a preference in the allocation of long-term firm transmission rights for the external load equal to the preference given to load serving entities with loads that lie within the transmission organization's region. Furthermore, in response to TAPS, the preference should apply in cases where pancaked rates between the transmission organization and the other transmission provider have been eliminated, as long as the agreement with the load serving entity provides for cost sharing in accordance with the non-pancaked rates currently in effect.

80. We further clarify that, in cases where no such agreement exists, a load serving entity with load that sinks outside the transmission organization's region is entitled to receive long-term firm transmission rights from existing system capacity to support that load to the extent that capacity is available after the needs of the load serving entities whose loads are within the region have been met. However, in such cases, we expect that the load serving entity would be required to contribute, on a long-term basis, toward the embedded cost of the transmission system, by paying either pancaked or non-pancaked rates, as applicable.

81. We deny SMUD's requested clarification to prohibit a transmission organization from allocating long-term firm transmission rights based on whether a customer is located in the transmission organization's control area or has agreed to cede control of its transmission facilities to that organization. Indeed, we have found in prior orders that, in allocating firm transmission rights, it is not discriminatory for a transmission organization to impose additional requirements on customers external to the transmission organization's control area (external load) as a precondition to receiving such rights.[74] We decline, in this rulemaking of general applicability, to draw a broad conclusion that it may never be reasonable to treat external load differently from internal load for purposes of allocation of long-term firm transmission rights.

7. Miscellaneous Issues Regarding the Allocation of Long-Term Firm Transmission Rights

82. In the Final Rule, we noted that specifying and allocating long-term firm transmission rights supported by existing transfer capability will likely raise difficult issues that must be addressed by transmission organizations and their stakeholders. However, rather than attempting to resolve in the Final Rule all of these potential issues, we adopted a non-prescriptive approach that gives each transmission organization and its stakeholders flexibility to design long-term firm transmission rights that fit the prevailing market design while also ensuring that the rights have certain fundamental properties necessary to achieve Congress's objectives in section 217(b)(4) of the FPA.

Rehearing Requests

83. First, NYISO states that the Commission should clarify that load serving entities' entitlement to receive new long-term firm transmission rights should be reduced to the extent that they already hold grandfathered transmission rights. NYISO explains that, under its system, load serving entities that have grandfathered rights already receive transmission service that confers the same level of price certainty and stability, and in many cases do so for a longer time, than the Final Rule requires. NYISO argues that, to the extent that a load serving entity's needs are already satisfied by these grandfathered rights, giving it preferential access to additional long-term firm transmission rights would give it a windfall without serving any useful policy purpose. NYISO states that, if the Commission denies the requested clarification, it should grant rehearing because granting additional long-term firm transmission right preferences would go beyond the Final Rule's stated goals.

84. Second, NYISO states that the Commission should clarify that transmission organizations may consider both the need to support state retail access programs and market participants' desire for access to shorter-term transmission rights when deciding what constitutes a ''reasonable'' amount of existing transmission capacity to set aside for long-term firm transmission rights. In the alternative, NYISO asks the Commission to grant rehearing because it has not offered a reasoned explanation of its reasons for prohibiting the consideration of these factors, and because such a prohibition would be inconsistent with other statements in the Final Rule. NYISO states that the Final Rule is not clear on the question of whether transmission organizations may account for the needs of state retail access programs when determining how much capacity to set aside for long-term firm transmission rights. NYISO believes that, as a general matter, many load serving entities in retail access states should be expected to prefer shorter-term rights since the amount of load that they serve may be subject to frequent change. NYISO asserts that reserving too much capacity for long-term firm transmission rights could become a serious barrier to market entry if it prevented new load serving entities from securing reasonable transmission rights.

85. Third, NYISO states that the Commission should clarify that the transmission organization need not allocate, or allow as many opportunities to reconfigure, long-term firm transmission rights as it does for shorter-term transmission rights. In the alternative, NYISO asks the Commission to grant rehearing because it has not offered a reasoned explanation why long-term firm transmission rights and shorter-term rights must be treated the same in this regard. NYISO states that it currently auctions transmission congestion contracts twice a year and holds monthly reconfiguration auctions. To avoid uncertainty and facilitate stakeholder compliance discussions, NYISO requests clarification that long-term and short-term rights may be allocated, and adjusted, on different timetables.

[74] *See, e.g., New England Power Pool*, 100 FERC ¶ 61,287, at P 85 (2002) (requiring external load to pre-pay its transmission access charge in order to receive FTRs); *see also California Independent System Operator Corporation,* 116 FERC ¶ 61,274 at P 766 (2006) (stating that external load and internal load are not similarly situated with respect to their reliance on the transmission organization's grid) (MRTU Order).

86. Finally, NYISO states that the Commission should clarify that load serving entities that obtain long-term firm transmission rights must pay a fair share of transmission system costs. If this was not the Commission's intent, NYISO asks that the Commission reverse its position on rehearing. NYISO argues that making long-term firm transmission rights available for free would be arbitrary and capricious because it would be inconsistent with relevant precedent and the Final Rule's stated goals. NYISO explains that granting this clarification will facilitate the NYISO stakeholder process by cutting off the possibility of a distracting debate over an issue that the Commission appears to view as unambiguously settled.

Commission Conclusion

87. With regard to NYISO's question concerning the treatment of grandfathered transmission rights, we note that, if such rights satisfy the requirements of section 217(b)(4) of the FPA and satisfy each of the guidelines in the Final Rule, they can be treated as the equivalent of the long-term firm transmission rights that the transmission organization must make available under this rule, and may substitute for such rights in the transmission organization's allocation process. That is, they must qualify as long-term firm transmission rights (or equivalent tradable or financial rights) that, for the load serving entities that hold them, meet their reasonable needs to satisfy their service obligations. However, we do not decide here whether the grandfathered rights held by NYISO's load serving entities satisfy these requirements. Should a transmission organization believe that its grandfathered rights satisfy each of the guidelines in the Final Rule, it should provide an explanation in its compliance filing, pursuant to 18 CFR 42.1(c)(1)(ii).

88. NYISO asks the Commission to clarify that transmission organizations may consider the needs of state retail access programs and market participants' preference for shorter-term transmission rights in determining how much existing transmission capacity to set aside for long-term firm transmission rights. As stated above, we expect the transmission organization to make available from existing transmission system capacity sufficient long-term firm transmission rights to meet the ''reasonable'' needs of all of its load serving entities. In most cases, we believe that the reasonable needs of load serving entities will be met if each load serving entity is able to request and obtain, at its option, a quantity of long-term firm transmission rights sufficient to hedge its long-term power supply arrangements at a base load level. We emphasize that a load serving entity is under no obligation to request its full entitlement to long-term firm transmission rights. If the transmission capacity that is set aside for long-term firm transmission rights remains unsubscribed at the conclusion of the long-term firm transmission rights allocation process, the extra capacity must be made available to support the requests of load serving entities that prefer to hold short-term rights. The Commission is confident that setting aside capacity for long-term rights in this manner will achieve the result that NYISO seeks; that is, it will meet the requirements of EPAct 2005 to make available long-term firm transmission rights to meet the reasonable needs of load serving entities that prefer such rights, while effectively reserving a large portion of existing capacity for those entities that prefer shorter-term rights.

89. NYISO asks the Commission to clarify that the transmission organization need not provide as many opportunities to allocate or reconfigure long-term firm transmission rights as it does for shorter-term transmission rights. We clarify that the transmission organization need not allow for the allocation or reconfiguration of long-term firm transmission rights more frequently than once per year. Because most transmission organizations can now readily accommodate annual allocations of short-term rights, the Commission believes that a process that provides for the annual allocation and reconfiguration of long-term firm transmission rights would be reasonable and appropriate. However, if the transmission organization proposes to allow allocations or reconfigurations less frequently than once per year, we clarify that it must fully support such a request in its compliance filing.

90. Finally, NYISO asks the Commission to clarify that load serving entities that obtain long-term firm transmission rights must pay a fair share of transmission system costs. We clarify that, although the Final Rule does not permit the use of an allocation process that requires load serving entities to purchase long-term firm transmission rights by bidding in an auction (see discussion below), we believe that load serving entities that are awarded such rights incur an obligation to contribute, directly or indirectly, to the embedded costs of the transmission system that supports those rights. Each transmission organization has in place a process for allocating short-term firm transmission rights and for recovering the embedded costs of the transmission system from those entities that receive, or are eligible to receive, the rights. We expect that, in most cases, the transmission organization will revise its current process as necessary to accommodate the introduction of long-term firm transmission rights.

8. Use of an Auction to Allocate Long-Term Firm Transmission Rights

91. As adopted in the Final Rule, guideline (7) states that the initial allocation of the long-term firm transmission rights shall not require recipients of such rights to participate (i.e., bid or offer) in an auction to obtain the rights. We further explained that guideline (7) does not preclude a transmission organization from using an auction subsequently to re-allocate long-term firm transmission rights.

Rehearing Requests

92. TAPS states that the language of guideline (7) is limited to the initial allocation of the long-term firm transmission rights. TAPS therefore requests clarification, or in the alternative rehearing, that the same restrictions on the use of mandatory auctions for initial allocations will apply when long-term firm transmission rights are renewed.

Commission Conclusion

93. In response to TAPS' request, we clarify that the word ''initial'' is meant to distinguish the award of long-term firm transmission rights by the transmission organization to a load serving entity from any subsequent resale of those rights by the load serving entity. Thus, guideline (7) precludes a transmission organization from requiring a load serving entity to submit a winning bid in an auction in order to: (a) Acquire long-term firm transmission rights in the first instance; or (b) renew those rights at a later date. However, guideline (7) does not preclude a holder of long-term firm transmission rights from reselling those rights in an auction process that may require the buyer, which may be another load serving entity, to submit a winning bid to acquire them.

9. Transmission Planning and Expansion

94. In the Final Rule, we required that each transmission organization with an organized electricity market implement a transmission system planning process that will accommodate the long-term transmission rights that are awarded by ensuring that they remain feasible over their entire term. We noted that FPA

section 217(b)(4) requires the Commission to exercise its authority under the FPA in a manner that facilitates the planning and expansion of transmission facilities, and to enable load serving entities to obtain long-term firm transmission rights. To implement that section in a transmission organization with an organized electricity market, as required by section 1233(b) of EPAct 2005, we concluded that the transmission organization must plan its system to ensure that allocated or awarded long-term firm transmission rights are feasible. We stated that FPA section 217(b)(4) itself, by including both the requirement to facilitate planning and expansion and the requirement to provide long-term transmission rights, supports the Commission's authority to impose this requirement.

95. The Commission stated that FPA section 217(b)(4) does not merely require the provision of long-term firm transmission rights; it requires the Commission to facilitate the planning and expansion of transmission facilities. However, we noted that we were not requiring in the Final Rule any ''obligation to build'' or other obligation that does not already exist under Order No. 888. We noted that we are considering issues concerning our broader mandate to exercise our FPA authority to facilitate planning and expansion (which applies to all regions) in Docket No. RM05–25–000, the Order No. 888 OATT reform rulemaking.

Rehearing Requests

96. APPA asks the Commission to clarify that, while the Final Rule imposes no ''obligation to build'' transmission facilities that does not already exist in Order No. 888, this does not mean there is no obligation for transmission organizations to ensure that the transmission facilities necessary to support long-term firm transmission rights are constructed. In this regard, APPA notes that the OATT imposes an equivalent obligation on individual transmission providers, and transmission organization transmission providers must meet the ''consistent with or superior to'' requirement for their own OATTs. APPA states that it presumes this requirement will include a showing that transmission organizations under their OATTs will have obligations ''consistent with or superior to'' the obligations set out in the OATT (as revised in Docket No. RM05–25) to ensure the construction of new transmission facilities needed to support ongoing firm transmission service (including, in the transmission organization context, long-term firm transmission rights). APPA asks the Commission to clarify this point.

Commission Conclusion

97. The Commission stated in the Final Rule that it was not, through the long-term firm transmission rights regulations, imposing a new ''obligation to build'' that does not already exist under Order No. 888.[75] The Commission also noted that it was considering issues concerning its broader mandate to exercise its FPA authority to facilitate planning and expansion in both transmission organization and non-transmission organization regions in Docket No. RM05–25–000, the Order No. 888 reform rulemaking.[76] The nature of the general planning obligation in the OATT referred to by APPA here is under consideration in that docket. As a result, APPA's request for clarification is outside of the scope of this rulemaking proceeding, which concerns only the obligation to plan and expand the system as it relates to the provision of long-term firm transmission rights.

10. Properties of Physical Versus Financial Rights

98. In the Final Rule, we interpreted section 217(b)(4) of the FPA to require that load serving entities be able to obtain long-term firm transmission rights, whether as physical rights or financial rights. While we left the choice of specifying long-term rights as physical or financial rights to transmission organizations and their stakeholders, we did not require that transmission organizations with existing or approved designs for financial transmission rights create a new long-term physical right, such as an Order No. 888 network service right, upon request of a load serving entity.[77] In addition, in our discussion of guideline (2), we explained our interpretation of the firmness requirement in a financial rights context as the right to hold a fixed (MW) quantity of long-term firm transmission rights over the life of the rights and stability in the revenue stream from the right through full funding.[78] We observed that this interpretation roughly parallels the features of quantity and financial stability of long-term physical transmission contracts.[79] We further noted that organized markets with locational marginal pricing generally improve the firmness of physical transmission scheduling, by reducing the incidence of transmission loading relief, or TLRs.[80]

Rehearing Requests

99. Santa Clara seeks clarification or, in the alternative, rehearing on the ''physical attributes'' of long-term firm transmission rights. Santa Clara asserts this is necessary so that transmission organizations can meet what Santa Clara interprets to be section 217(b)(4)'s mandate ''that financial rights be 'equivalent to' physical rights.''[81] Santa Clara recognizes that the Final Rule proposes several measures to support the financial ''firmness'' of the long-term firm transmission rights, including full funding of the rights and fixing the quantity of the rights over time. However, Santa Clara argues that additional attributes are needed, including ''physical scheduling attributes that enable LSEs to deliver energy to native load.''[82] Santa Clara states that ''financial rights do nothing for situations where service is denied to a transmission-dependent user,'' including, in Santa Clara's view, physical curtailment of transmission service.[83] Hence, Santa Clara requests that holders of long-term firm transmission rights receive scheduling priority over other transmission users in the event of curtailment. In addition, Santa Clara argues that financial rights do not support building new transmission capacity.

Commission Conclusion

100. We reject Santa Clara's request for clarification or, in the alternative, rehearing. First, we do not agree with Santa Clara that existing physical transmission rights have physical scheduling attributes that are superior to the scheduling rights that are available in organized electricity markets with financial transmission rights. Currently, in organized markets with LMP, all physical transmission schedules are honored subject to congestion charges and physical feasibility. In general, physical feasibility has not been a problem in such markets, as reflected in the very infrequent need to undertake physical curtailment of transmission through transmission loading relief. Outside the organized markets, the frequency of transmission loading relief can be much higher.

101. Moreover, we do not agree that long-term firm transmission rights

[75] *See* Final Rule at P 21, n. 22 and P 453, n. 138.

[76] *Id.* at P 457.

[77] *See* Final Rule at P 120 and 474.

[78] *See id.* at P 170 and 473–74.

[79] *Id.* at P 473.

[80] *Id.*

[81] Request for Clarification/Rehearing of Santa Clara at 3.

[82] *Id.* at 6.

[83] *Id.* at 7.

warrant any additional physical scheduling priority in the event of transmission curtailment. Under guideline (5), we have already accorded load serving entities priority in the allocation of long-term firm transmission rights. Granting physical scheduling priority to holders of long-term rights would provide load serving entities that hold such rights with greater claim over physical scheduling than load serving entities that do not hold such rights. We are concerned that distinguishing between long-term and short-term transmission rights holders in this manner may not be just and reasonable and could be unduly discriminatory. In fact, in our conclusion on guideline (5) in the Final Rule, we determined that EPAct 2005 should not be construed to require transmission organizations to give a preference to load serving entities with long-term rights at the expense of load serving entities that prefer short-term power supply arrangements.[84] Santa Clara has failed to persuade us that changing this determination would yield a just and reasonable and non-discriminatory outcome.

102. Second, we disagree with Santa Clara's assertion that we have provided insufficient support for transmission expansion to support long-term firm transmission rights. The Final Rule requires that transmission organizations with organized electricity markets establish a transmission system planning process that will accommodate the long-term transmission rights that are awarded by ensuring that they remain feasible over their entire term.[85] Santa Clara has not specifically addressed that requirement or explained why it is insufficient.

11. Exemption From Marginal Loss Charges

103. We stated in the Final Rule that we do not interpret section 217(b)(4) as addressing marginal loss charges.[86] In addition, we noted that the transmission organizations with organized electricity markets currently refund any marginal loss surplus that they collect, and that those refund methods have been approved by the Commission on a case-by-case basis, reflecting regional preferences. Accordingly, we concluded that we would not overturn those decisions in the Final Rule.[87]

Requests for Rehearing and/or Clarification

104. SMUD argues that the Commission properly concluded that under section 217(b)(4), a financial rights-based long-term firm transmission service should provide a hedge to customers that allows them ''equivalent'' protection to physical rights service, one that is ''sufficient to meet the needs of load serving entities to hedge long-term power supply arrangements.'' [88] But, according to SMUD, the Commission arbitrarily and illogically failed to require transmission organizations employing marginal loss charges to either: (1) offer long-term firm service customers a hedge against those charges; or (2) exempt such customers from those charges.

Commission Conclusion

105. We stated in the Final Rule that we do not interpret section 217(b)(4) as addressing marginal loss charges.[89] The issue of hedging long-term marginal loss charges is distinct from that of hedging marginal congestion charges. Congestion charges arise in part due to transmission grid constraints (or bottlenecks). For congestion charges, transmission organizations allocate transmission rights to provide a hedge. Marginal losses are similar to congestion costs in that they are a function of locational energy prices and line loadings. However, the development of a financial instrument or other means for hedging of marginal losses has not been accomplished to date in any of the organized electricity markets.

106. Section 217(b)(4) of the FPA requires the Commission to act in a manner that ''* * * enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis. The terms ''firm transmission rights,'' and ''equivalent tradable or financial rights'' are consistent with terminology traditionally used to discuss hedging of congestion, rather than marginal losses. Furthermore, we do not interpret EPAct 2005 as requiring transmission organizations to provide long-term firm transmission rights with properties that are fundamentally different from those of the short-term rights that they now offer. Consequently, we do not interpret the statute as requiring hedging of marginal losses.[90] In addition, we note that, while we do not interpret EPAct as requiring hedging of marginal losses, this does not preclude future market design changes that allow hedging of losses. Indeed, we encourage transmission organizations to explore methods by which they can assist load serving entities and others to obtain a hedge for marginal losses.

12. Compliance Procedures

107. In the Final Rule, the Commission required transmission organizations subject to its requirements to file compliance proposals within 180 days of the publication of the Final Rule in the **Federal Register**.[91] The Commission specified that transmission organizations must file proposed tariff sheets and rate schedules that would make available long-term firm transmission rights that satisfy each of the guidelines in the Final Rule. We noted that while the implementation of long-term transmission rights would present difficult issues and require significant effort to prepare proposals within 180 days, Congress had directed in section 1233(b) of EPAct 2005 that the Commission act within one year of the legislation's passage, evidencing its intent that long-term transmission rights be made available as soon as possible.

Rehearing Requests

108. NYISO objects to the 180-day compliance deadline set forth in the Final Rule, arguing that this amount of time is insufficient for transmission organizations to collaborate with their stakeholders and prepare tariff revisions addressing the issues raised by the Final Rule. According to NYISO, unlike other transmission organizations, it must make major changes to its existing systems for allocating and auctioning transmission rights, making its compliance burden more significant than the Commission anticipates. NYISO argues that the Commission based its 180-day compliance deadline on an expectation that ''most'' transmission organizations would not require major changes in their financial transmission rights systems.[92] NYISO is different from the transmission organizations the Commission apparently had in mind, it asserts, for several reasons, including the fact that it does not have an ARR allocation system, does not currently have rules awarding incremental long-term firm transmission rights for upgrades paid for by a market participant, does not have

[84] Final Rule at P 319.

[85] *See id.* at P 453.

[86] *Id.* at P 478.

[87] *Id.*

[88] SMUD Rehearing Request at 2 (citing Final Rule at P 495).

[89] *Id.* at P 478.

[90] Transmission rights holders are nevertheless free, of course, to contract with generators to hedge losses.

[91] The Final Rule was published in the **Federal Register** on August 1, 2006, making compliance proposals due on January 29, 2007.

[92] Request for Rehearing of NYISO at 16 (citing Final Rule at P 18).

rules for mandatory re-assignments of transmission rights, and has substantial grandfathered transmission rights in place. NYISO also argues that it must take care to ensure that its long-term firm transmission rights design does not harm New York's successful retail access program.

109. NYISO further contends that nothing in section 217 of the FPA requires the Commission to impose such an aggressive compliance timeline. If anything, NYISO asserts, section 217's references to financial transmission rights and explicit protection of existing transmission organization auction rules suggests that Congress did not believe there was a pressing need for change. Moreover, NYISO compares the Commission's interpretation of the necessary compliance requirements here with new section 215 of the FPA (concerning bulk electric system reliability and certification of an Electric Reliability Organization (ERO)); it argues that the Commission did not interpret that statute's requirement that an ERO be certified within 180 days as imposing deadlines on the ERO's compliance with future Commission regulations.

110. Accordingly, NYISO states that the Commission is under no legal obligation to set a uniform compliance deadline, and should allow each transmission organization to propose an individual compliance deadline that reflects what it must do to comply with the Final Rule.[93] This approach better comports with the Commission's flexible approach, NYISO contends. If nothing else, it argues that the Commission should delay the start of the 180-day period for compliance filings until after it issues its order on rehearing. There is likely to be a large number of rehearing requests, some of which may seek significant revisions to the Final Rule. As a result, NYISO states, the order on rehearing may not issue until halfway through the compliance period (if not later), which would waste the effort of stakeholders if changes are required. Granting this request would not substantially affect the actual effective date of the tariff revisions filed in compliance with the Final Rule and would not delay technical implementation work, NYISO argues.

Commission Conclusion

111. We deny this rehearing request, and maintain the requirement in the Final Rule that transmission organizations file compliance proposals by January 29, 2007 (180 days from the date of publication in the **Federal Register**). While we appreciate that NYISO will need to work through many issues during this time period, perhaps even more than some other transmission organizations, we believe that it is necessary to implement Congress's mandate regarding provision of long-term transmission rights in an expeditious manner. The implementation of section 217(b)(4) and the availability of long-term firm transmission rights in transmission organizations with organized electricity markets is a directive from Congress in EPAct 2005. As we stated in the Final Rule, if implementing the rule requires NYISO or another transmission organization to reorder its market design initiatives, it should do so, seeking approval from the Commission to reset deadlines as necessary.[94]

112. Despite NYISO's observation that an expeditious implementation schedule is not explicitly required by section 217 of the FPA and section 1233(b) of EPAct 2005, we believe that Congress would not have specifically directed in section 1233(b) that the Commission act within one year to implement section 217(b)(4) within transmission organizations with organized electricity markets unless Congress believed that this directive would ensure presence of long-term firm transmission rights shortly thereafter. The references to financial transmission rights in section 217 only suggest that such rights, if offered on a long-term basis to support long-term power supply arrangements, can satisfy the requirements of that section, not that no change is required. NYISO's reference to the Commission's implementation of section 215 of the FPA (concerning mandatory reliability standards and certification of the ERO) is not relevant to our implementation of section 217(b)(4) of the FPA. Section 1233(b) of EPAct 2005 expressly directed that long-term firm transmission rights be implemented within one year of its passage. The Commission has already granted as much flexibility as we believe the statute allows in providing a six month period after the one-year deadline to file tariff sheets making long-term firm transmission rights available to market participants.

113. Accordingly, we decline to modify the Final Rule to allow transmission organizations to propose individual implementation schedules. We remind NYISO and the other transmission organizations, however, that they must file compliance proposals within 180 days, and may propose an individual effective date in that filing that takes into account existing allocation schedules for transmission rights or the need to make software or procedural changes to implement long-term rights.[95] The Commission will consider effective date proposals in light of Congress's intent that long-term firm transmission rights be implemented as soon as possible and demonstrated constraints faced by the transmission organization in implementing long-term rights.[96]

114. We also decline to begin the 180-day compliance period from the date of this order on rehearing. We are not changing the Final Rule, so the work transmission organizations and their stakeholders have accomplished to date will not be wasted.

13. Implementation Date

115. In the Final Rule, the Commission declined to prescribe effective dates for the tariff sheets to be filed 180 days after issuance of the Final Rule. We recognized that transmission organizations may need to synchronize the availability of long-term firm transmission rights with their existing allocation schedules, and take additional steps, such as making necessary software or procedural changes, to implement their long-term firm transmission rights proposals. Consequently, we concluded that we would evaluate effective dates on a case-by-case basis, and in light of Congress's intent that long-term firm transmission rights be implemented as soon as possible.

116. In addition, we explicitly required CAISO, along with all existing transmission organizations, to make proposals to comply with the Final Rule according to the 180-day timetable. While we were sympathetic to CAISO's concerns regarding its pending market redesign, we determined that we could not address in a rulemaking of general applicability any possible plans for phase-in or delayed implementation of long-term firm transmission rights. We further noted in the Final Rule that CAISO had not provided any timetable in its comments for implementing long-term firm transmission rights as required by EPAct 2005. Accordingly, we directed CAISO to work with its stakeholders to develop and submit a compliance filing within the timetable prescribed in the Final Rule. We also

[93] Specifically, NYISO states that each transmission organization should be required to submit a detailed compliance plan within 90 days (after consultation with stakeholders), including timetables for developing and filing tariff revisions.

[94] Final Rule at P 491.

[95] *Id.* at P 493.

[96] *Id.*

concluded that we would consider any issues specific to CAISO in its compliance filing for implementing long-term firm transmission rights in CAISO.[97]

Rehearing Requests

117. SMUD states that the Commission properly concluded that Congress intended transmission organizations to implement long-term firm service offerings ''as soon as possible.'' [98] Nevertheless, SMUD asserts that, given CAISO's prior unwillingness to offer a timetable for implementation, the Commission erred in two ways. First, according to SMUD, the Commission reached a conclusion inconsistent with its factual findings in concluding that the details of CAISO's implementation plans could be addressed when CAISO made a compliance filing.[99] SMUD asks the Commission to clarify that: (1) compliance filings must propose a timetable for implementation and include a timely implementation date; and (2) the implementation of long-term firm transmission rights must take priority over the implementation of new market designs, if implementation of new market designs would delay availability of long-term service include a timely implementation date.

118. Second, SMUD asserts that the Commission acted arbitrarily in failing to address SMUD's comment that transmission providers/organizations unable to develop financial rights-based long-term firm service within a short time after the date for the compliance filing should be required to offer interim plans, such as the use of physical rights service, until a financial rights service can be implemented.[100]

119. SMUD explains that CAISO's market redesign and technological upgrade (MRTU) will not be implemented until at least November 2007, so that even if CAISO's proposed ''priority renewal provisions'' for congestion revenue rights (CRRs) [101] offered a reasonable interim bridge, delaying implementation to coincide with implementation of a new market design will not meet the Congressional and Commission directives that long-term service be available ''as soon as possible.'' [102] SMUD expresses concern, based on its contact with CAISO and CAISO's track record on this issue, that CAISO may not implement long-term firm transmission rights before its MRTU implementation date or even by that date should its MRTU implementation schedule slip. SMUD asserts that CAISO's promise to make a timely compliance filing, without a corresponding commitment to propose any implementation date, much less a date ''as soon as possible'' after the filing, could lead to further disputes.

120. Santa Clara also requests clarification, or, in the alternative, rehearing concerning CAISO's obligation to comply with the Final Rule. Citing the NOPR and the Final Rule, Santa Clara argues that the Commission has found CAISO to be an organized electricity market that is required to submit a compliance filing within the 180-day time frame.[103] Santa Clara asks the Commission to clarify or grant rehearing and find that CAISO is a transmission organization with organized electricity markets, and is currently subject to the requirements of the Final Rule. Santa Clara states that the Final Rule makes clear that it applies to organized electricity markets that include ''auction-based day ahead and real time wholesale market[s],'' that do not offer financial transmission instruments with terms longer than one year.[104] Asserting that CAISO ''clearly operates an auction based single price day-ahead and real-time market'' and does not offer long-term rights with longer than annual terms, Santa Clara asks the Commission to confirm its prior ruling that CAISO must comply with the Final Rule. Santa Clara explains that confusion has arisen, ostensibly based on the Commission's statement that organized electricity markets do not include ''Day 1'' markets.[105]

Commission Conclusion

121. First, we grant SMUD's requested clarification that compliance filings must include implementation timetables. As we emphasized in the Final Rule, Congress intended the swift introduction of long-term firm transmission rights. In the Final Rule, we declined to prescribe an effective date for tariff sheets implementing long-term firm transmission rights, so as to provide flexibility to the various transmission organizations to effectuate the Final Rule. Nevertheless, we find it reasonable to require all transmission organizations, including CAISO, to include and justify in their compliance proposals a timetable for implementation of long-term firm transmission rights.

122. Next, we deny SMUD's request for a blanket clarification that the implementation of long-term firm transmission rights must take priority over the implementation of new market designs, if implementation of new market designs would delay availability of long-term service. Instead, we find it reasonable to evaluate market design priorities, including implementation of long-term firm rights, on a case-by-case basis. As in the Final Rule, and as discussed above, see supra P 107, we urge transmission organizations to find ways to reorder their priorities to ensure timely implementation of long-term firm transmission rights.

123. With respect to CAISO in particular, SMUD's requested clarification assumes CAISO cannot concomitantly accomplish its market redesign on schedule and devise and timely implement long-term firm transmission rights. We decline to make that assumption. As we recently concluded, California's market redesign and technology upgrade (MRTU) is needed to prevent recurrence of the California and Western power crisis of 2000–2001. As the Commission explained in its acceptance of the tariff CAISO filed to implement MRTU, MRTU will fix a flawed market design, enhance reliability of the CAISO-controlled grid, and improve market power mitigation.[106] These improvements over the current market design will help protect California, and the rest of the West, from a repeat of that crisis.[107] Long-term firm transmission rights are also a critical feature of MRTU's improved congestion management system, in part because these rights will help shield load serving entities from exposure to potentially volatile congestion costs.[108] The Final Rule directed CAISO to work with its stakeholders to develop and submit a compliance filing within the timetable prescribed in the Final Rule.[109] The MRTU Order similarly required CAISO to comply with the Final Rule concerning timely implementation of long-term firm transmission rights.[110] We understand SMUD's concerns, given CAISO's lackluster history of delay with respect

[97] Final Rule at P 495.

[98] SMUD Rehearing Request at 2 (citing Final Rule at P 495).

[99] *Id.* at 2 (citing *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

[100] *Id.* at 2 (citing *Noram Gas Transmission Co v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1990)); *see also id.* at 6–7.

[101] ''FTRs'' are called ''CRRs'' under California's new market design, MRTU.

[102] SMUD Rehearing Request at 8 (citing Final Rule at P 495).

[103] Request for Clarification/Rehearing of Santa Clara at 5.

[104] *See id.* (quoting Final Rule at P 30).

[105] *Id.* (citing Final Rule at P 31).

[106] MRTU Order at P 3.

[107] *Id.*

[108] *Id.* at P 9.

[109] Final Rule at P 493.

[110] MRTU Order at P 890 and 892.

to providing long-term firm transmission rights.[111] However, now that Congress has weighed in on the issue, we remain optimistic that CAISO will develop a plan, tariff sheets and implementation timetable to allow provision of long-term transmission rights at the inception of MRTU, without delaying MRTU's target November 2007 implementation date.

124. We also deny SMUD's request that, if implementation of financial long-term firm transmission rights cannot be accomplished within a short time after the date for the compliance filing, the affected transmission organizations should develop interim plans, such as the use of physical rights service, until a financial rights service can be implemented. We expect that, apprised of the importance of this matter to Congress, transmission organizations will make compliance proposals that fully comply with the Final Rule in a timely manner. It is premature and inappropriate to consider in this generic proceeding whether interim plans, such as the provision of physical rights, are needed. Similarly, we will not address in this rehearing of a rulemaking of general applicability SMUD's assertion that the CAISO's proposed priority nomination process, or PNP, is discriminatory. As we explained in the Final Rule, we will address the specifics of individual transmission organizations' implementation of the Final Rule in our orders on compliance proposals.[112] The compliance proposal process provides transmission organizations with the opportunity to offer for comment the proposals they have created after vetting issues through their stakeholder process, and the comment process ensures the opportunity for thorough and fair discussion of the proposals.

125. Finally, with respect to Santa Clara's requested clarification/rehearing concerning CAISO's obligation to comply with the Final Rule, section 1233(b) of EPAct 2005 requires the Commission to implement the FPA's new statutory provision, section 217, concerning long-term firm transmission rights in transmission organizations with organized electricity markets. Significantly, as we pointed out in the NOPR, neither EPAct 2005 nor section 217 of the FPA defines ''organized electricity market.'' [113] In the NOPR, we proposed to define ''organized electricity market'' as ''an auction-based market where a single entity receives offers to sell and bids to buy electric energy and/or ancillary services from multiple sellers and buyers and determines which sales and purchases are completed and at what prices, based on formal rules contained in Commission-approved tariffs, and where the prices are used by a transmission organization for establishing transmission usage charges.'' [114] In the Final Rule, however, we modified the first clause of the definition to state that organized electricity market ''means an auction based *day ahead and real time wholesale market.* * * *'' [115] We explained that the purpose of this modification was:

> to clarify the application of the Final Rule and ensure that the definition captures the transmission organizations with organized electricity markets using LMP and FTRs to which Congress directed the Commission to apply this Final Rule in section 1233(b) of EPAct 2005.[116]

126. CAISO does not currently operate a day-ahead *wholesale energy* market, although it will upon the inception of MRTU, scheduled to take place in November 2007. While CAISO currently has FTRs, their characteristics will change dramatically upon implementation of MRTU—*e.g.*, they will be point-to-point and available to load serving entities without participation in an auction, two features of long-term firm transmission rights required by our guidelines. Given that the nature of FTRs in CAISO is in transition, implementing long-term FTRs under the current market design would be problematic. Nevertheless, we clarify that CAISO must submit a compliance filing on January 29, 2007. This will enable the Commission (and its staff) to monitor CAISO's progress and ensure availability of long-term firm transmission rights when MRTU goes into effect.

By the Commission.

Magalie R. Salas,

Secretary.

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[111] *See id.* at P 891 (recounting CAISO's history of procrastination concerning long-term rights development).

[112] *Id.* at P 495.

[113] *See* NOPR at P 8.

[114] *See id.*

[115] *See* Final Rule at P 30 (emphasis added).

[116] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

Antidumping and Countervailing Duties

CFR Correction

In Title 19 of the Code of Federal Regulations, part 200 to end, revised as of April 1, 2006, on page 225, § 351.218 is corrected by removing and reserving paragraph (d)(2)(iii).

[FR Doc. 06–55530 Filed 11–24–06; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–56; Re: Notice No. 18]

RIN 1513–AA57

Establishment of the Chehalem Mountains Viticultural Area (2002R–214P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the 68,265-acre Chehalem Mountains viticultural area in Clackamas, Yamhill, and Washington Counties, Oregon. This new viticultural area is entirely within the existing Willamette Valley viticultural area. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* December 27, 2006.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide consumers with adequate information regarding product identity and prohibits the use of misleading information on those labels.

The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Chehalem Mountains Viticultural Area Petition and Rulemaking

Background

TTB received a petition from Alex Sokol-Blosser, secretary of the North Willamette Valley AVA Group, proposing establishment of the new ''Chehalem Mountains'' viticultural area. David Adelsheim, Paul Hart, and Richard Ponzi authored the petition.

The proposed Chehalem Mountains viticultural area is located in portions of Clackamas, Yamhill, and Washington Counties in northwestern Oregon. The proposed area lies in the northern region of the Willamette Valley viticultural area (27 CFR 9.90) and, along its southwestern boundary, encompasses the smaller Ribbon Ridge viticultural area (27 CFR 9.182). The Chehalem Mountains viticultural area is approximately 19 miles southwest of Portland, Oregon, and 45 miles inland from the Pacific Ocean. The proposed Chehalem Mountains viticultural area covers 106.6 square miles, or 68,265 acres. The petition states that, in 2002, the area contained at least 80 vineyards, totaling over 1,100 acres, and 12 commercial wineries.

Terrain, elevation, and climate are the significant distinguishing features of the proposed Chehalem Mountains viticultural area. The proposed boundary line, which is generally at 200 to 250 feet in elevation, encompasses this single, continuous landmass lifted from the Willamette Valley floor.

We summarize below the supporting evidence presented with the petition.

Name Evidence

The petition explains that the region within the proposed viticultural area is locally known as the ''Chehalem Mountains.'' The petition notes that use of the Chehalem name extends back to the early 19th century, that it is featured on USGS maps of the region, and that it is used by a variety of present-day businesses, housing developments, parks, and roads.

The modern word ''Chehalem'' comes from the Native American name ''Chahelim,'' listed under the heading Atfalati (Tualatin) in the ''Handbook of American Indians,'' according to references in the petition. Also, beginning in the early 1800s, the ''Chehalem'' name referred to more than 20 bands of Native Americans living in the general vicinity of the Chehalem Mountains.

Historically, the ''Chehalem'' name entered the vocabulary of the early European settlers prior to 1840, according to the petition. The petition explains that in 1834 a lumber mill started operations on Chehalem Creek. Also, in 1848, Joseph B. Rogers platted the town of ''Chehalem'' on his property, the current site of Newberg, Oregon. The petition further states that on March 14, 1851, the township of ''Chehalem'' established one of the earliest post offices in Yamhill County.

The ''Chehalem Mountains'' name figures prominently on the USGS quadrangle maps of Newberg, Dundee, Laurelwood, and Scholls, Oregon, submitted with the petition. Within the Chehalem Mountains, these USGS maps name the Parrett Mountain and Ribbon Ridge spurs, as well as other hills, peaks, and ridges, including Laurel Ridge, Bald Peak, Iowa Hill, Spring Hill, and Fern Hill. The entry for Chehalem Mountains in ''Oregon Geographic Names'' by Lewis L. McArthur reads, ''These are the highest mountains in the Willamette Valley * * *. The Chehalem Mountains and some independent spurs extend from the Willamette River east of Newberg to the foothills of the Coast range south of Forest Grove, Oregon.'' Additional geographic location name references on the USGS maps include Chehalem Creek, which runs through Chehalem Valley, on the south side of the Chehalem Mountains.

In addition to the USGS map references, modern ''Chehalem'' name usages include a municipal park and recreation district, a public middle school, public roads, 27 business names, and several housing developments, according to petition evidence.

Boundary Evidence

The proposed boundary line of the Chehalem Mountains viticultural area relies primarily on geographical features and elevations, the petition explains and the USGS regional maps confirm. In addition to terrain and elevation, slope and soil criteria help delineate the line between mountains and valley floor, according to the petition. Thus, the proposed Chehalem Mountains viticultural area boundary line includes mountainous and hillside terrain, but excludes flat or barely sloping lands.

A valley formed by the Tualatin River and its tributaries lies on much of the west side and all of the north side of the Chehalem Mountains. On the east side of the Chehalem Mountains, Rock Creek and Seely Ditch separate the mountains from the high ground around Tonquin. The southeast side of the Chehalem Mountains borders the flood plain of the Willamette River, and the Chehalem Valley lies along the southwest side of the proposed viticultural area's boundary line.

Historically, the first vineyard acquisition in the Chehalem Mountains

dates to 1968, when Dick Erath purchased 49 acres on Dopp Road in Yamhill County, according to the petition. Mr. Erath planted vineyards in the spring of 1969, the petition continues, and shortly thereafter other land owners also started planting wine grapes.

Distinguishing Features

The petition states that the distinguishing features of the proposed Chehalem Mountains viticultural area include its terrain, elevation, and climate. These features contrast with the surrounding Willamette Valley, Coast Range, and Columbia Gorge regions.

Physical Features

The length and towering peaks of the Chehalem Mountains landform distinguish the proposed viticultural area from the surrounding Willamette Valley area, the petition explains. Viewable from the West Hills of Portland, Oregon, and the northern Willamette Valley floor, the Chehalem Mountains measure more than 20 miles in length and 5 miles in width. The mountains are a single continuous landmass of increasing elevation, containing a series of ridges and two highly delineated spurs, Ribbon Ridge and Parrett Mountain. The mountains also serve to separate the Tualatin River basin and the Chehalem Valley, the petition continues.

The slopes of the Chehalem Mountains, both steep and gentle, significantly contrast with the almost flat Willamette Valley floor, the petition explains. On the west side of Ribbon Ridge and the southeast side of Parrett Mountain, the slopes descend steeply, according to the petition and the USGS maps of the region. At the bottom of these steep descents, the slopes become almost level and flatten into the valley floor.

The majority of the Chehalem Mountains slopes shift gradually and gently to the valley floor, as shown on USGS regional maps. Where the terrain transition lacks distinction, the petitioner uses a combination of terrain, elevation, slope, and soil criteria to determine the boundary line of the proposed Chehalem Mountains viticultural area.

Elevation

Within the Willamette Valley, the Chehalem Mountains tower in height over the surrounding landforms and terrain, according to the petition. Bald Peak, northwest of Newberg and within the proposed Chehalem Mountains viticultural area, rises to 1,633 feet above sea level, while the surrounding valley floor sits at or below 200 feet in elevation, according to the USGS regional maps.

Most of the vineyards in the proposed Chehalem Mountains viticultural area, the petition states, lie between the 200 feet and 1,000 feet contour lines. The areas below 200 feet in elevation have alluvial soils, characterized by greater depth, fertility, and water-holding capacity, according to the petition. This combination of soil features extends the growing period of the Willamette Valley floor and delays grape ripening. Also, frost potential increases at the lower elevations of the valley floor when compared to the higher hillside and mountain elevations. As a result, the proposed Chehalem Mountains viticultural area boundary line excludes valley floor elevations and its alluvial soils, the petition states.

Climate

Significant annual precipitation best distinguishes the climate of the proposed Chehalem Mountains viticultural area from surrounding regions, the petition claims. As the highest mountains in the Willamette Valley the Chehalems create a large obstacle for west-to-east moving storms. When the moist air rises over the Chehalem Mountains, water vapor in the cooling air condenses and falls to earth as terrain-induced rain, the petition explains.

According to data from the ''Atlas of Oregon,'' second edition (University of Oregon Press, 2001), annual rainfall within the boundaries of the proposed viticultural area ranges from 37 inches in the lower elevations to almost 60 inches at the highest elevation at Bald Peak. This annual precipitation contrasts with the 36 inches received in Hillsboro and Beaverton to the north of the proposed viticultural area, French Prairie to the south, and Portland International Airport to the east, the petition explains. To the west of the Chehalems, the Coast Range, closer to the moisture-laden air of the Pacific Ocean, annually averages over 100 inches of rain.

Several other uplifted regions within the Willamette Valley include higher rainfall levels than the surrounding valley floor, but none are as dramatic as the Chehalem Mountains. For example, to the south-southwest of the proposed viticultural area, the Eola Hills, which peak at approximately 1,160 feet, receive 40 to 48 inches of annual precipitation, while to the south of the proposed viticultural area, the Dundee Hills, which peak at 1,067 feet in elevation, receive 40 to 44 inches of annual precipitation.

Temperatures vary within the Chehalem Mountains more than in any other region within the Willamette Valley, the petition explains. According to data from the Oregon Climate Service, heat accumulation during the Chehalem Mountains growing season varies from over 2,200 degree days along the mountains' south side base to less than 1,800 degree days on the northsides of their higher peaks. The annual 400 degree-day variation typically results in a three-week difference in the ripening of Pinot Noir grapes, the petition explains. (Each degree that a day's mean temperature is above 50 degrees Fahrenheit, which is the minimum temperature required for grapevine growth, is counted as one degree day; see ''General Viticulture,'' Albert J. Winkler, University of California Press, 1975.)

Evapotranspiration, or the loss of water from soil and plants by a combination of evaporation and transpiration, averages about 3 inches less at the higher elevations of the Chehalem Mountains when compared to the surrounding valleys, the petition states. This difference corresponds to the warmer growing temperatures found at the lower elevations, as compared to the cooler growing temperatures at the higher elevations of the Chehalem Mountains, the petition explains.

Soil

The petition emphasizes that the diverse Chehalem Mountains soils fail to qualify as a distinguishing feature for this viticultural area petition. The soils, according to the petition, include loess, sedimentary, basaltic, and alluvial origins.

The Ribbon Ridge spur, within the proposed Chehalem Mountains southwest boundary line and heavily planted to red wine grapes, includes sedimentary soil of the Willakenzie Series, the petition explains. The central and southern Chehalem Mountains, with vineyards of white grapes and extensive Pinot Noir plantings, include large deposits of basaltic soils, mainly of the Jory Series. The central Chehalem Mountains region also includes loess soils, primarily of the Laurelwood Series.

The petition further states that the sedimentary western flank of the Chehalem Mountains contains similarities to the adjacent hilly region surrounding the Yamhill River Basin, beyond the proposed boundary line. Also, the basaltic-origin soils of the Chehalem Mountains' southern slope and the Parrett Mountain spur resemble soils found further south and outside the proposed boundary line in the

Dundee Hills and on the east side of the Eola Hills. Eolian soils on the north side of the Chehalem Mountains, the petition continues, resemble those found on the hills further north and east, beyond the proposed boundary line, in the Tualatin basin at Cooper and Bull Mountains. Finally, alluvial soils at the base of the Chehalem Mountains contain similarities to the surrounding valley flood plain soils found at elevations below the proposed viticultural area boundary line.

The petition concludes that terrain, elevation, and climatic features of the proposed Chehalem Mountains viticultural area join to create the distinguishing features of this proposed viticultural region. The Chehalem Mountains soils, with their variety of parent material types, lack distinction from the surrounding Willamette Valley floor and hill formations.

Notice of Proposed Rulemaking and Comments Received

On October 7, 2003, TTB published in the **Federal Register** (68 FR 57840) as Notice No. 18 a notice of proposed rulemaking regarding the establishment of the Chehalem Mountains viticultural area. We received eight comments in response to that notice.

All comments supported the establishment of the Chehalem Mountains viticultural area. Six of the eight comments agreed that the proposed ''Chehalem Mountains'' name, boundary line, and distinguishing features accurately represented the proposed viticultural area. The remaining two comments also supported establishment of the Chehalem Mountains viticultural area, but specifically expressed concern about a possible conflict with one winery's longstanding use of ''Chehalem'' in its brand name, because the winery does not source all of its grapes from within the proposed Chehalem Mountains boundary.

It is the understanding of TTB that these two commenters were referring to Chehalem Winery and Vineyards, which utilizes grapes grown within the boundary of the proposed Chehalem Mountains viticultural area but also relies on grapes from the nearby Dundee Hills viticultural area (27 CFR 9.180) for its production, with the result that the wine produced would not meet the 85 percent standard for use of ''Chehalem Mountains'' as an appellation of origin (see the Impact on Current Wine Labels discussion below). The two commenters recommended that TTB allow the winery to continue to use the ''Chehalem'' brand name for grapes obtained outside the proposed Chehalem Mountains viticultural area boundary line. One of these commenters specifically suggested that such continued use of ''Chehalem'' in the winery's brand name would be appropriate so long as all of the grapes in question came from within the Willamette Valley viticultural area.

TTB Finding

After careful review of the petition and the eight comments received, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the ''Chehalem Mountains'' viticultural area in Clackamas, Yamhill, and Washington Counties, Oregon, effective 30 days from the publication date of this document.

Regarding the concerns about use of the ''Chehalem'' name by Chehalem Winery and Vineyards, TTB has determined that only the full ''Chehalem Mountain'' name should have viticultural significance upon the establishment of the new viticultural area. Therefore, the name ''Chehalem'' standing alone will not have viticultural significance. Accordingly, the Chehalem Winery and Vineyards may continue to use its brand name for wines produced from grapes grown outside the boundaries of the Chehalem Mountains viticultural area.

Boundary Description

As originally proposed, the boundary of the Chehalem Mountains viticultural area encompassed the Ribbon Ridge landform, and the petitioning North Willamette Valley AVA Group intended to include the then proposed Ribbon Ridge viticultural area entirely within the proposed Chehalem Mountains area. Notice No. 8, included, therefore, proposed regulatory text that used the 200-foot and the 240-foot contour lines to define much of the southwestern boundary of the Chehalem Mountains viticultural area. In contrast, the regulatory text of § 9.182 adopted in T.D. TTB–27, which established the Ribbon Ridge viticultural area, uses Dopp and North Valley Roads for the Ribbon Ridge area's southern and western boundary lines, thus placing the Ribbon Ridge boundary slightly outside the originally proposed Chehalem Mountains southwestern boundary line.

TTB has, with the petitioner's agreement, modified the originally proposed southwestern boundary of the Chehalem Mountains viticultural area to mirror the established Ribbon Ridge viticultural area boundary line. This minor boundary line change ensures that the Chehalem Mountains and Ribbon Ridge viticultural areas share a common boundary where appropriate so that the Ribbon Ridge area is entirely within the Chehalem area as the petitioner intended. This boundary line modification increases the overall size of the proposed Chehalem Mountains viticultural area by approximately 425 acres.

In addition, for clarity, we have made minor editorial, non-substantive changes to the wording of the originally proposed Chehalem Mountains viticultural area boundary description. See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, ''Chehalem Mountains'' is recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation clarifies this point. Consequently, wine bottlers using ''Chehalem Mountains'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, must ensure that the product is eligible to use the viticultural area name or other term as an appellation of origin.

For a wine to be eligible to use as an appellation of origin a viticultural area name or other term specified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name or term as an appellation of origin and that name or other term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural

area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866 (58 FR 51735). Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend title 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.205 to read as follows:

§ 9.205 Chehalem Mountains.

(a) *Name.* The name of the viticultural area described in this section is ''Chehalem Mountains''. For purposes of part 4 of this chapter, ''Chehalem Mountains'' is a term of viticultural significance.

(b) *Approved Maps.* The appropriate maps for determining the boundary of the Chehalem Mountains viticultural area are six United States Geological Survey 1:24,000 scale topographic maps. They are titled:

(1) Newberg Quadrangle, Oregon, 7.5 Minute Series, 1961 (photorevised 1985);

(2) Dundee Quadrangle, Oregon, 7.5 Minute Series, 1956 (revised 1993);

(3) Laurelwood Quadrangle, Oregon, 7.5 Minutes Series 1956 (revised 1992);

(4) Scholls Quadrangle, Oregon, 7.5 Minute Series, 1961 (photorevised 1985);

(5) Beaverton Quadrangle, Oregon, 7.5 Minute Series, 1961 (photorevised 1984); and

(6) Sherwood Quadrangle, Oregon, 7.5 Minute Series, 1961 (photorevised 1985).

(c) *Boundary.* The Chehalem Mountains viticultural area is located in Clackamas, Yamhill, and Washington Counties, Oregon. The boundary of the Chehalem Mountains viticultural area is as described below:

(1) The beginning point is in Yamhill County on the Newberg map in section 15, T3S/R2W, at the intersection of Oregon Highway 99W and the 250-foot contour line, 0.4 mile east of Spring Brook;

(2) From the beginning point, proceed northwesterly 1.2 miles along the 250-foot contour to its intersection with an unnamed light-duty road locally known as Benjamin Road, section 50, T3S/R2W, Newberg map; then

(3) Proceed west 0.5 mile along Benjamin Road, crossing railroad tracks, to its intersection with an unnamed light-duty road locally known as Spring Brook Road, section 48, T3S/R2W, Newberg map; then

(4) Proceed southwest 0.3 mile along Spring Brook Road, parallel to the railroad tracks, to its intersection with an unnamed light-duty road locally known as Mountainview Drive, section 48, T3S/R2W, on the Newberg map; then

(5) Proceed west 0.35 mile on Mountainview Drive to its intersection with an unnamed light-duty road locally known as Aspen Way, along the western boundary of section 8, T3S/R2W, Newberg map; then

(6) Proceed northwesterly 1.4 miles on Aspen Way to its intersection with Bell Road, along the northern boundary of section 47, T3S/R2W, Newberg map; then

(7) Proceed west 0.8 mile on Bell Road, which becomes North Valley Road after crossing Oregon Highway 219, to its intersection with the 250-foot contour line, immediately before an unimproved dirt road on the left, section 46, T3S/R2W, Newberg map; then

(8) Proceed westerly 2 miles along the 250-foot contour line to its first intersection with the western boundary line of section 43, T3S/R3W, along the western border of the Newberg map; then

(9) Proceed north 0.2 mile along the western boundary of section 43, T3S/R3W, to its intersection with the 240-foot contour line, Newberg map; then

(10) Proceed westerly for 4 miles along the 240-foot contour line, crossing onto the Dundee map, to its intersection with an unnamed light-duty road locally known as Sullivan Lane, section 74, T3S/R3, Dundee map; then

(11) Proceed south 0.25 mile along Sullivan Lane to its intersection with North Valley Road at elevation point 216, section 74, T3S/R3, Dundee map; then

(12) Proceed west 0.1 mile along North Valley Road to its intersection with the 200-foot contour line, section 74, T3S/R3W, Dundee map; then

(13) Proceed northwesterly 1 mile along the 200-foot contour line to its intersection with an unnamed creek northeast of elevation point 215, and continue northwesterly 0.05 mile along the unnamed creek to its intersection with Dopp Road along the western boundary line of section 74, T3S/R3W, Dundee map; then

(14) Proceed south 0.8 mile along Dopp Road to its intersection with North Valley Road at the elevation point 202 near the Ewing Young School, section 39, T3S/R3W, Dundee map; then

(15) Proceed northerly 5 miles on North Valley Road, crossing onto the Laurelwood map, to the road's intersection with Laughlin Road and Albertson Road at elevation point 235, section 58, T2S/R3W, Laurelwood map; then

(16) Proceed east 0.1 mile on Albertson Road to its intersection with the 240-foot contour line, section 58, T2S/R3W, Laurelwood map; then

(17) Proceed northerly 15.6 miles along the 240-foot contour line to its intersection with Sandstrom Road, section 19, T1S/R3W, Laurelwood map; then

(18) Proceed west 0.15 mile on Sandstrom Road to its third crossing of the 200-foot contour line, just before Fern Hill Road to the west, section 24, T1S/R4W, Laurelwood map; then

(19) Proceed northwesterly and then northeasterly 4.5 miles along the meandering 200-foot contour line to its intersection with La Follette Road along the eastern boundary of section 8, T1S/R3W, Laurelwood map; then

(20) Proceed south 0.25 mile on La Follette Road to its intersection with the 240-foot contour line, north of Blooming Fern Hill Road, along the western boundary line of section 16, T1S/R3W, Laurelwood map; then

(21) Proceed easterly and then southerly 17 miles along the meandering 240-foot contour line, crossing over and back on the Scholls map in section 25 and 56, T1S/R3W,

crossing Christensen Creek in section 35, T1S/R3W, and continuing to the contour line's intersection with Laurel Road West, along the southern boundary line of section 1, T2S/R3W, Laurelwood map; then

(22) Proceed east 0.15 mile on Laurel Road West to its intersection with the 200-foot contour line, along the southern boundary line of section 1, T2S/R3W, Laurelwood map; then

(23) Proceed easterly 17.5 miles along the meandering 200-foot contour line, and, after crossing onto the Scholls map and crossing over Laurel Road South, McCormick Hill Road four times, and Midway Road, and after crossing over and back on the Newberg map (crossing Heaton Creek) in section 28, T2S/R2W, continue to the contour line's intersection with Mountain Home Road, east of Heaton Creek, section 21, T2S/R2W, Scholls map; then

(24) Continue easterly and then southerly 8.9 miles along the 200-foot contour line and, after crossing Baker Creek, skirting Laurel Ridge to the north, crossing onto the Beaverton map, crossing over and back on the Sherwood map, crossing over in the northwest corner of the Beaverton map, and returning to the Scholls map, continue to the contour line's intersection with the middle tributary of an unnamed creek, along the western boundary line of section 24, T2S/R2W, Scholls map; then

(25) Proceed southeast along the meandering 200-foot contour line and, after crossing over to the northeast corner of the Newberg map to the Sherwood map, continue to the contour line's intersection with Edy Road, section 25, T2S/R2W, Sherwood map; then

(26) Proceed southwest along the meandering 200-foot contour line and, after crossing onto the Newberg map, skirting part of Chicken Creek, and returning to the Sherwood map, continue to the contour line's intersection with Elwert Road, along the eastern boundary line of section 25, T2S/R2W, Sherwood map; then

(27) Proceed south 0.85 mile on Elwert Road to its intersection with Oregon Highway 99W, along the eastern boundary line of section 36, T2S/R2W, Sherwood map; then

(28) Proceed south-southwest 0.45 mile on Oregon Highway 99W to its intersection with the 250-foot contour line immediately south of an unnamed Cedar Creek tributary, section 36, T2S/R2W, Sherwood map; then

(29) Proceed southerly 1 mile along the meandering 250-foot contour line to its intersection with Middleton Road, section 1, T3S/R2W, Sherwood map; then

(30) Proceed southwesterly 0.5 mile on Middleton Road, which becomes Rein Road, to the road's intersection with the 200-foot contour line, immediately south of Cedar Creek, section 1, T3S/R2W, Sherwood map; then

(31) Proceed 1.6 miles generally east along the 200-foot contour line to its intersection, in the village of Middleton, with an unnamed light-duty east-west road locally known as Brookman Road, section 6, T3S/R1W, Sherwood map; then

(32) Proceed easterly 0.7 mile on Brookman Road to its intersection with the Washington-Clackamas County line, at the northwest corner of section 5, T3S/R1W, Sherwood map; then

(33) Proceed east 1 mile along the Washington-Clackamas County line to its intersection with Brown Road, at the northeast corner of section 5, T3S/R1W, Sherwood map; then

(34) Proceed southerly 1 mile on Brown Road to its second intersection with the 250-foot contour line, immediately south of an intermittent stream, in section 4, T3S/R1W, Sherwood map; then

(35) Proceed southerly 2.8 miles along the meandering 250-foot contour line, skirting Hoodview, to the contour line's intersection with Baker Road, section 16, T3S/R1W, Sherwood map; then

(36) Proceed south 0.15 mile on Baker Road to its intersection with the 200-foot contour line, section 16, T3S/R1W, Sherwood map; then

(37) Proceed southwesterly 13.1 miles along the meandering 200-foot contour line and, after crossing onto the Newberg map, continue to the contour line's intersection with Wilsonville Road, north of Willamette Greenway State Park, section 60, T3S/R2W, Newberg map; then

(38) Proceed northwesterly 2 miles on Wilsonville Road to its intersection with an unnamed tributary of Spring Brook, east-northeast of Grouse Butte, section 57, T3S/R2W, Newberg map; then

(39) Proceed southwesterly 0.25 mile along the unnamed tributary of Spring Brook to its intersection with the 200-foot contour line, section 57, T3S/R2W, Newberg map; then

(40) Proceed westerly and then northerly 0.45 mile along the 200-foot contour line, following the base of Grouse Butte, to the contour line's intersection with Wilsonville Road, section 57, T3S/R2W, Newberg map; then

(41) Proceed east 0.45 mile on Wilsonville Road to its intersection with the same unnamed tributary of Spring Brook, section 57, T3S/R2W, Newberg map; then

(42) Proceed northeasterly 0.05 mile along the unnamed tributary of Spring Brook to its intersection with the 250-foot contour line, southwest of the quarries, section 57, T3S/R2W, Newberg map; then

(43) Proceed northerly 2.2 miles along the 250-foot contour line to its intersection with Corral Creek Road (misnamed Ladd Hill Road on the Newberg map), south of Oregon Highway 99W, section 15, T3S/R2W, Newberg map; then

(44) Proceed north 0.5 mile along Corral Creek Road to its western-most intersection with an unnamed light-duty road locally known as Veritas Lane, section 15, T3S/R2W, Newberg map; then

(45) Proceed north-northwesterly in a straight line approximately 0.05 mile and return to the beginning point.

Signed: September 8, 2006.

John J. Manfreda,

Administrator.

Approved: October 27, 2006.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. E6–20018 Filed 11–24–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–57; Re: Notice No. 39]

RIN 1513–AA70

Establishment of the Shawnee Hills Viticultural Area (2002R–345P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the Shawnee Hills viticultural area in the Shawnee National Forest region of southern Illinois. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* December 27, 2006.

FOR FURTHER INFORMATION CONTACT: Rita Butler, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide consumers with adequate information regarding a product's identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographic features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Rulemaking Proceedings

Shawnee Hills Petition

TTB received a petition from Dr. Theodore F. Wichmann, president of Owl Creek Vineyard, Inc., and Dr. Imed Dami, Illinois State Viticulturist, proposing the establishment of the ''Shawnee Hills'' American viticultural area in southern Illinois. The proposed Shawnee Hills viticultural area lies within portions of Alexander, Gallatin, Hardin, Jackson, Johnson, Pope, Pulaski, Randolph, Saline, Union, and William counties. The Shawnee National Forest is located largely within the proposed area. The proposed viticultural area covers about 2,140 square miles or 1.37 million acres between the Ohio and Mississippi Rivers, and is approximately 80 miles long east to west and 20 miles wide north to south. The proposed Shawnee Hills viticultural area encompasses a region of unglaciated hills and ridges that are from 400 to 800 feet higher in elevation than the flatter, glaciated land to the north and the river flood plains to the south.

Below, we discuss the evidence presented in the Shawnee Hills viticultural area petition.

Name Evidence

The Shawnee Indian Nation, led by Chief Tecumseh and his brother, The Prophet, occupied the southern Illinois hill country in the early 1800s in an attempt to stem the flow of white settlers from the east. As a result, the petition states, the Shawnee name became attached to the hills, and academic and State government publications document the continued use of the name. For example, the book ''Land Between the Rivers'' (C.W. Horrell, *et al.*, 1973), as cited in the petition, describes the region as follows:

> South of the Mount Vernon hill country you come next to the Shawnee Hills [which mark] the southernmost limit of the prehistoric ice sheets. The Shawnee Hills culminate in Shawneetown Ridge, a heavily timbered wilderness of bluffs and knobs reaching up to an elevation of over a thousand feet, with rocky cliffs towering hundreds of feet above the valley floor. The Shawnee Hills are the heart of Southern Illinois [and] the 204,000 acre Shawnee National Forest. (pg. 11.)

The Illinois State Geological Survey map ''Landforms of Illinois'' (1980) labels the hills within the proposed viticultural area as the Shawnee Hills. In addition, an Illinois Department of Natural Resources brochure titled ''Illinois' Natural Divisions and Biodiversity'' (April 2002) describes the State's 14 unique natural regions. These regions are based upon such natural features as topology, geology, soils, and climate, as well as their unique flora and fauna. According to the brochure, the Shawnee Hills natural region consists of two sections, the Greater and the Lesser Shawnee Hills.

''Shawnee'' also appears in many other political and geographic names within the proposed viticultural area, including Shawneetown, Shawneetown Ridge, and the Shawnee National Forest, which lies largely within the proposed area. Furthermore, five wineries within the proposed viticultural area formed the ''Shawnee Hills Wine Trail'' in 1996, which is described in a brochure of the same name. According to the petition, the names ''Shawnee Hills'' and ''Shawnee Hills Wine Trail'' have been used numerous times in other national, State, and local publications.

Boundary Evidence

People have raised grapes in southern Illinois and the Shawnee Hills since 1860, according ''Grape Culture'' by W.E. Gould (1891) as cited in the petition. The region contained 1,250 acres of vineyards in 1890, and vintners produced 19,750 gallons of wine in 1891, the petition adds, citing ''Grape and Wine Production in Illinois from 1983 to Present,'' by R.M. Skirvin, *et al.*, in ''Illinois Grape Growers and Vintners Association Conference Proceedings'' (2000). Currently, there are eight wineries and 51 vineyards with approximately 160 acres planted to wine varietals within the proposed Shawnee Hills viticultural area, the petition states, citing ''1999 Grape Growers and Vintner's Survey,'' in ''Illinois Grape Growers and Vintners Association Conference Proceedings'' (2000).

Academic and Illinois State government publications describe the boundaries of the Shawnee Hills landform, and the petition included copies of these publications. As described by Horrell, *et al.*, the Shawnee Hills is a region of unglaciated hills and ridges that extends across southern Illinois, about 80 miles long, from the Ohio River in the east to the Mississippi River in the west, and approximately 20 miles wide from north to south. The

region's elevation is its most distinguishing feature, averaging roughly 400 to 800 feet higher in elevation than the glaciated land immediately to the north and the Mississippi and Ohio River flood plains immediately to the south.

According to the petition, and the State of Illinois publications and maps submitted with it, the eastern boundary of the Shawnee Hills landform is the bluff line along the Ohio River, while the landform's western boundary is the high bluff line above the Mississippi bottomland. The ''Illinois' Natural Divisions and Biodiversity'' brochure notes that the Mt. Vernon Hill Country section of the Southern Till Plain division lies north of the Shawnee Hills. As the petition and the accompanying publications note, the dividing line between the Shawnee Hills region and the Mt. Vernon Hill Country marks the southernmost advance of Ice Age glaciers. The area immediately to the south of the Shawnee Hills consists of the lowlands and flood plains found along the Ohio and Mississippi Rivers. This region, according to the petition, is commonly called the ''Cairo Delta.''

Differences between the natural boundaries of the Shawnee Hills region and the boundaries of the proposed Shawnee Hills viticultural area are minor and largely a matter of convenience. For example, a road near the base of the Mississippi River bluff rather than a complex meandering elevation line is used to mark a portion of the proposed area's western boundary. The proposed Shawnee Hills viticultural area boundary also follows, in places, the boundary of the Shawnee National Forest, which covers much of the Shawnee Hills region.

Distinguishing Features

Elevation

As noted by the petitioners and by Horrell, *et al.*, in ''Land Between the Rivers,'' elevation is the most obvious feature distinguishing the Shawnee Hills from surrounding areas. As shown on the ''Paducah; Kentucky: Illinois-Missouri-Indiana'' USGS map (1987) submitted with the petition, the Shawnee Hills range from 400 to 800 feet higher in elevation than the glaciated land to the north and the river delta land to the south. Most of the highest elevations in Illinois, many above 1,000 feet, are in the Shawnee Hills.

According to the petition, spectacular hills and ridges and a unique mesoclimate characterize the proposed Shawnee Hills viticultural area. Nearly all vineyards in the proposed Shawnee Hills viticultural area are on ridge tops and bench lands ranging between 600 and 900 feet in elevation. As such, the commercial vineyards in the Shawnee Hills area have experienced little or no spring frost or winter freeze injury. An additional benefit of the Shawnee Hills topography, the petition notes, is the enhanced air circulation caused by constant summer breezes, allowing faster drying of vineyard leaves and fruit clusters following rain, thus minimizing the risk of fungal infections in an otherwise humid, wet climate.

In contrast, the Mt. Vernon Hill County region immediately to the north of the Shawnee Hills was glaciated, and, as a result, is 400 to 500 feet lower in elevation than the Shawnee Hills, according to the petition, which adds that the Mt. Vernon region is relatively flatter with no high ridges, cliffs, or gorges. Horrell, *et al.*, describe the topography of the Mt. Vernon Hill Country as ''rolling farmland.''

The Cairo Delta area to the south of the Shawnee Hills is lower still, averaging about 300 to 400 feet in elevation, with an extremely flat topography that is often totally flooded by the Mississippi, Ohio, Wabash, and Cache Rivers, which all converge there. This delta region comprises all of the land in Illinois south of the Shawnee Hills. Horrell, *et al.* (1973), describe this area as follows:

> Beyond Shawneetown Ridge the land drops away in gentle foothills to the low-lying swamps and lakes along the Cache River—the ancient bed of the Ohio River. Beyond Cache valley you come to the flood plain of the Ohio River itself. Two similar flood plains border Southern Illinois on the east and west, forming the banks of the Wabash and Mississippi rivers.

Geology

The petitioners also note that the geological characteristics of the Shawnee Hills are a distinguishing feature. The ''Illinois Geological Survey,'' compiled by H.B. William, *et al.* (1967), as cited in the petition, notes that the backbone of the Shawnee Hills is the Shawneetown Ridge, a high ridge of Pennsylvanian, Caseyville Formation Battery Rock sandstone up to 600 feet thick, which runs east to west from the Ohio River south of the village of Shawneetown to the Mississippi River near the town of Chester. This rock is very obvious in the ridge's south-facing bluffs, as well as along the north-south roads cut through it. The ridge's northern slope consists primarily of Pennsylvanian, Abbott Formation, Grindstaff sandstone up to 350 feet thick. The southern slope consists primarily of Mississippian Upper Chesterian, Grove Church shale up to 65 feet thick, and Kinkaid Limestone, which is 110 to 180 feet thick. The bluffs above the Mississippi River consist primarily of Lower Devonian Clear Creek chert and Backbone limestone.

This underlying mixture of sandstone, chert, and limestone gives the Shawnee Hills a Karst-like topography, honeycombed with sinkholes and limestone caves feeding many surface springs, the petition states. One of the few such areas in Illinois, the petition notes that this combination of steep slopes, rock fissures, sink holes, and caves provides the proposed viticultural area with superior surface and ground water drainage in a region that often has excessive rainfall (38 to 46 inches annually).

In contrast, the petition notes, the Mt. Vernon Hill Country to the north of the Shawnee Hills was totally glaciated, resulting in lower elevations, flatter topography, and a different geology. The southern portion of the Mt. Vernon Hill Country consists primarily of Pennsylvanian, Spoon Formation, Curlew limestone layered with DeKoren and Davis coal, as well as Carbondale Formation, Piasa limestone with number 2, 5, and 6 coals. The northern part of the Mt. Vernon Hill Country area consists primarily of Modesto Formation Shoal Creek limestone 200 to 500 feet thick with number 7 and 8 coal throughout, as well as Bond Formation, Millersville limestone 100 to 350 thick. Horrell, *et al.* (1973), describe this area as ''a great crescent stretching southeast from Randolph and Perry counties to Gallatin county, where coal beds come so close to the surface that they have made this the most heavily mined region in the state.''

Also in contrast, the petition notes that the Cairo Delta area south of the Shawnee Hills was flattened by water from both glacial melt and the tremendous flow and flooding of the two largest rivers in the country—the Mississippi and the Ohio, which eroded and replaced rock with clay, sand, and gravel. According to the ''Illinois State Geological Survey,'' the northern part of the delta area consists of Cretaceous, Gulfian McNary sand, and Tuscaloesa gravel. The southern part of the delta region consists of Paleocene and Eocene Wilcox Formation, Porters Creek clay 75 to 150 feet thick.

Climate

Another distinguishing factor of the proposed Shawnee Hills viticultural area, according to the petitioners, is its climate. While the Shawnee Hills area generally has a continental climate, as

does all of the Midwestern United States, the hills climatically separate the upper Midwest from the South. The petition states that the Shawnee Hills region is warmer than the adjacent areas to the north but cooler than the adjacent areas to the south, which are often too hot in the summer to grow quality grapes. This climate provides a longer growing season for ripening late varieties of grapes, higher degree-days for optimum ripeness, and fewer winter occurrences of below-zero degree Fahrenheit temperatures, which can kill buds and damage wood on many grape varieties, according to the petition.

As evidence of this unique climate, the petition included data from the Midwestern Climate Center (*http://mcc.sws.uiuc.edu/summary*) for Mt. Vernon, Anna, and Cairo, Illinois. Anna is located within the proposed Shawnee Hills viticultural area; Mt. Vernon, which is within the Mt. Vernon Hill Country region, is approximately 50 miles north of Anna; while Cairo, which is within the Cairo Delta region, is approximately 35 miles south of Anna.

The table shown below, which the petitioners provided, compares Shawnee Hills, Mt. Vernon, and Cairo temperature data. The table shows that the Shawnee Hills could be classified as a mid-Region IV climate in the Winkler heat summation climate classification system, with 3,770 growing degree-days. (During the growing season, one degree day accumulates for each degree Fahrenheit that a day's median temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. See ''General Viticulture,'' by Albert J. Winkler, University of California Press, 1974.)

HEAT SUMMATION AS DEGREE-DAYS ABOVE 50 DEGREES FAHRENHEIT FOR THE PERIOD APRIL 15 TO OCTOBER 15

Climate station	Degree days over 50° F								Winkler climate region
	Apr 15–30	May	Jun	Jul	Aug	Sept	Oct 1–15	Apr 15–Oct 15	
Mt. Vernon	108	447	706	835	774	550	123	3,543	Low Region IV
Anna	127	498	733	868	815	587	142	3,770	Mid Region IV
Cairo	159	586	823	950	872	643	168	4,201	Low Region V

Source Midwest Climate Center Data: *http://mcc.sws.uiuc.edu/summary/data.*

For the proposed Shawnee Hills viticultural area, average temperatures are highest from mid-June to mid-August during early ripening; then the temperatures taper off in September and October, which is the period of late ripening and harvest. Typically, the area experiences warm days and cool nights from late August to October.

The table below, which the petitioners also provided, describes the length of growing season for the three areas (Mt. Vernon, Anna, and Cairo). For the Shawnee Hills, the median last spring frost occurs by April 10. In 10 percent of the years, the last frost occurred after April 23. North of this area, the median last spring frost occurs in mid-April, with 10 percent occurring after May 2. Since bud break generally occurs during the second week of April, areas to the north of the Shawnee Hills often experience more bud and shoot damage due to late frost. Also, since the first frost in the fall occurs one to three weeks later in the Shawnee Hills than in areas to the north, late varieties such as Chambourcin and Norton ripen more fully before leaf drop.

GROWING SEASON SUMMARY, 1961–1990 BASE TEMPERATURE = 32 DEGREES FAHRENHEIT

Station	Date of last spring frost occurrence			Date of first fall frost occurrence			Length of growing season		
	Median	90%	10%	Median	90%	10%	Median	90%	10%
Mt. Vernon	4/12	3/27	5/02	10/16	10/03	10/29	184	207	150
Anna	4/10	3/23	4/23	10/27	10/12	11/07	200	215	186
Cairo	3/24	3/01	4/08	11/13	10/31	11/28	233	260	214

Source Midwest Climate Center Data: *http://mcc.sws.uiuc.edu/summary/data.*

Because the Midwestern United States is a continental climate, one of the limiting factors in growing quality wine grapes is dormant wood and bud damage due to extreme cold temperatures in the winter. The next table, as provided by the petitioners, shows that the Shawnee Hills area averages 81 days below 30 degrees Fahrenheit and 1.8 days below 0 degrees Fahrenheit each year. The region immediately to the north averages 104 days below 30 degrees Fahrenheit and 3.5 days below 0 degrees Fahrenheit. One or two days of extreme cold can mean the difference between a full crop and healthy wood, and a partial crop and damaged wood.

AVERAGE ANNUAL TEMPERATURE VARIATION

[Averages: 1961–1990; Extremes: 1896–2000]

Station	Average annual temperature (degrees fahrenheit)			Annual number of days of minimum temperature	
	Maximum	Minimum	Mean	<32° F	<0° F
Mt. Vernon	65.0	42.9	54.0	104	3.5
Anna	67.1	46.1	56.6	81	1.8

AVERAGE ANNUAL TEMPERATURE VARIATION—Continued

[Averages: 1961–1990; Extremes: 1896–2000]

Station	Average annual temperature (degrees fahrenheit)			Annual number of days of minimum temperature	
	Maximum	Minimum	Mean	<32° F	<0° F
Cairo	67.5	49.9	58.7	64	0.7

Source: Midwest Climate Center Data: *http://mcc.sws.uiuc.edu/summary/data.*

Rainfall

The petitioners note that while rainfall does not appear to be a distinguishing feature for the proposed Shawnee Hills viticultural area, the area's drainage capacity does differ from that of surrounding areas. Because of its well-drained soils, steep topography, and limestone base, the Shawnee Hills can shed excess water more quickly and completely than adjacent areas. In the Shawnee Hills area, most precipitation occurs in the spring months of March through May. The driest months are generally September and October, which receive an average of only 2 to 3 inches per month. Although the area receives excessive rainfall on an annual basis, the growing season and the harvest months are more moderate in terms of rainfall. The drier harvest months allow grapes to develop more intensity in flavor, color, sugar, and acid. In most years, the petition states, the Shawnee Hills vineyards produce wine grapes that are very well balanced relative to these quality parameters.

Soils

While noting that soils vary in the Shawnee Hills region, the petitioners provided a general description contrasting the soils of the proposed area with the soils of adjacent areas. As noted on the ''General Soil Map of Illinois,'' prepared by J.B. Fehrenbacher (1982), the soils in the proposed Shawnee Hills viticultural area are, generally, class XIII and class XIV, which tend to be thin loess with or without residuum on limestone or interbedded sandstone, siltstone, and shale. The main soils are Alford, Hosmer, Wellston, and Zanesville. All of these soils are light colored, moderately developed, and moderately well drained. The western and southern parts of the area tend to have deeper soils, 12 to 20 feet thick, on limestone. The central and northern parts of the area tend to have soil that is 20 to 48 inches thick on sandstone, siltstone, and shale. The primary viticultural advantage of the soils within the Shawnee Hills is that they are moderately well drained and are of low fertility.

Soil drainage in the Shawnee Hills area is moderate to excellent. In this area of Karst topography, the loess soils, which tend to erode easily, are very good for quality vines and grapes. However, the best vineyard sites within the proposed Shawnee Hills viticultural area are on flat ridge tops and bench lands with deep soils that are not highly eroded.

In contrast, the soil north of the Shawnee Hills in the Mt. Vernon Hill Country are class II, which are primarily thick loess (30 to 70 inches) on Illinois drift. The main soils are Stoy, Weir, Bluford, Wynoose, Colp, and Del Rey. These soils tend to be much deeper than those in the Shawnee Hills, as well as more fertile but with poorer drainage. In general, these soils are more suited to growing such crops as corn and soybeans, which are the primary crops of the Mt. Vernon Hill Country, than to growing apples, peaches, and grapes, which are the primary crops in the Shawnee Hills area. The soils south of the Shawnee Hills in the Cairo Delta, according to the petition, are primarily class XV, which are sandy to clay alluvial sediments on bottomlands. The soils include Lawson, Sawmill, Darwin, Haymond, Perrolia, and Karnak. These soils tend to be poorly developed and poorly drained.

Notice of Proposed Rulemaking

On April 8, 2005, TTB published a notice of proposed rulemaking regarding the establishment of the Shawnee Hills viticultural area in the **Federal Register** (70 FR 17940) as Notice No. 39. Comments on the proposed establishment of the Shawnee Hills viticultural area were due on or before June 7, 2005.

Comments Received

We received 46 comments in response to Notice No. 39. Of those, 28 comments supported the petition and 18 comments opposed the petition, including one comment with 84 additional signatures attached.

Supporting commenters included the Governor of Illinois, two officers of the Illinois Grape Growers and Vintners Association (IGGVA), a representative of the Southernmost Illinois Tourism Bureau, various wine industry members with interests within the proposed area, and several wine consumers. In addition, TTB received a detailed response to the opposing comments from one of the original Shawnee Hills petitioners, Dr. Theodore F. Wichmann, president of Owl Creek Vineyard, Inc.

Opposing commenters included industry members with interests in southern Illinois outside of the proposed area, the president of the Greater Shawnee Grape Growers Association (GSGGA), and the mayors of Pulaski and Benton, Illinois.

Below, we discuss the issues raised by the opposing commenters. We discuss some opposing comments individually, and where more than one opposing comment covers the same issue, we address those comments as a group. Where applicable, we also discuss Dr. Wichmann's responses to the opposing comments. We do not discuss the 28 supporting comments in detail.

Opposing Comments in Support of a Larger Viticultural Area

All commenters opposed to the establishment of the proposed Shawnee Hills viticultural area as outlined in Notice No. 39 express support for expanding the proposed viticultural area and naming it ''Shawnee,'' ''Greater Shawnee,'' or ''Southern Illinois.'' For example, an industry member associated with the Shawnee Winery comments that ''the area should be designated as all of Southern Illinois south of Interstate 64 and from the Mississippi River to the Wabash River.'' A few commenters support an even larger viticultural area encompassing all of Illinois south of Interstate 70.

Economic Consequences, Development, and Support

Most opposing commenters supporting the designation of a larger viticultural area in southern Illinois note that more growers would reap the economic benefits from inclusion within a larger viticultural area. One commenter states that a viticultural area encompassing all of Illinois south of Interstate 64 would double the number

of growers able to benefit from inclusion in a viticultural area. Another commenter believes that the number of benefiting growers could triple. Several opposing commenters also add that, with a larger viticultural area, wineries would have more grapes to choose from.

Some opposing commenters also state that exclusion from the proposed Shawnee Hills viticultural area would have negative economic consequences for their operations and those of other excluded southern Illinois growers. For example, the owner of the Flint Hill Vineyard near Muddy, Illinois, states that exclusion from the proposed area would ''negatively affect the price of my grapes,'' and that as a result he could be displaced by novice growers. A Carbondale-area grower also notes that exclusion from the proposed Shawnee Hills viticultural area ''would put my grapes in a competitive disadvantage and impose economic hardship on my existing enterprise.''

In addition, several opposing commenters state that the creation of a smaller, rather than a larger, viticultural area in southern Illinois would negatively affect economic development efforts in the region. A commenter associated with the Office of Economic and Regional Development at Southern Illinois University states, ''The future of the viticultural industry in southern Illinois is dependent upon a whole region, not the gerrymandered version being proposed.'' The owners of the Lost Creek Vineyard near Benton, Illinois, believe that the development of grape growing in southern Illinois should be given the same consideration in setting the boundaries of the proposed viticultural area as soil and climate conditions.

Several opposing commenters fear that economic development incentives and technical assistance offered by the State of Illinois to viticulturists, as well as U.S. Department of Agriculture assistance and loans, could be denied to growers outside of the proposed viticultural area. In particular, three growers who identified themselves as minority group members commented on this concern. Noting his exclusion from the proposed Shawnee Hills viticultural area, one such grower from Carrier Mills, Illinois, believes that it is ''highly likely in the future I will hear that the location of my vineyard does not justify any State support'' or support from the banking establishment.

Arbitrary Boundaries

Some opposing commenters state that the proposed Shawnee Hills viticultural area boundaries are arbitrary, leaving some growers outside the proposed area by a few miles or, in some cases, ''by a matter of a few hundred feet!'' Others contend the proposed viticultural area boundary is arbitrary since it does not encompass most growers in southern Illinois or does not include all of the historic grape growing areas within southern Illinois. For example, the mayor of Benton, Illinois, comments that ''[t]here are just too many vineyards scattered through [southern Illinois] to pretend to draw an artificial line * * * along the bottom of ditches, unnamed dirt roads, and through the center of communities like Carbondale and Marion.''

While most opposing commenters expressed their support for a larger viticultural area in general terms, several other industry members sought the addition of specific vineyard properties to the viticultural area as proposed. For example, the owner of the Flint Hill Vineyard notes that while members of his family have grown grapes on the same ridge since the 1920s, that ridge was excluded from the proposed viticultural area by a few miles. The president of the GSGGA states that his vineyard is outside of the proposed Shawnee Hills viticultural area ''by less than one-quarter mile.''

Lack of Distinguishing Characteristics

A few opposing commenters also state that the boundary of the proposed Shawnee Hills viticultural area is arbitrary since the proposed area is not truly distinguishable from the rest of southern Illinois based on its geography, climate, or soils.

In his comment, the president of the GSGGA included a table showing the elevation of various southern Illinois communities in support of his contention that the elevations found inside and outside the proposed Shawnee Hills viticultural area are not significantly different. These elevation differences between the proposed viticultural area and the surrounding region, this opposing commenter concludes, ''are not significant enough to warrant a case for different growing conditions,'' and thus will not result in ''detectable flavor differences'' in the resulting wine.

The GSGGA president notes in particular that, given the 30-mile distance between them, the difference in elevation between Alto Vineyards, one of the highest vineyards within the proposed Shawnee Hills viticultural area, and his Monte Alegre Vineyard, outside of the proposed area, results in only a slope of 0.20 percent. In terms of climate, he states that ''elevation differences of the order or 300 feet for over 30 to 40 miles do not present a topographical hurdle for the large continental air masses that dominate the climate of the region.'' This commenter notes that the relative flatness and location in the center of the continent gives southern Illinois ''very uniform climatic characteristics.''

Other commenters also contend that there is little difference in the climate of the proposed Shawnee Hills viticultural area when compared with the climate of the surrounding region of southern Illinois, particularly as measured in average temperatures, last and first frost dates, heat accumulation as measured in degree days,[1] or in average rainfall. One grower notes, ''Every year, the trees bud and turn at the same time, the farmers plant and harvest at the same time, [and] the rivers are all high or low at the same time.''

A few opposing commenters also questioned the soil differences outlined by the original petitioners. One commenter notes that soils in southern Illinois ''are mostly all acidic, heavy soils, with organic content in the 1 to 2% range or less, and although they may exhibit differences in texture, this texture can change within a single vineyard.'' This commenter adds ''these marginal differences will be undetectable in the wine.''

Other Issues

Some opposing commenters believe inclusion within a viticultural area is a judgment of the quality of an area's fruit and that grapes from vineyards outside of the proposed area will be regarded as substandard. The mayor of Pulaski, Illinois, states in his comment that the Shawnee Hills petition ''simply assumes'' that the hills surrounding the village are ''substandard for grapes.'' One opposing commenter questioned the value of establishing a viticultural area in a region that grows only French-American hybrids and North American varieties since these ''do not aspire to the flavor complexities'' usually found in wines from viticultural areas growing *vinifera* grapes. In addition, a few opposing commenters note that the petitioners did not consult with growers outside the proposed Shawnee Hills viticultural area in developing their proposal.

Petitioner's Response

Regarding the economic issues raised by the opposing commenters, the lead

[1] As a measurement of heat accumulation during the growing season, one degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. See ''General Viticulture,'' by Albert J. Winkler, University of California Press, 1974.

Shawnee Hills petitioner, Dr. Wichmann, notes in his response that some southern Illinois growers may mistakenly believe that the establishment of a viticultural area limits to whom they may sell their grapes or who may buy their grapes. The petitioner dismisses the role of viticultural areas in economic development as being irrelevant since viticultural areas are established only to ''inform consumers of where the grapes in a given bottle of wine were grown.'' The petitioner also states that the establishment of a viticultural area does not ''imply or guarantee the quality of grapes grown within or outside its boundaries.''

The Shawnee Hills petitioner contends that, by definition, a viticultural area's boundaries are restrictive since the boundaries define an area that is different from surrounding areas. In this case, the petitioner states that the proposed Shawnee Hills viticultural area differs from the surrounding areas of southern Illinois in that the Shawnee Hills landform is higher than surrounding areas, is warmer, and has different soils. The petitioner's response notes that the president of the GSGGA compared the elevations of communities outside of the proposed Shawnee Hills viticultural area mostly with communities located at the bottom of valleys and gorges within the proposed area, which, the petitioner states, minimizes the elevation differences between the proposed area and the rest of southern Illinois. The petitioner states that most commercial vineyards in the Shawnee Hills are ''on high ridges above 600 feet'' while elevations in the Mt. Vernon Hill Country north of the proposed area range from 300 to 450 feet and are no higher than 500 feet.

In terms of climate, the petitioner acknowledges that southern Illinois has the same overall macroclimate and agrees that the differences in elevation do not ''present a topographical hurdle'' for the large continental air masses that cover the region. Rather, the petitioner contends that the opposing commenters ignore how changes in elevation of 100 to 300 feet can change an area's mesoclimate and how changes in elevation of as little as 10 feet can effect a vineyard's microclimate. The petitioner's response specifically notes that due to cold air drainage, especially during times of minimum temperatures, the ridgetop vineyards within the proposed viticultural area are slightly warmer than vineyards to the north of the proposed area, a difference the petitioners contend is significant for growing grapes.

In terms of soil differences, the petitioner's response states that soils within the proposed Shawnee Hills viticultural area are class XIII and class XIV, which tend to be thin loess on limestone, with the main soils being of the Alford, Hosmer, Wellston, and Zanesville series. In contrast, the petitioner states, the soils to the north in the Mt. Vernon Hill Country are class II, which are primarily thick loess on Illinois drift. The main soils there are of the Stoy, Weir, Bluford, Wynoose, Colp, and Del Rey series.

TTB Response

General Discussion: As previously stated, a viticultural area is defined under the TTB regulations as a delimited grape growing region distinguishable by geographical features. TTB considers evidence relating to name, boundaries, and geographical features in determining whether to approve a petitioned-for viticultural area. Though the establishment of a particular viticultural area may potentially have an economic impact on local grape growers and wineries outside the area, viticultural area designations under TTB regulations are not made on the basis of the potential economic impacts in adjacent localities. We designate viticultural areas in order to allow vintners to better describe the origin of their wines and to allow consumers to better identify the wines they may purchase.

TTB wishes to clarify that the establishment of a viticultural area, by itself, does not prohibit or limit the sale of grapes grown outside the established area to vintners within the established area. The designation of a viticultural area only restricts the use of the name of the viticultural area and any related term of viticultural significance on wine labels and in wine advertisements. Requirements for the use of appellations of origin, including viticultural area names, are contained in § 4.25 of the TTB regulations (27 CFR 4.25). In order to use a viticultural area name on a wine label, at least 85 percent of the wine must be derived from grapes grown within the viticultural area and the wine must be finished within the State or States in which the viticultural area lies. However, this does not mean that vintners within a designated viticultural area may only produce wines that are subject to the 85 percent rule. Vintners located within a viticultural area may continue to produce wine from grapes grown outside that area; they simply would not be able to use the viticultural area name on the label of a wine that does not meet the 85 percent rule.

TTB also wishes to clarify, as previously noted in this document, that its establishment of a viticultural area is neither an approval nor an endorsement by TTB of the grapes grown or the wine produced in that area. Therefore, financial or other assistance to a viticultural enterprise should not be based solely on the enterprise's location inside or outside of a viticultural area.

Opposing comments raised several other issues that do not pertain to the approval standards for viticultural areas under the TTB regulations. TTB understands that these issues are important to the commenters; nevertheless, those issues are beyond the scope of this rulemaking action.

Viticultural Area Boundary and Distinguishing Characteristics: TTB understands that many growers in southern Illinois support the establishment of a larger viticultural area. By definition, a viticultural area is a ''delimited grape-growing region distinguishable by geographic features.'' In other words, by its very nature, a viticultural area is a limited geographical area that excludes those growers outside that limited region. It is not the intent of TTB to harm any industry member excluded from the petitioned-for viticultural area. Rather, the designation of a viticultural area merely signifies that the viticultural area is different from surrounding areas based on one or more geographic factors. These factors may include, but are not limited to, climate (temperature, precipitation, fog, winds, etc.), soils, geology, topography, elevation, or another physical feature that may affect growing conditions within the area.

TTB believes the evidence provided in the petition shows that the proposed Shawnee Hills viticultural area encompasses an area that is different from the surrounding areas of southern Illinois. We note the evidence available to us shows that the Shawnee Hills landform is generally higher in elevation, has a different underlying geology, has somewhat warmer vineyard temperatures due to cold air drainage, and has different soils when compared to the surrounding areas of southern Illinois. While we recognize that grapes are grown across southern Illinois, to include growers outside the proposed viticultural area would ignore the differences between the Shawnee Hills landform and the surrounding region of the State.

As required by our regulations, we use features (both natural and man-made) found on the USGS map supplied by the original petitioners to define the boundary of the proposed Shawnee Hills viticultural area. As a result, the

proposed viticultural area's boundary may fall slightly inside or outside of the Shawnee Hills landform's natural boundary. As noted in Notice No. 39, rather than using the exact natural limit of the Shawnee Hills, which is delineated by a complex set of elevation lines, we mark the boundary of the proposed viticultural area using more convenient features, such as nearby roads and streams. This is consistent with our past practice regarding the use of features different from a viticultural area's natural extent to draw its boundary. (For example, see the *Boundary Description* section of T.D. TTB–27, Establishment of the Ribbon Ridge Viticultural Area, published in the **Federal Register** on June 1, 2005, at 70 FR 31342.)

However, TTB will entertain a properly prepared and submitted petition from any interested party regarding the establishment of a larger viticultural area in southern Illinois under an appropriate name. Section 4.25(e)(2) of the TTB regulations outlines the requirements for proposing an American viticultural area. A viticultural area petition must include evidence related to the proposed area's name, its boundaries, and its distinguishing geographic features, as well as a specific description of and maps showing the proposed area's boundaries. For details, see the *Requirements* section above and § 9.3(b) of our regulations.

In addition, TTB notes that all Illinois vintners may use ''Illinois'' or the name of an Illinois county as an appellation of origin provided that the wine in question meets the requirements of 27 CFR 4.25. Multistate and multicounty appellations can also be claimed for some wines (see § 4.25(c) and (d) for details).

Opposing Comments Regarding Possible Consumer Confusion

As noted above, all commenters opposing the establishment of the proposed Shawnee Hills viticultural area express support for a larger viticultural area to be named ''Shawnee,'' ''Greater Shawnee,'' or ''Southern Illinois.'' In addition, one commenter states that the Shawnee Hills name is inappropriate and could cause consumer confusion since that name is associated with a ''small five or six winery wine trail'' that ''represents a very small geographic area'' within the proposed viticultural area. The same commenter adds that the Shawnee Hills name ignores that the grapegrowing and winemaking area ''already accepted by the public'' includes all of southern Illinois.

A similar comment states that some consumers may come to believe that only those wineries located along the Shawnee Hills Wine Trail are included in the Shawnee Hills viticultural area. Likewise, the president of the GSGGA notes in his comment that other localities in Kentucky and Ohio also are known as ''Shawnee Hills,'' which he believes could cause consumer confusion over the location of a Shawnee Hills viticultural area.

Petitioner's Response

The lead Shawnee Hills petitioner sees no potential for consumer confusion since Shawnee Hills ''is the name of the landform itself'' and that name is used by agencies of the State of Illinois, ''as well as by many others.'' The petitioner adds that ''Southern Illinois'' or ''Little Egypt'' may be appropriate for a larger, regional viticultural area.

TTB Response

After considering the petition evidence and the comments received, TTB concludes that the ''Shawnee Hills'' name is appropriate for the proposed viticultural area. We note that the Illinois State Geological Survey's ''Landforms of Illinois'' map labels the landform within the proposed Shawnee Hills viticultural area as the Shawnee Hills. Other State of Illinois publications also use this name for the hills and ridges located within the proposed viticultural area. TTB believes the names ''Greater Shawnee,'' ''Southern Illinois'' or ''Little Egypt'' may best be associated with a region larger than the proposed Shawnee Hills viticultural area and, therefore, are not appropriate for the smaller proposed viticultural area. As noted above, we will consider a petition to create a larger viticultural area in southern Illinois under an appropriate name.

We also believe that the use of the Shawnee Hills name will not cause consumers to confuse the proposed viticultural area with the wine trail within it. We believe that most wine consumers understand that a viticultural area encompasses more land than the winery or vineyard properties located along any given winery driving tour.

In addition, we believe that consumers will not confuse the proposed Shawnee Hills viticultural area with similarly named places in Kentucky and Ohio. We note that Shawnee Hills, Kentucky, is a real estate development on the eastern shore of Lake Barkley, while the unincorporated community of Shawnee Hills in Greene County, Ohio, is a housing development built around an artificial lake. The village of Shawnee Hills in Delaware County, Ohio, is now a suburb of the city of Columbus. We do not believe that any of these non-rural places are or will become known as grape-growing areas. We also note that our regulations do not require that the name of a proposed viticultural area be absolutely exclusive to the area in question.

TTB Finding

After careful review of the petition and the comments received, TTB finds that the evidence submitted supports the establishment of the proposed Shawnee Hills viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the ''Shawnee Hills'' viticultural area in Alexander, Gallatin, Hardin, Jackson, Johnson, Pope, Pulaski, Randolph, Saline, Union, and William counties in southern Illinois, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, ''Shawnee Hills,'' is recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation clarifies this point. Consequently, wine bottlers using ''Shawnee Hills'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

On the other hand, we do not believe that ''Shawnee'' standing alone has viticultural significance. A search of the Geographic Names Information System maintained by the U.S. Geological Survey shows no entries for ''Shawnee Hills,'' but does show entries for ''Shawnee'' standing alone or in conjunction with words such as ''Creek,'' ''Lake,'' ''Peak,'' or ''Valley'' in 29 States. We therefore conclude that ''Shawnee'' standing alone does not have a geographical context or meaning

that is generally limited to the location of the Shawnee Hills viticultural area. Accordingly, the regulatory text set forth in this document specifies only the full ''Shawnee Hills'' name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area or other term specified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must derive from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name or other term as an appellation of origin and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

Rita Butler of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Amendment

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter 1, part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend subpart C by adding § 9.206 to read as follows:

§ 9.206 Shawnee Hills.

(a) *Name.* The name of the viticultural area described in this section is ''Shawnee Hills''. For purposes of part 4 of this chapter, ''Shawnee Hills'' is a term of viticultural significance.

(b) *Approved maps.* The United States Geological Survey (USGS) 1:250,000-scale topographic map used to determine the boundary of the Shawnee Hills viticultural area is titled—Paducah: Kentucky–Illinois, Missouri–Indiana, 1987 edition.

(c) *Boundary.* The Shawnee Hills viticultural area is located in southern Illinois between the Ohio and Mississippi Rivers, and largely within the Shawnee National Forest. The boundary of the Shawnee Hills viticultural area is described below—

(1) Beginning at the intersection of State Routes 3 and 150 in the town of Chester (Randolph County), proceed northeast on Route 150 to its intersection with the surveyed boundary line between Township 6 South (T6S) and Township 7 South (T7S); then

(2) Proceed due east along the T6S/T7S boundary line until it becomes the boundary between Perry and Jackson Counties, and continue east along the Perry-Jackson County line to State Route 4; then

(3) Proceed southeast on State Route 4 through the villages of Campbell Hill, Ava, and Oraville to its intersection with State Route 13/127; then

(4) Proceed south on State Route 13/127 to the intersection where State Routes 13 and 127 divide in the town of Murphysboro; then

(5) Proceed east on State Route 13 through the city of Carbondale to State Route 13's intersection with Interstate 57; then

(6) Proceed south on Interstate 57 to its intersection with State Route 148; then

(7) Proceed southeast on State Route 148 to its intersection with State Route 37; then

(8) Proceed south on State Highway 37 to Saline Creek; then

(9) Proceed northeasterly (downstream) along Saline Creek to its confluence with the South Fork of the Saline River, then continue easterly (downstream) along the South Fork of the Saline River to its confluence with the Saline River, then continue easterly and then southeasterly (downstream) along the Saline River to its confluence with the Ohio River near Saline Landing; then

(10) Proceed southwesterly (downstream) along the Ohio River to the Interstate 24 bridge; then

(11) Proceed north on Interstate 24 to its intersection with the New Columbia Ditch (with the towns of Big Bay to the northeast and New Columbia to the northwest); then

(12) Proceed westerly along the New Columbia Ditch to its confluence with the Main Ditch, and continue westerly along the Main Ditch to its confluence with the Cache River (near the Cache River's confluence with the Post Creek Cutoff), approximately 1.5 miles east-northeast of the village of Karnak; then

(13) Proceed westerly (downstream) along the Cache River, passing under Interstate 57 near the village of Ullin, and continue southeasterly along the Cache River to the river's confluence with Sandy Creek (northeast of the village of Sandusky); then

(14) Proceed westerly (upstream) along Sandy Creek approximately 4 miles to its junction with an unnamed secondary road (known locally as Alexander County Road 4); then

(15) Proceed south along the unnamed secondary road (Alexander County Road 4) to its junction with State Route 3 at the village of Olive Branch; then

(16) Proceed northwest on State Route 3 to its intersection with the Main Ditch (also known locally as Sexton Creek) at the village of Gale; then

(17) Proceed northerly along Main Ditch and Clear Creek Ditch to a light-duty road (known locally as State Forest Road) near the southwest corner of the Trail of Tears State Forest, approximately 3.75 miles east of the village of Wolf Lake; then

(18) Proceed west on the light-duty road (State Forest Road) to its intersection with State Route 3 just south of Wolf Lake; then

(19) Proceed north on State Route 3 to its junction with the Big Muddy River (near the village of Aldridge), and continue north (upstream) along the Big Muddy River to its confluence with Kincaid Creek near the village of Grimsby; then

(20) Continue northerly along Kincaid Creek to its junction with State Route 149; then

(21) Proceed west on State Route 149 to its junction with State Route 3, and then continue northwest along State

Route 3 to the beginning point in the town of Chester.

Signed: September 25, 2006.

John J. Manfreda,

Administrator.

Approved: October 27, 2006.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. E6–20023 Filed 11–24–06; 8:45 am]

BILLING CODE 4810–31–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2005–11]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: This notice announces that during the next three years, the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of six classes of copyrighted works.

EFFECTIVE DATE: November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Steven Tepp, Principal Legal Advisor, and David O. Carson, General Counsel, Copyright GC/&, P.O. Box 70400, Southwest Station, Washington, D.C. 20024–0400. Telephone: (202) 707–8380; telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: In this notice, the Librarian of Congress, upon the recommendation of the Register of Copyrights, announces that during the period from the time of this notice through October 27, 2009, the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of six classes of copyrighted works. This announcement is the culmination of a rulemaking proceeding commenced by the Register on October 3, 2005. A more comprehensive statement of the background and legal requirements of the rulemaking, a discussion of the record and the Register's analysis may be found in the Register's memorandum of November 17, 2006, to the Librarian, which contains the full explanation of the Register's recommendation.[1] This notice summarizes the Register's recommendation and publishes the regulatory text codifying the six exempted classes of works.

I. Background

A. Legislative Requirements for Rulemaking Proceeding

In 1998, Congress enacted the Digital Millennium Copyright Act (''DMCA''), which among other things amended title 17, United States Code, to add section 1201. Section 1201 prohibits circumvention of technological measures employed by or on behalf of copyright owners to protect their works (hereinafter ''access controls''). In order to ensure that the public will have continued ability to engage in noninfringing uses of copyrighted works, such as fair use, subparagraph (B) limits this prohibition, exempting noninfringing uses of any ''particular class of works'' when users are (or in the next 3 years are likely to be) adversely affected by the prohibition in their ability to make noninfringing uses of that class of works. Identification of such classes of works is made in a rulemaking proceeding conducted by the Register of Copyrights, who is to provide notice of the rulemaking, seek comments from the public, consult with the Assistant Secretary for Communications and Information of the Department of Commerce, and recommend final regulations to the Librarian of Congress. The regulations, to be issued by the Librarian of Congress, announce ''any class of copyrighted works for which the Librarian has determined, pursuant to the rulemaking conducted under subparagraph (C), that noninfringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such users with respect to such class of works for the ensuing 3–year period.''[2]

The first section 1201 rulemaking took place in 2000, and on October 27, 2000, the Librarian determined that noninfringing users of two classes of works would not be subject to the prohibition on circumvention of access controls.[3] Exemptions to the prohibition on circumvention remain in force for a three–year period and expire at the end of that period. The Librarian is required to make a determination on potential new exemptions every three years. The second rulemaking culminated in the Librarian's October 28, 2003, announcement that noninfringing users of four classes of works would not be subject to the prohibition on circumvention of access controls.[4]

B. Responsibilities of Register of Copyrights and Librarian of Congress

The purpose of the rulemaking proceeding conducted by the Register is to determine whether users of particular classes of copyrighted works are, or in the next three years are likely to be, adversely affected by the prohibition in their ability to make noninfringing uses of copyrighted works. In making her recommendation to the Librarian, the Register must carefully balance the availability of works for use, the effect of the prohibition on particular uses and the effect of circumvention on copyrighted works. Section 1201(a)(1)(C) directs the Register and the Librarian to examine: ''(i) the availability for use of copyrighted works; (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes; (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research; (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and (v) such other factors as the Librarian considers appropriate.''

C. The Purpose and Focus of the Rulemaking

1. Purpose of the Rulemaking

As originally drafted, section 1201(a)(1) provided simply that ''No person shall circumvent a technological measure that effectively controls access to a work protected under this title.'' However, in response to concerns that section 1201, in its original form, might undermine Congress's commitment to fair use if developments in the

[1] A copy of the Register's memorandum may be found at *http://www.copyright.gov/1201.*

[2] 17 U.S.C. 1201(a)(1)(D).

[3] Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 65 FR 64555 (October 27, 2000); *http://www.copyright.gov/fedreg/2000/65fr64555.pdf.* The **Federal Register** notice contained the recommendation of the Register of Copyrights and the determination of the Librarian.

[4] The announcement was published in the **Federal Register** on October 31, 2003. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 68 FR 62011 (October 31, 2003); *http://www.copyright.gov/fedreg/2003/68fr2011.pdf.* On October 30, 2006, the Librarian announced that the existing classes of works were being extended, on an interim basis, pending the conclusion of the current rulemaking proceeding. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 71 FR 63247 (October 30, 2006).

marketplace relating to use of access controls result in less access to copyrighted materials that are important to education, scholarship, and other socially vital endeavors, it was determined that a triennial rulemaking proceeding should take place to monitor the use of access controls. If the rulemaking record revealed that access was being unduly restricted, *e.g.*, by elimination of print or other hard–copy versions, permanent encryption of all electronic copies or adoption of business models that restrict distribution and availability of works, then users of particular classes of works who are engaging in noninfringing uses of those works would be allowed to circumvent access controls without running afoul of the prohibition in section 1201(a)(1). The rulemaking proceeding, to be conducted by the Register of Copyrights, was considered a ''fail–safe'' mechanism, monitoring developments in the marketplace for copyrighted materials, and would allow the enforceability of the prohibition against the act of circumvention to be selectively waived, for limited time periods, if necessary to prevent a diminution in the availability to individual users of a particular category of copyrighted materials.

2. The Necessary Showing

Proponents of an exemption have the burden of proof. In order to make a prima facie case for an exemption, proponents must show by a preponderance of the evidence that there has been or is likely to be a substantial adverse effect on noninfringing uses by users of copyrighted works. De minimis problems, isolated harm or mere inconveniences are insufficient to provide the necessary showing. Similarly, for proof of ''likely'' adverse effects on noninfringing uses, a proponent must prove by a preponderance of the evidence that the harm alleged is more likely than not; a proponent may not rely on speculation alone to sustain a prima facie case of likely adverse effects on noninfringing uses. It is also necessary to show a causal nexus between the prohibition on circumvention and the alleged harm.

Proposed exemptions are reviewed *de novo*. The existence of a previous exemption creates no presumption for consideration of a new exemption, but rather the proponent of such an exemption must make a prima facie case in each three–year period.

3. Determination of ''Class of Works''

In previous rulemakings, it was determined that the starting point for any definition of a ''particular class'' of works in this rulemaking must be one of the categories of works set forth in section 102 of the Copyright Act, but that those categories are only a starting point and a ''class'' will generally constitute some subset of a section 102 category. The determination of the appropriate scope of a ''class of works'' recommended for exemption will also take into account the likely adverse effects on noninfringing uses and the adverse effects an exemption may have on the market for or value of copyrighted works.

It was also determined that while starting with a section 102 category of works, or a subcategory thereof, the description of a ''particular class''of works ordinarily should be further refined by reference to other factors that assist in ensuring that the scope of the class addresses the scope of the harm to noninfringing uses. For example, the class might be defined in part by reference to the medium on which the works are distributed, or even to the access control measures applied to them. But classifying a work solely by reference to the medium on which the work appears, or the access control measures applied to the work, would be beyond the scope of what ''particular class of work'' is intended to be.

In the current proceeding, the Register has concluded that in certain circumstances, it will also be permissible to refine the description of a class of works by reference to the type of user who may take advantage of the exemption or by reference to the type of use of the work that may be made pursuant to the exemption. The Register reached this conclusion in reviewing a request to exempt a class of works consisting of ''audiovisual works included in the educational library of a college or university's film or media studies department and that are protected by technological measures that prevent their educational use.'' Concluding that a ''class'' must be properly tailored not only to address the harm demonstrated, but also to limit the adverse consequences that may result from the creation of an exempted class, the Register has concluded that given the facts demonstrated by the film professor proponents of the exemption and the legitimate concerns expressed by the opponents of the proposed exemption, it makes sense that a class may, in appropriate cases, be additionally refined by reference to the particular type of use and/or user.

D. Consultation with the Assistant Secretary for Communications and Information

As required by section 1201(a)(1)(C), the Register consulted with the Assistant Secretary for Communications and Information of the Department of Commerce, meeting with him at the outset of the rulemaking proceeding and exchanging information throughout the course of the proceeding. The Assistant Secretary communicated his views to the Register in letters dated September 13, 2006, and October 31, 2006. The letters related to the proposal to designate as a class of works ''Computer programs that operate wireless communications handsets,'' and are discussed below in the discussion of that particular proposal.

II. Solicitation of Public Comments and Hearings

On October 3, 2005, the Register initiated the current rulemaking proceeding pursuant to section 1201(a)(1)(C) with publication of a Notice of Inquiry.[5] The Copyright Office received 74 written comments proposing a class or classes of works for exemption. Supporters and opponents of these proposals filed 35 reply comments. Four days of public hearings were conducted in Spring 2006 in Washington, D.C., and Palo Alto, California. Following the hearings, the Office sent follow–up questions to some of the hearing witnesses, and responses were received during the summer. The entire record in this and the previous section 1201(a)(1)(C) rulemakings are available on the Office's website.[6]

The Register has now carefully reviewed and analyzed the entire record in this rulemaking proceeding to determine whether any classes of copyrighted works should be exempt from the prohibition against circumvention during the next three years. The Register recommends that noninfringing users of six classes of works be exempt from the prohibition on circumvention of access controls.

III. Discussion

A. The Six Exempted Classes

Based on the Register's review of the record, the case has been made for exemptions pertaining to the following six classes of copyrighted works.

1. Audiovisual works included in the educational library of a college or

[5] 70 FR 57526 (October 3, 2005); *http://www.copyright.gov/fedreg/2005/70fr57526.html.*

[6] *http://www.copyright.gov/1201/index.html.* Some of the witnesses at the hearing submitted audiovisual materials which are not available on the website, but are on file with the Copyright Office.

university's film or media studies department, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors.

A number of film and media studies professors proposed a class consisting of ''Audiovisual works included in the educational library of a college or university's film or media studies department and that are protected by technological measures that prevent their educational use.'' They asserted that in order to teach their classes effectively, they need to be able to create compilations of portions of motion pictures distributed on DVDs protected by CSS for purposes of classroom performance. They also asserted that in order to show pedagogically necessary, high quality content in a reasonably efficient manner, they must circumvent CSS in order to extract the portions of motion pictures or audiovisual works necessary for their pedagogical purposes.

The proponents of this exemption demonstrated that the reproduction and public performance of short portions of motion pictures or other audiovisual works in the course of face–to–face teaching activities of a film or media studies course would generally constitute a noninfringing use. Moreover, the record did not reveal any alternative means to meet the pedagogical needs of the professors. The professors demonstrated that the encrypted DVD versions of motion pictures often are of higher quality than copies in other available formats and contain attributes that are extremely important to teaching about film for a number of reasons. For example, the DVD version of a motion picture can preserve the original color balance and aspect ratio of older motion pictures when other available alternatives fail to do so.

The most significant objection to the proposal was the concern expressed by copyright owners that an exemption for a ''class of works'' would necessarily exempt a much broader range of uses than those in which the film professors wished to engage. Copyright owners noted that in prior rulemakings, the Register had determined that a class must be based primarily on attributes of the work itself and not the nature of the use or the user. Therefore, recognizing the class sought by the film professors would benefit not only persons similarly situated to the film professors, but others engaging in entirely different uses. Further, copyright owners believed that such an exemption would create confusion about the circumstances in which circumvention was appropriate.

The concerns of the copyright owners were well–founded, but the Register has concluded that those concerns can be addressed without denying an exemption that will enable the film professors to engage in the noninfringing uses they have identified. The facts underlying the film professors' proposal justify a refinement of the approach that has been taken in determining what may be a ''particular class of works.'' Even though a ''class'' must begin, as its starting point, by reference to one of the categories of authorship enumerated in section 102 of the Copyright Act (or a subset thereof), the ways in which that primary classification should be further delineated depend on the specific facts demonstrated in the proceeding. Based on the facts presented with respect to this proposed class of works and based on a review of the statutory text and legislative history, the Register has concluded that given the appropriate factual showing, it is permissible to refine the definition of a ''class'' of works by reference to particular types of uses and/or users.

If it had not been possible to define a class of works by reference to the users or the uses made of those works, it might have been difficult for the Register to recommend an exemption for this class of works. The Register would have had to make difficult choices between (1) recommending an exemption for a particular class of works that would permit circumvention for a broad ranges of uses, even though the case had been made for only a narrow noninfringing use, and (2) refusing to recognize an exemption for a class because the adverse consequences of a broadly defined class would outweigh the prohibition's adverse effects to a narrow noninfringing use. Refining the exempted class by reference to the users and uses for which a case had been made in this rulemaking proceeding permits the Librarian to designate a class of works that is tailored to the case that was made in the rulemaking but avoids adverse consequences that may result from the recognition of too broad a class. Such an approach is consistent with Congress's directive that a '''particular class of copyrighted works' [should] be a narrow *and focused* subset of the broad categories of works of authorship identified in section 102.''

In this case, the proposed class should be refined by reference to both the user and the use, as follows: ''when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors.''

2. Computer programs and video games distributed in formats that have become obsolete and that require the original media or hardware as a condition of access, when circumvention is accomplished for the purpose of preservation or archival reproduction of published digital works by a library or archive. A format shall be considered obsolete if the machine or system necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

The Internet Archive, along with some supporting commenters, proposed an exemption that is identical to the classes of works exempted in the 2003 Rulemaking proceeding. There was no direct opposition to this request, apart from a concern by copyright owners that many old video games and computer programs are being reintroduced into the market in new ways by their copyright owners, who wished to exclude from the exemption video games that have been re–released on a new gaming platform because circumvention of access controls would cause significant harm to copyright owners in their exploitation of these re–released works. The copyright owners stated that they appreciated that the Internet Archive is solely interested in preservation and archival use, which would not necessarily be harmful to copyright owners' interests. Yet, they argued, because the exemption is not limited by reference to the specific use or user, the effect of the exemption could extend well beyond the specific use that served as the basis of the exemption, i.e., archival and preservation use.

Because the particular noninfringing use sought by the Internet Archive that serves as the sole basis for this exemption is preservation and archival use, and because the Register has determined that in appropriate cases, the definition of a class of works may be refined by reference to particular kinds of users and/or uses, the concerns of copyright owners can be addressed by such a refinement, which also meets the case presented by the Internet Archive. The Internet Archive established that its archival and preservation activities are noninfringing and that computer programs and video games that were distributed in formats that have become obsolete and that require the original media or hardware as a condition of access (*e.g.*, that the original floppy diskette must be inserted into a computer's disc drive in order for the program to operate) constitute works

protected by access controls. Without the ability to circumvent those ''original–only'' access controls, the Internet Archive could not engage in its preservation and archival activities with respect to those works. Therefore, the Register recommends renewal of this exemption.

The Internet Archive also sought an exemption for a second proposed class: ''Computer programs and video games distributed in formats that require obsolete operating systems or obsolete hardware as a condition of access.'' The Register cannot recommend adoption of an exemption for this proposed class because it does not involve access controls and, therefore, no exemption is needed. This is, in fact, consistent with the request of the Internet Archive, which sought designation of the second class ''only if, and only to the extent that, the Copyright Office determines that such practical restrictions on access created by the lack of backward compatibility in new software and hardware platforms constitute ''technological protection measures' within the meaning of the Digital Millennium Copyright Act.'' The fact that the creators of the computer programs and video games in question designed them to run on particular operating systems or particular hardware does not make the operating system or hardware 'technological measures that control access to works.'' Section 1201 addresses technological measures that copyright owners place on works in order to restrict access to those who are not authorized to gain access. There is no suggestion in the record that the operating systems and hardware in question are such technological measures. Because organizations such as the Internet Archive do not violate § 1201(a)(1)(A) when they take measures to make such computer programs and video games run on new operating systems or hardware, there is no need to designate a class for exemption from the operation of § 1201(a)(1)(A).

3. Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete. A dongle shall be considered obsolete if it is no longer manufactured or if a replacement or repair is no longer reasonably available in the commercial marketplace.

A number of commenters proposed the renewal of an existing exemption from 2003, which in turn was a modified version of one of the exemptions from the first rulemaking in 2000. As described in the first rulemaking, ''[the] issue relates to the use of 'dongles,' hardware locks attached to a computer that interact with software to prevent unauthorized access to that software.'' In both the previous rulemakings, evidence was presented that damaged or malfunctioning dongles can prevent authorized access to the protected software. Because in some instances the software vendors may be unresponsive or have gone out of business, the evidence painted a compelling picture of a genuine problem for authorized users of often–expensive computer programs who lose their ability to gain access to those programs due to malfunctioning or damaged hardware that cannot be replaced or repaired.

The legal and analytical rationale for this exemption remains unchanged. Thus, the key question is whether the evidence in this record supports renewing the exemption for another three years. The Register concludes that a sufficient factual showing was made at the public hearing on this proposed exemption. However, for purposes of clarity and consistency, the description of the class should be refined to include an explanation of what constitutes an ''obsolete'' dongle. This is consistent with the existing exemption for ''computer programs and video games distributed in formats that have become obsolete and which require the media or hardware as a condition of access.'' That class of works includes a second sentence describing when a format is obsolete: ''A format shall be considered obsolete if the machine or system necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.'' A similar explanation should be included in the description of this class.

However, the Register cannot recommend adoption of an expanded exemption sought by one proponent. At the hearing on the proposed class of computer programs protected by dongles, that proponent asked, for the first time, that the class of works be expanded from ''Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete'' to ''Computer programs protected by dongles that prevent access due to malfunction or damage or *hardware or software incompatibilities or require obsolete operating systems or obsolete hardware as a condition of access.''* (Emphasis added.) That request was untimely. The purpose of the hearing, at a relatively late stage of the proceedings, is not to accept new proposals for exemptions or to entertain requests for expanded versions of exemptions that were proposed in a timely manner, but rather to give proponents and opponents of exemptions an opportunity to summarize the facts and arguments that have already been presented in written comments, to draw attention to those facts and arguments that they believe are most pertinent in the time allotted for the hearing, to respond to questions from the Register and her staff, and, if appropriate and applicable, to demonstrate some of the facts related in the written comments.

4. Literary works distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling either of the book's read–aloud function or of screen readers that render the text into a specialized format.

A number of commenters, led by the American Foundation for the Blind, proposed renewal of an existing exemption for ebooks for which the ''screen readers'' and the ''read–aloud'' function have been disabled. These functions enable the blind to ''read'' the text of an ebook by rendering the written text of the book into audible, synthetic speech. Screen readers also allow the text and layout of a text screen to be conveyed spatially so that a blind user can perceive the organization of a page on the screen or even the organization of a work as a whole and navigate through that ebook.

Some literary works are distributed in ebook form with the read–aloud and screen reader functions disabled through the use of digital rights management tools. In order to alter the usage settings of such ebooks in order to enable read–aloud and screen reader functionality, a user would have to circumvent access controls.

The proponents of this exemption selected a sample of five titles and conducted only a limited examination of the options available even for those five titles — a minimal showing at best. However, the Register has concluded that the proponents have met their burden, if only barely. Especially in light of the fact that nobody, including the copyright owners whose works would be subject to this exemption, has urged rejection of the proposed exemption, the Register recommends renewal of the exemption.

However, proponents of the exemption have made a persuasive argument for a minor modification of the existing exemption, which currently is applicable only if there is no ebook edition of the work that contains access controls that prevent the enabling *both* of the ebook's read–aloud function *and*of screen readers. Because of the

limited functionality of the read–aloud function on ebooks and the ability that screen readers offer to the blind to actually navigate within an ebook, the Register is persuaded that the exemption should be applicable to a literary work when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling *either* of the book's read–aloud function or of screen readers that render the text into a specialized format. In other words, if there is no screen reader functionality or no read–aloud functionality, the exemption will apply.

5. Computer programs in the form of firmware that enable wireless telephone handsets to connect to a wireless telephone communication network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless telephone communication network.

The Wireless Alliance and Robert Pinkerton proposed an exemption for ''Computer programs that operate wireless communications handsets.'' The proponents of this exemption stated that providers of mobile telecommunications (cellphone) networks are using various types of software locks in order to control customer access to the ''bootloader'' programs on cellphones and the operating system programs embedded inside mobile handsets (cellphones). These software locks prevent customers from using their handsets on a competitor's network (even after all contractual obligations to the original wireless carrier have been satisfied) by controlling access to the software that operates the mobile phones (*e.g.*, the mobile firmware).

Many reply comments were submitted in support of this exemption and only one reply comment provided any opposition to the proposal. Only two witnesses testified at the hearing on this issue: a representative of the principal proponent of the exemption and a representative of some copyright owners (none of whom operate wireless telecommunication services, manufacture wireless handsets or make bootloader or operating system programs for cellphones).

It was undisputed that mobile handset consumers who desire to use their handsets on a different telecommunications network are often precluded from doing so unless they can obtain access to the bootloader or operating system within the handset in order to direct the phone to a different carrier's network. The evidence demonstrated that most wireless telecommunications network providers do not allow a consumer to obtain such access in order to switch a cell phone from one network to another, and that the consumer could not use the cell phone with another carrier, even after fulfilling his or her contractual obligations with the carrier that sold the phone. In order to switch carriers, the consumer would have to purchase a new phone from a competing mobile telecommunications carrier.

The obstacle that prevents customers from using lawfully acquired handsets on different carriers is the software lock. At least one wireless telecommunications service has filed lawsuits alleging that circumvention of the software lock is a violation of section 1201(a)(1)(A) and has obtained a permanent injunction (albeit by stipulation).

The Register has concluded that the software locks are access controls that adversely affect the ability of consumers to make noninfringing use of the software on their cellular phones. Moreover, a review of the four factors enumerated in § 1201(a)(1)(C)(i)–(iv) supports the conclusion that an exemption is warranted. There is nothing in the record that suggests that the availability for use of copyrighted works would be adversely affected by permitting an exemption for software locks. Nor is there any reason to conclude that there would be any impact — positive or negative — on the availability for use of works for nonprofit archival, preservation, and educational purposes or on the ability to engage in criticism, comment, news reporting, teaching, scholarship, or research. Nor would circumvention of software locks to connect to alternative mobile telecommunications networks be likely to have any effect on the market for or value of copyrighted works. The reason that these four factors appears to be neutral is that in this case, the access controls do not appear to actually be deployed in order to protect the interests of the copyright owner or the value or integrity of the copyrighted work; rather, they are used by wireless carriers to limit the ability of subscribers to switch to other carriers, a business decision that has nothing whatsoever to do with the interests protected by copyright. And that, in turn, invokes the additional factor set forth in § 1201(a)(1)(C)(v): ''such other factors as the Librarian considers appropriate.'' When application of the prohibition on circumvention of access controls would offer no apparent benefit to the author or copyright owner in relation to the work to which access is controlled, but simply offers a benefit to a third party who may use § 1201 to control the use of hardware which, as is increasingly the case, may be operated in part through the use of computer software or firmware, an exemption may well be warranted. Such appears to be the case with respect to the software locks involved in the current proposal.

The copyright owners who did express concern about the proposed exemption are owners of copyrights in music, sound recordings and audiovisual works whose works are offered for downloading onto cellular phones. They expressed concern that the proposed exemption might permit circumvention of access controls that protect their works when those works have been downloaded onto cellular phones. The record on this issue was fairly inconclusive, but in any event the proponents of the exemption provided assurances that there was no intention that the exemption be used to permit unauthorized access to those works. Rather, the exemption is sought for the sole purpose of permitting owners of cellular phone handsets to switch their handsets to a different network.

Because the Register has concluded that, in appropriate circumstances, a class of works may be refined by reference to uses made of the works, this issue can best be resolved by modifying the proposed class of works to extend only to ''Computer programs in the form of firmware that enable wireless telephone handsets to connect to a wireless telephone communication network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless telephone communication network.''

On September 18, 2006, long after the comments had been submitted and the hearings had been conducted in this rulemaking, the Register received unsolicited submissions from CTIA – The Wireless Association (a nonprofit trade association that promotes the interests of the wireless industry, representing both wireless carriers and manufacturers) and TracFone Wireless, Inc. (which describes itself as ''America's largest prepaid wireless company''). The submissions included the submitters' responses to written questions that the Copyright Office had submitted to the two witnesses who had testified at the March 23, 2006, hearing on the proposed exemption — witnesses who had no relationship with Tracfone or CTIA. The submissions also contained arguments opposing the proposed exemption.

In the course of his consultation with the Register of Copyrights on this rulemaking, the Acting Assistant Secretary of Commerce for

Communications and Information shared his concern that the record on this proposal appeared to be incomplete and stated that he was pleased that the Register had sought additional information (in the form of the written questions to the witnesses) to supplement the record. Subsequently, he expressed to the Register his view that the CTIA and TracFone comments ''afford you a complete record in which the views of both users and creators of content are currently represented,'' and urged the Register to consider those submissions in making her recommendation.

The Assistant Secretary's concerns are understandable, and the Register shares his desire that the views of both users and creators of content be represented in the rulemaking. However, complying with the Assistant Secretary's request and accepting the last–minute submissions of CTIA and TracFone would undermine the procedural requirements of this proceeding and of the rulemaking process in general. While it is preferable that all interested parties make their views known in the rulemaking process, they must do so in compliance with the process that is provided for public comment, or offer a compelling justification for their failure to do so. In this case, they have failed to offer such justification. CTIA (which counts TracFone among its members) was aware of this rulemaking proceeding and this request for an exemption as early as January or February, 2006. Yet it remained silent until September 18, long after the opportunities provided for comment and testimony had expired. Nor did it offer any explanation for its silence. If these extremely untimely submissions were accepted, it would be difficult to imagine when it ever would be justified to reject an untimely comment. Such a precedent would be an invitation to chaos in future rulemakings. Therefore, the late submissions of CTIA and TracFone have not been considered.

6. Sound recordings, and audiovisual works associated with those sound recordings, distributed in compact disc format and protected by technological protection measures that control access to lawfully purchased works and create or exploit security flaws or vulnerabilities that compromise the security of personal computers, when circumvention is accomplished solely for the purpose of good faith testing, investigating, or correcting such security flaws or vulnerabilities.

A number of commenters sought an exemption based on facts arising out of the distribution, by Sony BMG Music Entertainment, of compact discs (CDs) which employed certain digital rights management (''DRM'') software that created security vulnerabilities on computers on which the software was installed. Specifically, they identified SunnComm's MediaMax content protection software and First4Internet's XCP copy protection software program. The leading proponents of such an exemption, Edward W. Felten, Professor of Computer Science and Public Affairs at Princeton University, and J. Alex Halderman, a graduate student at Princeton, proposed a class of ''sound recordings and audiovisual works distributed in compact disc format and protected by technological measures that impede access to lawfully purchased works by creating or exploiting security vulnerabilities that compromise the security of personal computers.''

The evidence in the record demonstrated that MediaMax and XCP controlled access to the sound recordings (as well as some related audiovisual works, such as music videos) on a number of CDs distributed in 2005 and, as a consequence, ended up being installed on perhaps half a million computer networks worldwide. The evidence also established that these access controls created security vulnerabilities on the personal computers on which they were installed. For example, XCP includes a ''rootkit'' which cloaks the existence of other aspects of the XCP digital rights management software (a music player application and a device driver). The rootkit creates security vulnerabilities by providing a cloak that conceals malicious software, a cloak that, in fact, was exploited by disseminators of malware within days of the discovery of the XCP rootkit.

Copyright owners opposed the proposed exemption primarily on the ground that they believe there already exists a statutory exemption that permits circumvention of access controls ''for the purpose of good faith testing, investigating, or correcting, a security flaw or vulnerability, with the authorization of the owner or operator of such computer, computer system, or computer network.'' *See* 17 U.S.C. § 1201(j). But while it appears that this statutory exemption may permit circumvention in cases such as those involving MediaMax and XCP, it is not clear whether that provision extends to such conduct. In light of that uncertainty and the seriousness of the problem, the Register recommends that the Librarian designate a class of works consisting of sound recordings, and audiovisual works associated with those sound recordings, distributed in compact disc format and protected by technological protection measures that control access to lawfully purchased works and create or exploit security flaws or vulnerabilities that compromise the security of personal computers, when circumvention is accomplished solely for the purpose of good faith testing, investigating, or correcting such security flaws or vulnerabilities. The restriction of the exemption to cases where the purpose of circumvention is to engage in good faith testing, investigating, or correcting of security flaws or vulnerabilities is language taken directly from § 1201(j), in recognition of Congress's judgment that in such cases, the privilege to circumvent should extend only to conduct directed at the security flaws or vulnerabilities that justify the exemption in the first place.

B. Other Exemptions Considered, But Not Recommended

A number of other proposed exemptions were considered, but rejected. They are briefly discussed below. Similar proposed exemptions are discussed together.

1. Compilations consisting of lists of Internet locations blocked by commercially marketed filtering software applications that are intended to prevent access to domains, websites or portions of websites, but not including lists of Internet locations blocked by software applications that operate exclusively to protect against damage to a computer or a computer network or lists of Internet locations blocked by software applications that operate exclusively to prevent receipt of email.

This proposal is for the renewal of an existing exemption from 2003, which in turn was a modified version of one of the original exemptions from the 2000 rulemaking. As in the previous two rulemakings, initial comments proposed an exemption to the prohibition on circumvention in order to access the lists of blocked websites or Internet addresses that are used in various filtering software programs sometimes referred to as ''censorware.'' These programs are intended to prevent children and other Internet users from viewing objectionable material while online. It has been alleged that although the software is intended to serve a useful societal purpose, the emphasis of the programs is on robust blocking rather than accuracy. Critics contend that the result of this focus is that this type of filtering software tends to over–block, thereby preventing access to legitimate informational resources. Proponents of the exemption (both previously and again this year) wish to legalize the circumvention of the technology which controls access to

lists of blocked Internet locations and thus adversely affects one's ability to comment on and criticize the lists of sites blocked by the technological protection measure.

Although the notice of proposed rulemaking made clear that proponents of renewal of an existing exemption must make their case de novo, proponents in the current rulemaking proceeding made no attempt to make any factual showing whatsoever, choosing instead to rest on the record from three years ago and argue that the existing exemption has done no harm, that nothing has changed to suggest the exemption is no longer needed, and that if anything, the use of filtering software is on the rise. In a rulemaking proceeding that places the burden of coming forward with facts to justify an exemption for the ensuing three–year period on proponents, one cannot assume that the elements of the case that was made three years ago remain true now. Nor is there any evidence in the record that there has been any use of the exemption in the past three years, or that there would be likely to be any use of an exemption during the next three years. While this is not necessarily fatal, nevertheless a record that reveals no use of an existing exemption tends to indicate that the exemption is unnecessary. Together, the absence of any quantification of the current scope of the problem along with the absence of any demonstration that the existing exemption has offered any assistance to noninfringing users leaves a record that provides no basis to justify a recommendation for renewal of the exemption.

2. Space–shifting.

A number of commenters sought an exemption for an activity that is referred to by some of those commenters generally as ''space–shifting.'' In essence, these commenters sought an exemption to permit circumvention of technological protection measures applied to audiovisual and musical works in order to copy these works to other media or devices and to access these works on those alternative media or devices. In most cases, the comments did not identify the particular technological measures; indeed, in most cases it was unclear whether the commenters were referring to access controls or copy controls, or simply to incompatibility of formats.

Many of the commenters claimed that their space–shifting of the works and their access to those works on an alternative device were noninfringing uses and that technological restrictions were impeding their ability to engage in a noninfringing use. Yet these commenters uniformly failed to cite legal precedent that establishes that such space–shifting is, in fact, a noninfringing use. The Register concludes that the reproduction of those works onto new devices is an infringement of the exclusive reproduction right unless some exemption or defense is applicable. In the absence of any persuasive legal authority for the proposition that making copies of a work onto any device of the user's choosing is a noninfringing use, there is no basis for recommending an exemption to the prohibition on circumvention.

3. DVDs that cannot be viewed on Linux operating systems.

Some commenters proposed an exemption to allow circumvention of CSS in order to use their computers running the Linux operating system to view motion pictures on DVDs. DVDs protected by CSS may be played only on authorized DVD players licensed by the DVD Copy Control Association (DVD–CCA). Proponents of an exemption assert that there is no licensed player available for the Linux operating system. However, there is evidence in the record that Linux–based DVD players currently exist. Moreover, there are many readily available ways in which to view purchased DVDs. Standard DVD players that can connect to televisions have become inexpensive and portable DVD players have decreased in price. Similarly, Linux users can create dual–boot systems on their computers in order to use DVD software that is compatible with, for example, the Microsoft operating system. There are also alternative formats in which to purchase the motion pictures contained on DVDs.

Due to these alternative options for access and use by consumers, there is no reason to conclude that the availability for use of the works on DVDs is adversely affected by the prohibition. An exemption is not warranted simply because some uses are unavailable in the particular manner that a user seeks to make the use, when other options are available. If a user may access the DVD in readily–available alternative ways or may purchase the works in alternative formats, the need for the exemption becomes simply a matter of convenience or preference. The proposal by users of the Linux operating system is a matter of consumer preference or convenience that is unrelated to the types of uses to which Congress instructed the Librarian to pay particular attention, such as criticism, comment, news reporting, teaching, scholarship, and research as well as the availability for use of works for nonprofit archival, preservation and educational purposes. The Register cannot recommend an exemption for this class of works.

4. Region Coded DVDs.

Two commenters sought an exemption to permit circumvention in order to obtain access to motion pictures protected by region coding, a technological protection measure contained on many commercially distributed DVDs that limits access to the content on DVDs to players coded for the same geographical region. On a more extensive record, such an exemption was denied three and six years ago. The reasoning behind the denial of the exemption in 2000 and 2003 appears to be equally valid today: Region coding imposes, at most, an inconvenience rather than actual or likely harm, because there are numerous options available to individuals seeking access to content from other regions. Consumers who wish to view DVDs from other regions have a number of inexpensive options other than circumvention, including obtaining DVD players, including portable devices, set to play DVDs from other regions and obtaining DVD–ROM drives for their computers, and setting those drives to play DVDs from other regions. Region coding of audiovisual works on DVDs serves legitimate purposes as an access control, such as preventing the marketing of DVDs of a motion picture in a region of the world where the motion picture has not yet been released in theaters, or is still being exhibited in theaters.

In light of the de minimis showing made in support of the proposed exemption, the Register recommends rejection of this proposed class.

5. Computer programs protected by mechanisms that restrict their full operation to a particular platform or operating system.

Two commenters asserted that certain lawfully obtained computer programs do not work properly when operating systems are upgraded. The brief comments submitted on this issue failed to present sufficient evidence from which to conclude that technological measures that control access to works are interfering with the ability of users of copyrighted works to make noninfringing uses. No exemption can be recommended in this case because insufficient information has been presented to understand the nature of the problem or even the relevance of § 1201(a)(1).

6. Computer games and software with Copy Protections that prevent legitimate users from installing and using games and programs.

One commenter, in a one–page comment, stated that some copy protection systems create problems with the installation or using of computer games or programs, specifically citing SecureRom and StarForce as examples of such systems. The commenter did not present any evidence that the adverse effect articulated is the result of an access control. There is not sufficient evidence in the record to understand the problem adequately, to know whether the prohibition is the cause of the problem, or to know whether an exemption is warranted.

7. Literary works distributed in electronic audio format by libraries.

One commenter stated that an exemption should issue for circumvention of literary works distributed in electronic audio format by libraries, because although libraries lend downloadable versions of audio books, they require special software in order to use the legally checked–out downloaded books. However, the commenter did not identify any technological measures that control access to the literary content of the digital books, nor does it explain how such measures are creating problems for users. His complaint appeared to be about software incompatibility.

In any event, it appears that the technology in question is the type of use–facilitating technology the DMCA was enacted to encourage. It would appear that the deployment of such technology actually results in greater access to copyrighted works by enabling libraries to engage in online lending that they would not otherwise be able to conduct without infringing the copyrights of the books that they distribute online. The Register cannot recommend an exemption.

8. All works and fair use works.

Many commenters stated that the DMCA adversely affects consumer rights and that all works should be exempt for a variety of purposes. These commenters have not articulated a sufficient class or provided sufficient evidence of adverse effects by the prohibition on noninfringing uses that would allow the articulation of a cognizable class.

9. All works protected by access controls that prevent the creation of back–up copies.

A number of commenters sought an exemption for a class that, while described in various ways, can be summarized as ''works protected by access controls that prevent the creation of back–up copies.'' Proponents made assertions such as that it is common sense to make back–up copies of expensive media such as CDs and DVDs due to their alleged fragility.

However, the proponents offered no legal arguments in support of the proposition that the making of backup copies is noninfringing, and the Register is aware of no authority (apart from section 117 of the Copyright Act, which relates to computer programs) in support of that notion. Nor did proponents offer facts that would warrant a conclusion that media such as DVDs and CDs are so susceptible to damage and deterioration that the practice of making preventive backup copies should be noninfringing.

The unauthorized reproduction of DVDs is already a critical problem facing the motion picture industry. Creating an exemption to satisfy the concern that a DVD may become damaged would sanction widespread circumvention to facilitate reproduction for works that are currently functioning properly. The Register finds that the record does not justify the proposed exemption.

10. Audiovisual works and sound recordings protected by a broadcast flag.

A number of comments assert that broadcast flags for television and radio broadcasts would interfere with time shifting, format–shifting, and recording for personal use. However, there is currently no broadcast flag mandate for either television or radio broadcasts and whether such a mandate will exist within the next three years is a matter of speculation. If it does exist, it will be due in whole or in part to Congressional action. Moreover, even if an audio or television broadcast flag were to be established, the precise substance of the requirement is unknown at this time. The Register cannot recommend an exemption based upon speculation about a legal regime that may or may not be imposed in the next three years.

11. Miscellaneous Proposals.

A number of individual comments, each of one page or less, were submitted that do not fall into any of the categories noted above. In each case, the proponent failed to provide information that would justify an exemption. These proposals include ''any copyrighted work which has been available for purchase for more then one year''; ''any digital work'' for the purpose of overriding End User License Agreements (''EULAs'') containing terms which prohibit comment and criticism; access controls used by satellite television services; ''computer games and software''; ''any works in digital or electronic format which, due to their access controls, prevent the user from being able to access the user–created content''; and ''Digital Broadcasts which employ measures that protect 'access' to copyrighted works which disable, prevent, or otherwise make impossible, time–shifting of programs.'' None of these comments presented sufficient facts or justification to warrant an exemption.

IV. Conclusion

Having considered the evidence in the record, the contentions of the parties, and the statutory objectives, the Register of Copyrights recommends that the Librarian of Congress publish the six classes of copyrighted works designated above, so that the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of those particular classes of works.

Dated: November 17, 2006

Marybeth Peters,

Register of Copyrights.

Determination of the Librarian of Congress

Having duly considered and accepted the recommendation of the Register of Copyrights that the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of the six classes of copyrighted works designated above, the Librarian of Congress is exercising his authority under 17 U.S.C. 1201(a)(1)(C) and (D) and is publishing as a new rule the six classes of copyrighted works that shall be subject to the exemption found in 17 U.S.C. 1201(a)(1)(B) from the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) for the period from November 27, 2006 through October 27, 2009.

List of Subjects

37 CFR Part 201

Copyright, Exemptions to prohibition against circumvention.

Final Regulations

■ For the reasons set forth in the preamble, 37 CFR part 201 is amended as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: Authority: 17 U.S.C. 702

■ 2. Section 201.40 is amended by revising paragraphs (b) and (c) to read as follows:

§ 201.40 Exemption to prohibition against circumvention.

* * * * *

(b) Classes of copyrighted works. Pursuant to the authority set forth in 17 U.S.C. 1201(a)(1)(C) and (D), and upon the recommendation of the Register of Copyrights, the Librarian has determined that during the period from November 27, 2006 through October 27, 2009, the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to persons who engage in noninfringing uses of the following six classes of copyrighted works:

(1) Audiovisual works included in the educational library of a college or university's film or media studies department, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors.

(2) Computer programs and video games distributed in formats that have become obsolete and which require the original media or hardware as a condition of access, when circumvention is accomplished for the purpose of preservation or archival reproduction of published digital works by a library or archive. A format shall be considered obsolete if the machine or system necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

(3) Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete. A dongle shall be considered obsolete if it is no longer manufactured or if a replacement or repair is no longer reasonably available in the commercial marketplace.

(4) Literary works distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling either of the book's read–aloud function or of screen readers that render the text into a specialized format.

(5) Computer programs in the form of firmware that enable wireless telephone handsets to connect to a wireless telephone communication network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless telephone communication network.

(6) Sound recordings, and audiovisual works associated with those sound recordings, distributed in compact disc format and protected by technological protection measures that control access to lawfully purchased works and create or exploit security flaws or vulnerabilities that compromise the security of personal computers, when circumvention is accomplished solely for the purpose of good faith testing, investigating, or correcting such security flaws or vulnerabilities.

(c) Definition. ''Specialized format,'' ''digital text'' and ''authorized entities'' shall have the same meaning as in 17 U.S.C. 121.

Dated: November 20, 2006

James H. Billington,

The Librarian of Congress,

[FR Doc. E6–20029 Filed 11–24–06; 8:45 am]

BILLING CODE 1410–30–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0016; FRL–8248–3]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Reid Vapor Pressure Requirements for Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving Texas State Implementation Plan (SIP) revisions. The revisions pertain to Reid Vapor Pressure (RVP) requirements for gasoline. The revisions add exemptions to RVP requirements for research laboratories and academic institutions, competition racing, and gasoline that is being stored or transferred that is not used in the affected counties. The revisions also reduce recordkeeping requirements for retail gasoline dispensing outlets in the affected counties, and correct a typographical error. We are approving the revisions pursuant to section 110 and part D of the Federal Clean Air Act (CAA).

DATES: This rule is effective on January 26, 2007 without further notice, unless EPA receives adverse comment by December 27, 2006. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2006–0016, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6coment.htm*. Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov*. Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2006–0016. 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.

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 Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, State/Oversight Section (6PD–O), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7247; fax number 214–665–7263; e-mail address *patterson.alima@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we'', ''us'', or ''our'' is used, we mean the EPA.

Outline

I. What Is a SIP?
II. What Action Is EPA Taking?
III. Final Action
IV. Statutory and Executive Order Reviews

I. What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state which contains areas that are not attaining the NAAQS must submit these regulations and control strategies to us for approval and incorporation into the federally-enforceable SIP.

Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

II. What Action Is EPA Taking?

We are taking direct final action to approve revisions to the Texas SIP that pertain to regulations on gasoline RVP submitted by the State on October 4, 2001. The Texas RVP regulations were originally approved into the SIP by EPA on April 26, 2001 (66 FR 20927). The regulations are part of the State strategy to achieve the NAAQS for ozone in the Houston/Galveston and Dallas/Fort Worth nonattainment areas. The regulations reduce volatile organic compound emissions by requiring conventional gasoline in a 95-county area of central and eastern Texas to be limited to maximum RVP of 7.8 pounds per square inch from May 1 through October 1 of each year. The 95 Texas counties are: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood. Texas developed this fuel requirement as part of a strategy to reduce emissions of volatile organic compounds and achieve the NAAQS for ozone in the Houston-Galveston and Dallas-Fort Worth nonattainment areas.

The revised regulations being approved are Sections 114.307 and 114.309 of Title 30 of the Texas Administrative Code, Chapter 114. The revisions add exemptions to RVP requirements for research laboratories and academic institutions, competition racing, and gasoline that is being stored or transferred that is not used in the affected counties. The exemptions are similar to those in place for Texas low emission diesel fuel approved by EPA on November 14, 2001 (66 FR 57196). It is expected that the emissions that would occur from the exempted sources would be insignificant in comparison with emissions from sources covered by the regulation. Because of this the revisions are not expected to have a significant impact on air quality. The revisions also reduce record keeping requirements for retail gasoline dispensing outlets in the affected counties, and correct a typographical error relating to the name of Smith County. Retail gasoline dispensing outlets in the affected counties no longer have to keep records of the RVP of all the gasoline they store or sell. These records will be maintained by the provider of the gasoline to the retail outlet. The retail outlets will have to keep records documenting that the gasoline they sell is certified as meeting the Texas RVP regulations.

III. Final Action

We are approving the revisions to the Texas SIP that pertain to regulations on gasoline RVP submitted by the State on October 4, 2001 pursuant to section 110 and part D of the CAA. The revisions add exemptions to RVP requirements for research laboratories, competitive racing, and gasoline that is being stored or transferred that is not used in the affected counties. The revisions to RVP requirements are not expected to have a significant impact on air quality. The State's revisions will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA. As such, EPA's approval of the revisions complies with the requirements of section 110(*l*) of the CAA. Under section 110(*l*) EPA may not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA. This approval will make the revised regulations federally enforceable.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register**

publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on January 26, 2007 without further notice unless we receive relevant adverse comment by December 27, 2006. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. 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 CAA. 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 CAA. 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 CAA. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 26, 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, Intergovernmental Relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 9, 2006.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended 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 SS—Texas

■ 2. In § 52.2270 (c), the table entitled ''EPA APPROVED REGULATIONS IN THE TEXAS SIP'' is amended under Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles by revising the entries for sections 114.307 and 114.309 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
* *	*	*	*	*
Chapter 114 (Reg 4)—Control of Air Pollution From Motor Vehicles				
* *	*	*	*	*
Subchapter H—Low Emission Fuels Division 1: Gasoline Volatility				
* *	*	*	*	*
Section 114.307	Exemptions	10/04/01	11/27/06 [Insert *FR* page number where document begins].	
Section 114.309	Affected Counties	10/04/01	11/27/06 [Insert *FR* page number where document begins].	

* * * * *

[FR Doc. E6–19991 Filed 11–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[OW–2003–0063; FRL–8248–1]

RIN 2040–AE79

Application of Pesticides to Waters of the United States in Compliance With FIFRA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today, EPA is issuing a regulation stating that the application of a pesticide in compliance with relevant requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) does not require a National Pollutant Discharge Elimination System (NPDES) permit in two specific circumstances. The first circumstance is when the application of the pesticide is made directly to waters of the United States to control pests that are present in the water. The second circumstance is when the application of the pesticide is made to control pests that are over, including near, waters of the United States. This rulemaking is based on the Agency's interpretation of the definition of the term ''pollutant'' under the Clean Water Act (CWA) as not including such pesticides.

This final rulemaking replaces EPA's previously published Interim and Final Interpretive Statements on the Application of Pesticides to Waters of the United States in Compliance with FIFRA. EPA's Interpretive Statement, published February 1, 2005, described the Agency's interpretation of the CWA with regard to the application of pesticides regulated under FIFRA that are applied to or over, including near, waters of the United States. On August 13, 2003, EPA provided public notice of and solicited public comment on an Interim Statement and incorporated that input into the Interpretive Statement. On February 1, 2005, EPA published the Interpretive Statement and proposed to codify its substance in EPA's NPDES regulations and solicited comment on that proposed action. Today's final rule is the result of this process.

DATES: These final regulations are effective on January 26, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OW–2003–0063. All documents in the docket are listed online at *http://www.regulations.gov*. Although listed in the online docket, some information is not publicly available, i.e., 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 either online or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Jeremy Arling, Water Permits Division, Office of Wastewater Management (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–2218, e-mail address: *arling.jeremy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you apply pesticides to or over, including near, water. Potentially affected entities may include, but are not limited to:

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE

Category	NAICS	Examples of potentially affected entities
Agriculture parties—General agricultural interests, farmers/producers, forestry, and irrigation.	111 Crop Production	Producers of crops mainly for food and fiber including farms, orchards, groves, greenhouses, and nurseries.
	113110 Timber Tract Operations	The operation of timber tracts for the purpose of selling standing timber.

TABLE 1.—ENTITIES POTENTIALLY REGULATED BY THIS RULE—Continued

Category	NAICS	Examples of potentially affected entities
	113210 Forest Nurseries Gathering of Forest Products.	Growing trees for reforestation and/or gathering forest products, such as gums, barks, balsam needles, rhizomes, fibers, Spanish moss, ginseng, and truffles.
	221310 Water Supply for Irrigation	Operating irrigation systems.
Pesticide parties (includes pesticide manufacturers, other pesticide users/interests, and consultants).	325320 Pesticide and Other Agricultural Chemical Manufacturing.	Formulation and preparation of agricultural pest control chemicals.
Public health parties (includes mosquito or other vector control districts and commercial applicators that service these).	923120 Administration of Public Health Programs.	Government establishments primarily engaged in the planning, administration, and coordination of public health programs and services, including environmental health activities.
Resource management parties (includes State departments of fish and wildlife, State departments of pesticide regulation, State environmental agencies, and universities).	924110 Administration of Air and Water Resource and Solid Waste Management Programs.	Government establishments primarily engaged in the administration, regulation, and enforcement of air and water resource programs; the administration and regulation of water and air pollution control and prevention programs; the administration and regulation of flood control programs; the administration and regulation of drainage development and water resource consumption programs; and coordination of these activities at intergovernmental levels.
	924120 Administration of Conservation Programs.	Government establishments primarily engaged in the administration, regulation, supervision and control of land use, including recreational areas; conservation and preservation of natural resources; erosion control; geological survey program administration; weather forecasting program administration; and the administration and protection of publicly and privately owned forest lands. Government establishments responsible for planning, management, regulation and conservation of game, fish, and wildlife populations, including wildlife management areas and field stations; and other administrative matters relating to the protection of fish, game, and wildlife are included in this industry.
Utility parties (includes utilities)	221 Utilities	Provide electric power, natural gas, steam supply, water supply, and sewage removal through a permanent infrastructure of lines, mains, and pipes.
Other Parties	713910 Golf courses and country clubs.	Golf course operators who have ponds for irrigation.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in 40 CFR 122.23. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. Clean Water Act and the Federal Insecticide, Fungicide, and Rodenticide Act

Congress passed the Federal Water Pollution Control Act (1972), also known as the Clean Water Act (CWA), to ''restore and maintain the chemical, physical, and biological integrity of the nation's waters'' 33 U.S.C. 1251(a). The CWA prohibits the discharge of any pollutant by any person from a point source into a water of the United States, except in compliance with certain other provisions of the Act, including Section 402. 33 U.S.C. 1311(a). Section 402 in turn authorizes EPA to issue permits under the National Pollutant Discharge Elimination System (NPDES) permit program for such discharges. States may also issue NPDES permits if authorized to do so by EPA. 33 U.S.C. 1342(a) and (b).

NPDES permits under the CWA are required only for point source discharges of materials that are *pollutants* to waters of the United States. Section 502(6) of the CWA defines ''pollutant'' to mean:

> * * * dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

33 U.S.C. 1362(6).[1] In the more than 30 years that EPA has administered the CWA, the Agency has never issued an NPDES permit for the application of a pesticide to or over water to target a pest that is present in or over the water. Nor has the Agency ever stated in any general policy or guidance that an NPDES permit is required for such applications.

EPA regulates the sale, distribution and use of pesticides in the United States under the statutory framework of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to ensure that when used in conformance with FIFRA labeling directions, pesticides will not pose unreasonable risks to human health and the environment. All new pesticides must undergo a rigorous registration procedure under FIFRA during which EPA assesses a variety of potential human health and environmental effects associated with use of the product.

Under FIFRA, EPA is required to consider the effects of pesticides on the environment by determining, among

[1] The remaining language of the definition of ''pollutant'' in Section 502(6) is as follows, and is not relevant to today's action: ''The term does not mean (A) ''sewage from vessels'' within the meaning of Section 312 of this Act; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.''

other things, whether a pesticide ''will perform its intended function without unreasonable adverse effects on the environment,'' and whether ''when used in accordance with widespread and commonly recognized practice [the pesticide] will not generally cause unreasonable adverse effects on the environment.'' 7 U.S.C. 136a(c)(5). In performing this analysis, EPA examines the ingredients of a pesticide, the intended type of application site and directions for use, and supporting scientific studies for human health and environmental effects and exposures. The applicant for registration of the pesticide must provide data from tests done according to EPA guidelines. This process is discussed in more detail below.

Several courts have recently addressed the question of whether the CWA requires NPDES permits for pesticide applications. These cases have resulted in some confusion among the regulated community and other affected citizens about the applicability of the CWA to pesticides applied to waters of the United States. In 2001, the U.S. Court of Appeals for the Ninth Circuit held in *Headwaters, Inc.* v. T*alent Irrigation District* (*Talent*) that an applicator of herbicides was required to obtain an NPDES permit under the circumstances before the court (described in detail in Section V.C. below). 243 F.3rd 526 (9th Cir. 2001). The *Talent* decision caused considerable concern and confusion among public health authorities, natural resource managers, and others who rely on pesticides regarding their potential obligation to obtain an NPDES permit when applying a pesticide consistent with FIFRA and particularly about the impact of such a requirement on accomplishing their mission of protecting human health and the environment.

In 2002, the Ninth Circuit in *League of Wilderness Defenders et al.* v. *Forsgren* (*Forsgren*) held that the application of pesticides to control gypsy moths in National Forest lands required an NPDES permit. 309 F.3d 1181 (9th Cir. 2002). The court in Forsgren did not analyze the question of whether the pesticides applied were pollutants, because it assumed that the parties agreed that they were. In fact, the United States expressly reserved its arguments on that issue in its brief to the District Court. Id. at 1184, n.2. The court instead analyzed the question of whether the aerial application of the pesticide constituted a point source discharge, and concluded that it did. Id. at 1185.

Since *Talent and Forsgren*, California, Nevada, Oregon, and Washington, all of which are within the Ninth Circuit, have issued permits for the application of certain types of pesticides (e.g., products to control aquatic weeds and algae and products to control mosquito larvae). Other States have continued their longstanding practice of not issuing permits to people who apply pesticides to waters of the United States. These varying practices reflect the substantial uncertainty among regulators, the regulated community, and the public regarding how the Clean Water Act applies to pesticides that have been properly applied and used for their intended purpose.

The Ninth Circuit recently addressed the Clean Water Act's applicability to pesticide applications for a third time. In *Fairhurst* v. *Hagener*, the court held that pesticides applied directly to a lake in order to eliminate non-native fish species, where there are no residues or unintended effects, are not ''pollutants'' under the CWA because they are not chemical wastes. 422 F.3d 1146 (9th Cir. 2005).

Since *Talent* and *Forsgren*, other courts have addressed the applicability of the CWA's NPDES permit requirements to pesticide applications. In *Altman* v. *Town of Amherst (Altman)*, the Second Circuit vacated and remanded for further development of the record a District Court decision holding that the Town of Amherst was not required to obtain an NPDES permit to spray mosquitocides over waters of the United States. 47 Fed. Appx. 62, 67 (2nd Cir. 2002). The United States filed an amicus brief setting forth the Agency's views in the context of that particular case. In its opinion, the Second Circuit stated that ''[u]ntil the EPA articulates a clear interpretation of current law—among other things, whether properly used pesticides released into or over waters of the United States can trigger the requirement for NPDES permits * * *—the question of whether properly used pesticides can become pollutants that violate the CWA will remain open.'' *Id.* at 67.

B. Interim and Interpretive Statements

In August 2003, EPA first analyzed the applicability of the NPDES permit program to pesticide applications in an administrative context through an Interim Statement and Guidance. 68 FR 48385 (Aug. 13, 2003). The Interim Statement presented EPA's position on the two circumstances in which pesticides applied to waters of the United States consistent with all relevant requirements of FIFRA are not ''pollutants'' under the CWA and thus do not require an NPDES permit. Although the United States previously addressed issues related to the Interim Statement in several *amicus* briefs, including those filed in *Talent* and *Altman*, those briefs reflected the government's evaluation of the law in the context of specific factual situations, and did not result from deliberative consideration through an administrative process. As such, the amicus briefs did not represent EPA's legal position on the precise questions at issue in the Interim Statement or in today's regulation.

EPA solicited public comments on its interpretation of the term ''pollutant'' in the Interim Statement as it relates to certain pesticide applications. After considering the public comments, EPA issued a final Interpretive Statement on January 25, 2005. EPA simultaneously published a notice of proposed rulemaking to incorporate the substance of the Interpretive Statement into EPA regulations and solicited public comment on the proposed rulemaking. 70 FR 5093 (Feb.1, 2005). EPA has considered the comments received and is today taking final action on the proposed regulation. The final regulation is substantially similar to the proposed regulations, with certain modifications described below.[2]

III. Summary of the Final Rule

EPA is revising the NPDES permit program regulations to add a paragraph to the list of discharges in 40 CFR 122.3 that are excluded from NPDES permit requirements. Specifically, today's regulation excludes applications of pesticides to waters of the United States consistent with all relevant requirements under FIFRA in two specific circumstances as follows:

(1) The application of pesticides directly to waters of the United States in order to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds, or other pests that are present in waters of the United States.

(2) The application of pesticides to control pests that are present over waters of the United States, including near such waters, where a portion of the pesticides will unavoidably be deposited to waters of the United States in order to target the pests effectively; for example, when insecticides are aerially applied to a forest canopy where

[2] On March 29, 2002, EPA issued an Interpretive Statement and Regional Guidance on the Clean Water Act's Exemption for Return Flows from Irrigated Agriculture, which clarified that the application of an aquatic herbicide consistent with the FIFRA labeling to ensure the passage of irrigation return flow is a nonpoint source activity not subject to NPDES permit requirements under the Clean Water Act. This regulation does not address the March 2002 guidance.

waters of the United States may be present below the canopy or when pesticides are applied over or near water for control of adult mosquitoes or other pests.

Pesticides applied under these circumstances are not pollutants and therefore are not subject to NPDES permitting requirements.

EPA's final rule is substantially similar to the rule proposed in February 2005. EPA has modified the proposed regulatory text only to clarify the types of pesticide applications covered in the second circumstance (those to control pests present over, including near, waters of the United States). Commenters raised concerns that the second circumstance, as written in the proposed rule, could be interpreted more broadly than the Agency intended (e.g. encompassing drift from terrestrial pesticide applications). The final rule clarifies that the applications in the second circumstance are those in which it is unavoidable that some of the pesticides will be deposited into water in order to effectively target the pests. In other words, EPA is clarifying in the final rule that the regulation encompasses only those applications to control pests over, including near, waters of the United States, where the pesticide necessarily must enter the water in order for the application to achieve its intended purpose. Thus, the applications must first be intended to control pests over (including near) a water of the United States. Second, it must be unavoidable that the pesticide enter the water in order to target such pests effectively. For example, EPA believes that wide-area forest canopy insecticide applications can result in deposition to streams and other waters of the U.S. which are either not visible to the aerial applicator or not possible to avoid given the location of aerial application, and that in such circumstances, it is unavoidable that the pesticide enter the water in order to effectively target pests living in the canopy. Likewise, mosquito adulticide applications can result in some pesticide product entering the water because adult mosquitoes generally live over and adjacent to waterbodies. Similarly, pesticide applications to control non-native plants which grow at the water's edge, such as purple loosestrife, are intended to be covered by this provision, because when targeting plants at the water's edge, it is unavoidable that some of the herbicide will enter the water. EPA notes that the clarifying language in § 122.3(h)(2) is not intended to impose any additional requirements on pesticide applications beyond relevant FIFRA requirements. In addition, it is not intended to address applications of pesticides to terrestrial agricultural crops.

IV. Discussion

Today's rulemaking implements EPA's interpretation of the CWA's definition of ''pollutant'' with respect to certain applications of pesticides. Under the CWA, pollutant means:

> * * * dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. 1362(6).

The circumstances of pesticide applications covered under today's rule are limited to the two types of applications described above, when conducted in compliance with all relevant requirements of FIFRA. EPA considers ''relevant requirements'' of FIFRA to mean those FIFRA requirements that relate to water quality. For instance, violating a requirement that the person mixing the pesticide must wear protective clothing, while an unlawful act that can be enforced under FIFRA, is not related to the protection of water quality, and therefore not a relevant FIFRA requirement for purposes of today's regulation. However, a labeling provision that governs application rates, active ingredient concentrations and dilution requirements, buffer zones, application locations, intended targets, times of day, temperature or other application requirements, and thus concerns the amounts, concentrations, and viability of substances that may potentially end up in waters of the United States, is related to water quality. Relevant FIFRA requirements may appear in product labeling, FIFRA regulation, or other documents setting forth requirements applied pursuant to FIFRA.

The application of a pesticide from a point source to waters of the United States requires an NPDES permit only if it constitutes the discharge of a ''pollutant'' within the meaning of that term in the CWA. EPA has evaluated whether pesticides regulated under and applied consistent with relevant FIFRA requirements for the two circumstances previously described fall within the terms in the CWA's definition of ''pollutant,'' and concludes that they do not. Pesticides are not dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt or industrial, municipal, and agricultural waste. See CWA section 502(6). In addition, as described below, the terms, ''chemical waste'' and ''biological materials,'' also do not encompass the types of pesticide applications addressed in today's action.

First, such pesticides are not ''chemical wastes.'' The term ''waste'' ordinarily means that which is ''eliminated or discarded as no longer useful or required after the completion of a process.'' The New Oxford American Dictionary 1905 (Elizabeth J. Jewell & Frank Abate eds., 2001). Pesticides applied consistent with relevant FIFRA requirements are not ''wastes'' as that term is commonly defined—on the contrary, they are products that EPA has evaluated and registered for the purpose of controlling target organisms, and are designed, purchased, and applied to perform that purpose. See *Fairhurst* v. *Hagener*, 422 F.3d at 1150.

EPA also interprets the term ''biological materials'' not to include biological pesticides applied consistent with relevant FIFRA requirements. This interpretation is both reasonable and consistent with Congressional intent, and is supported by relevant case law. It is unlikely that Congress intended to include biological pesticides applied in the circumstances described in today's rule within the Clean Water Act's definition of ''pollutant.'' To do so would mean that biological pesticides are pollutants, while chemical pesticides used in the same circumstances are not. Since biologically and chemically based pesticides applied consistent with relevant requirements adopted by EPA under FIFRA are both EPA-evaluated products, treating them differently under the Clean Water Act is not warranted. Moreover, at the time the Act was adopted in 1972, chemical pesticides were predominant. It is therefore not surprising that Congress failed to discuss whether biological pesticides were to be covered by the Act. The fact that more biological pesticides have been developed since passage of the Act in 1972 does not justify expanding the reach of the NPDES permit requirement when there is no evidence that Congress intended the CWA to regulate biological pesticides in a manner different from chemical pesticides. Finally, biological pesticides in use today are generally reduced-risk products that have a narrower range of potential adverse environmental effects compared to many chemical pesticides. For this reason it would not make sense, and would be inconsistent with the goals of the Clean Water Act, to discourage the

use of biological pesticides by requiring applicators of these products to obtain an NPDES permit when chemical pesticides have no such requirement.

In cases in which courts have found specific biological materials to be ''pollutants'' under section 502(6) the substances at issue were waste materials discharged from a point source. See *Concerned Area Residents for the Environment* v. *Southview Farm*, 34 F.3d 114 (2d Cir. 1994) (liquid manure is solid waste, sewage, biological material, and agricultural waste and is therefore a pollutant); *USPIRG* v. *Atlantic Salmon*, 215 F.Supp. 2d 239, 247–49 (D. Maine 2002) (non-native fish escaped from net pens and salmon feces and urine exiting net pens are biological materials; pharmaceuticals in excess salmon feed exiting net pens are chemical wastes), *National Wildlife Federation* v. *Consumers Power Co.*, 862 F.2d 580, 585 (6th Cir. 1988) (live fish, dead fish, and fish remains released from hydro-electric facility's turbine are biological materials), *U.S.* v. *Plaza Health Laboratories, Inc.*, 3 F.3d 643, 646 (2d Cir. 1993), *cert. denied* 114 S.Ct. 2764 (1994) (discarded vials of human blood are pollutants). In none of these cases, which were cited by commenters, did a court find that a product applied for its intended purpose consistent with applicable EPA requirements was a ''biological material'' and therefore a pollutant under the CWA.

The Ninth Circuit Court of Appeals in *Assn. to Protect Hammersley, Eld, and Totten Inlets (APHETI)* v. *Taylor Resources, Inc.*, 299 F.3d 1007, 1017 (9th Cir. 2002), cited to several of these cases as being in accord with its finding that ''biological materials'' means the waste product of a human or industrial process. The APHETI court based its decision that mussel shells, mussel feces, and other materials emitted from mussels grown on harvesting rafts are not pollutants on the doctrine of *ejusdem generis.* The court found that the more specific terms in the CWA's definition of ''pollutant'' support an understanding of the more general term ''biological materials'' as waste material of a human or industrial process. *Id.* at 1015. The court went on to analyze Congress' intent in enacting the CWA and found that the purpose of the statute further supported such an interpretation of biological materials in that case. *Id.* at 1016.

Furthermore, EPA's interpretation that biological and chemical pesticides are not pollutants is reasonable because both types of pesticides must comply with FIFRA registration requirements. EPA reviews and evaluates these pesticides and authorizes their use, subject to the limitations and requirements of the EPA registration.

Today's action applies only to the specific categories of pesticide applications addressed in the text of the regulation. EPA notes that pesticides are waste materials, and therefore pollutants under the Act, when contained in a waste stream, including storm water regulated under section 402(p) or other industrial or municipal discharges. In those circumstances, an NPDES permit may be required if the pesticides are discharged into a water of the United States from a point source.

In addition, if there are residual materials resulting from pesticides that remain in the water after the application and its intended purpose (elimination of targeted pests) have been completed, these residual materials are also pollutants under CWA section 502(6) because they are wastes of the pesticide application. Such residuals include excess amounts of pesticide that do not reach a target organism and materials that remain after the application has completed its intended task. These materials are waste materials, as that term is commonly defined, because they are substances that are ''no longer useful or required after the completion of a process.'' The New Oxford American Dictionary 1905, supra. See also *Fairhurst* v. *Hagener*, 422 F.3d 1146.

However, pesticide applications under the circumstances described above and consistent with FIFRA do not require NPDES permits, even if the application leaves residual materials which are ''pollutants'' under the Act in waters of the United States. Section 301(a) of the CWA prohibits the ''discharge of any pollutant'' except in compliance with certain other provisions of the Act. The CWA defines ''discharge of a pollutant'' to mean ''any *addition* of any pollutant to navigable waters from *any point source.*'' Thus, at the time of discharge to a water of the United States, the material in the discharge must be both a pollutant, and from a point source. In this case, while the discharge of the pesticide is from a point source (generally a hose or an airplane), it is not a pollutant at the time of the discharge. The material added by a pesticide applicator to or over, including near, water is not a pollutant for the reasons stated above. Even though the pesticide may become a ''pollutant'' at a later time (*e.g.*, after the pesticide product has served its intended purpose), a permit is not required for its application because it did not meet both statutory prerequisites (pollutant and point source) at the time of its discharge into the water. Instead, the residual should be treated as a nonpoint source pollutant, potentially subject to CWA programs other than the NPDES permit program (*e.g.*, listing and TMDL development pursuant to CWA section 303(d)).

Today's action does not address drift over and into waters of the United States from pesticide applications to land. As discussed below, EPA has established a multi-stakeholder workgroup under one of its federal advisory committees to explore policy issues relating to the terrestrial application of pesticides that may drift into aquatic environments. EPA also notes that today's discussion of the terms ''chemical waste'' and ''biological materials'' applies only for CWA purposes and is not intended to address the use of those terms or similar terms under any other statutes the Agency administers.

V. Public Comment

EPA first solicited comment on its interpretation of ''pollutant'' under the CWA with respect to certain pesticide applications on August 13, 2003. See 68 FR 48385 (Aug. 13, 2003). EPA provided a second opportunity for public comment on its interpretation when it proposed the regulation on which the Agency is today taking final action. See 70 FR 5093 (Feb. 1, 2005). EPA received many comments on its interpretation during both comment periods, from a wide range of interested parties including pesticide manufacturers and applicators, public health control agencies, State agricultural agencies, State environmental agencies, environmental groups, human health advocates, farming interests, and other members of the public. Many commenters supported EPA's interpretation, while others opposed it as inconsistent with the CWA.

The record for today's action contains EPA's detailed responses to comments received during both public comment periods. See Docket ID No. OW–2003–0063 at *http://www.regulations.gov.* EPA is providing a summary below of its responses to some of the significant comments received.

A. Scope of Regulation

Many of the commenters who supported EPA's proposed rule also recommended that EPA broaden the scope of the final rule to cover all pesticide applications, including agricultural applications over land, that are conducted in accordance with the relevant requirements of FIFRA. This final rule addresses only the following two circumstances described in the proposed rule: The application of

aquatic pesticides directly to waters of the United States, and the application of pesticides to control pests over, including near, such waters.

In the meantime, EPA will continue to follow its long-standing practice of not requiring NPDES permits for agricultural pesticide applications that are conducted in compliance with relevant FIFRA requirements. EPA is continuing to consider the applicability of the CWA to situations other than those EPA is addressing in today's action where pesticides applied in accordance with relevant FIFRA requirements may reach and enter waters of the United States, including drift of pesticides applied aerially over land. Therefore, EPA does not believe it is appropriate to broaden the scope of the regulation to include additional types of pesticide applications at this time.

To assist the Agency's consideration of these issues, EPA has established a workgroup under the existing Pesticide Program Dialogue Committee (PPDC) (an advisory committee chartered under the Federal Advisory Committee Act (FACA)) to address issues involving pesticide spray drift from agricultural and other applications. The goals of the workgroup are the following: (1) Improving understanding of the perspectives of all stakeholders regarding pesticide spray drift; (2) finding common ground for further work toward minimizing both the occurrence and potential adverse effects of pesticide spray drift; (3) developing options for undertaking work where common ground exists; and (4) exploring the extent of drift, even with proper usage, and the range and effectiveness of potential responses to unacceptable levels of off-target drift. The spray drift workgroup will provide advice to EPA through the PPDC.

The PPDC is a FACA-authorized forum for a diverse group of stakeholders to provide feedback to the Agency's pesticide program on various pesticide regulatory, policy, and program implementation issues. Topics of discussion at past meetings have included the disclosure of inert ingredients, registration review, nonanimal testing, antimicrobial pesticides, endangered species, reduced risk pesticides, labeling, minor uses, ecological standards, fees for service, experimental use permits, environmental marketing claims, outreach to the public, and several implementation issues emanating from the Food Quality Protection Act of 1996.

Members of the PPDC include representatives of environmental and public interest groups, pesticide manufacturers and trade associations, user and commodity groups, public health and academic institutions, federal and State agencies, and the general public. Participants in the Spray Drift workgroup reflect the range of stakeholder interests represented on the full PPDC, and also include members with backgrounds in water quality issues. By operating under the PPDC, the Spray Drift workgroup will comply with FACA procedural requirements including timely public notice of meetings, public access to meetings and opportunity for the public to comment; public availability of documents considered by the workgroup; and attendance of a federal officer or employee at each meeting.

B. Sufficiency of FIFRA to Address Water Quality Impacts of Pesticide Applications

Many commenters objected to the proposed rule on the basis that EPA's regulation of pesticides under FIFRA does not adequately protect water quality, and thus pesticide applications should require an NPDES permit. These commenters alleged both legal and policy shortcomings of FIFRA. They also asserted that EPA's interpretation is improper because FIFRA does not preempt CWA requirements and because EPA lacks authority to exempt categories of discharges from the CWA's prohibition against discharges without an NPDES permit.

These commenters may have misinterpreted the legal interpretation that provides the basis for today's action. First, EPA is not expressly or by implication repealing any provision of the CWA in today's action, nor is the Agency arguing that FIFRA registration preempts CWA section 301(a) or section 402(a). Moreover, EPA is not arguing that registration under FIFRA or compliance with FIFRA requirements replaces or satisfies an otherwise applicable requirement under the CWA to obtain an NPDES permit. Nor is EPA exempting from section 301(a) or section 402(a) any categories of pollutants, because the pesticide applications at issue here are not pollutants under the Act. The proscription in the CWA against discharging pollutants from point sources to waters of the United States except in compliance with section 402 continues to apply. Rather, EPA is exercising its authority to interpret a term in a statute it administers. EPA is clarifying that pesticides applied to or over, including near, water for their intended purpose consistent with all relevant requirements under FIFRA in the circumstances specified in the rule are not, at the time of application, ''pollutants'' under the CWA, and therefore applications are not discharges required to obtain permits.

EPA's review, evaluation, and registration of pesticides used in these two circumstances further demonstrate that this is a reasonable interpretation, consistent with Congressional intent. EPA's regulatory programs under FIFRA provide support for the Agency's conclusion that the pesticides applied to or over, including near, water are not wastes (and therefore not pollutants) and serve as an indicator of when a pesticide is being applied as a product for its intended, beneficial purpose. Under FIFRA, EPA receives applications from people who wish to sell and distribute pesticides. The Agency may approve and issue a registration for a product if EPA determines that the product will not cause ''unreasonable adverse effects on the environment,'' which is defined as ''any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of [a] pesticide * * *.'' FIFRA Section 3(c)(5). In other words, the Agency may register a pesticide only if the product provides economic, social, and environmental benefits that outweigh risks from its use. As part of FIFRA registration, EPA may establish requirements, which are typically contained in the label for the pesticide, to ensure that when used, it will not cause unreasonable adverse effects on the environment, including the aquatic environment. Thus, registration and use of a pesticide in accordance with its approved labeling or other relevant FIFRA requirements indicates that a pesticide is a product intended to be used for a beneficial purpose that is authorized by EPA and is not a waste. For these reasons, comments regarding the adequacy of EPA's pesticide regulatory program do not pertain to the legal interpretation of whether a pesticide is a ''chemical waste'' or a ''biological material'' for purposes of the definition of ''pollutant'' under the CWA.

Nonetheless, it is important to note that EPA disagrees with commenters' concerns that EPA's registration process does not take into account local conditions, existing water quality standards and use designations, synergistic effects of multiple pesticides, inert ingredients, non-target aquatic organisms, and the effect of multiple applicators in the same area. The regulatory and non-regulatory tools under FIFRA provide means of addressing water quality problems arising from the use of pesticides. In

particular, the pesticide registration and re-registration processes consider impacts on both human health from the presence of pesticides in drinking water, and on aquatic resources (*e.g.*, fish, invertebrates, plants, and other species in fresh water, estuarine, and marine environments). EPA requires a pesticide company to submit a substantial body of data in support of an application for registration. EPA then supplements this required database with information obtained through a systematic search of the open literature on the ecotoxicity of environmental substances. EPA compares the estimated environmental concentrations expected to result from use of a pesticide with toxicity values observed in required studies and studies from the open literature. This database provides sufficient information to conduct assessments of potential ecological and human health risks, including the identification of toxicologically significant degradation products and/or metabolites. For additional information on EPA's approach to ecological risk assessment in general, and endangered and threatened species in particular, see: *http://www.epa.gov/espp/consultation/ecorisk-overview.pdf.*

C. EPA's Interpretation of the Term ''Pollutant'' Under the CWA

Some commenters claimed that EPA's interpretation of the term ''pollutant'' is inconsistent with the Clean Water Act, with relevant case law, or with prior Agency statements. EPA disagrees with the commenters and believes its interpretation of the term ''pollutant'' is reasonable and consistent with the language and legislative intent of the Clean Water Act. As described above, pesticides applied in the circumstances addressed in today's regulation, in compliance with FIFRA, for their intended purpose, are not pollutants under the Act. EPA also disagrees with commenters that the term ''biological materials'' can only be read to include biological pesticides applied in the circumstances addressed by today's regulation—i.e., application to or over waters of the United States consistent with relevant requirements of FIFRA. EPA's analysis of the terms ''chemical waste'' and ''biological materials'' in the circumstances addressed by today's regulation is described in more detail above.

In addition, the Ninth Circuit Court of Appeals recently held that pesticides that do not generate a residue when applied directly to a lake to eliminate a non-native fish species are not ''pollutants'' under the CWA because they are not chemical wastes. *Fairhurst* v. *Hagener*, 422 F.3d 1146 (9th Cir. 2005). In so holding, the court considered the plain meaning of the term ''chemical waste'' and noted that its analysis was in accord with EPA's interpretation of the term in its July 2003 Interim Statement, and that EPA's interpretation is ''reasonable and not in conflict with the expressed intent of Congress.'' Id. at 1149–50. Today's regulation is based on the same interpretation EPA first articulated in the Interim Statement, and is consistent with the *Fairhurst* court's holding.

Moreover, EPA's interpretation is not inconsistent with *Talent* and *Forsgren* as some commenters have asserted. As explained below, these cases do not interpret the term ''pollutant'' as including the pesticide applications addressed in today's rule.

In *Headwaters* v. *Talent*, the Ninth Circuit reversed the District Court's dismissal of a CWA citizen suit against an irrigation district alleging that application of the herbicide Magnacide H to irrigation canals to control aquatic weeds and vegetation required an NPDES permit. The District Court had concluded that the application of the pesticide was adequately regulated under FIFRA, and further regulation under the CWA was unnecessary. *Headwaters* v. *Talent*, No. 98–6004–AA slip op. at 12 (D. Ore. Feb. 1, 1999). The Ninth Circuit found that residual from the application of Magnacide H was a pollutant in this case and that registration of the herbicide under FIFRA did not preclude applicability of the CWA. *Headwaters* v. *Talent*, 243 F.3d at 532. This conclusion is consistent with EPA's interpretation. As described above, EPA agrees that residual materials from pesticide applications are ''pollutants'' under the Act. In addition, the irrigation district in *Talent* failed to comply with a FIFRA registration requirement to contain the herbicide-laden water in an irrigation canal for a specified number of days. EPA's interpretation codified in today's action is that pesticides applied in the circumstances described in the rule are not ''pollutants'' where they are applied consistent with relevant FIFRA requirements. Thus, EPA's interpretation is consistent with the result reached by the *Talent* court.

In *League of Wilderness Defenders* v. *Forsgren*, the Ninth Circuit held that the aerial application of insecticides over National Forest lands in Washington and Oregon to control a predicted outbreak of the Douglas fir tussock moth required an NPDES permit. However, the court in Forsgren stated incorrectly that the parties in the case did not dispute that the insecticides met the CWA definition of ''pollutant.'' *League of Wilderness Defenders* v. *Forsgren*, 309 F.3d at 1184, n.2. In fact, the Forest Service in its brief before the District Court reserved its arguments on that particular issue. Because the Ninth Circuit erroneously assumed that the question of whether the applications were pollutants was not in dispute, it did not analyze the issue but simply stated that they were. *Id.* at 1185. The issue that the *Forsgren* court did analyze in detail was whether the airplanes from which the insecticides were sprayed are point sources under the CWA—a different issue from that addressed in today's interpretation.[3]

Commenters also claimed that EPA's interpretation is inconsistent with the Clean Water Act because the purpose for which a pesticide is applied is not relevant to the question of whether it is a pollutant under the Act. The commenters pointed primarily to two cases—*Hudson River Fisherman's Assn.* v. *City of New York*, 751 F.Supp. 1088 (S.D.N.Y.), affd., 940 F.2d 649 (2d Cir. 1991), and *Minnehaha Creek Watershed District* v. *Hoffman*, 597 F.2d 617 (8th Cir. 1979)—as supporting their assertion. However, both these cases are distinguishable from EPA's interpretation.

In *Minnehaha Creek*, the court was interpreting the terms ''rock, sand, [and] cellar dirt'' in the definition of ''pollutant'' in CWA Section 502(6). The federal appellants in that case appealed a District Court decision finding that the U.S. Army Corps of Engineers did not have jurisdiction under CWA Section 404 over the placement of riprap and the construction of dams in Minnehaha Creek and adjacent Lake Minnetonka. The District Court's decision was based on its conclusion that the creek and the lake were not navigable waters of the United States and that while the riprap and construction materials were ''rock and sand,'' the activities at issue in the case were not within the purview of the Act because they did not significantly affect water quality. *Minnehaha Creek Watershed District* v. *Hoffman*, 449 F.Supp 876, 886 (D. Minnesota 1978). The Eighth Circuit disagreed and held

[3] EPA's General Counsel issued a memorandum on September 3, 2003, addressing the Agency's views on the effect of the *Forsgren* decision. Specifically, EPA stated that it did not acquiesce outside the Ninth Circuit with the court's decision regarding the application of EPA regulation defining ''silvicultural point source'' at 40 CFR 122.27(b)(1), and would continue to follow its longstanding interpretation of the statute and these regulations. Memorandum from Robert E. Fabricant to Regional Administrators, ''interpretive Statement and Guidance Addressing Effect of Ninth Circuit Decision in *League of Wilderness Defenders* v. *Forsgren* on Application of Pesticides and Fire Retardants,'' Sept. 3, 2003.

that a significant alteration in water quality need not be demonstrated for a substance to be a pollutant. *Minnehaha Creek Watershed District* v. *Hoffman*, 597 F.3d at 626–27.

The Eighth Circuit stated in Minnehaha Creek that it found ''no justification in the District Court's determination that whether the discharge of a particular substance *listed in s[ection] 502(6)* constitutes the discharge of a 'pollutant' under the Act depends upon the purpose for which the discharge is made.'' *Id.* at 627, emphasis added. EPA notes that nowhere in its opinion does the District Court reach such a conclusion. In any case, EPA is not concluding that the question of whether a substance is a pollutant depends on the specific purpose for which it is discharged. Rather, EPA is interpreting what specific terms in section 502(6) mean in the context of certain pesticide applications.

The Second Circuit Court of Appeals decision in *Hudson River Fishermen's Assn.* v. *City of New York* is also distinguishable from the circumstances addressed in today's rule. In that case, the District Court held that discharges of chlorine and aluminum sulfate (alum floc) from an aqueduct into a reservoir were discharges of pollutants requiring an NPDES permit. First, this case involved the discharge of alum floc from a point source at a point when it was a ''chemical waste'' and, therefore, consistent with EPA's interpretation, properly constituted a pollutant under the statute. *Hudson River Fishermen's Assn.* v. *City of New York*, 751 F.Supp 1088, 1102. In contrast, today's rule addresses certain pesticides which are being applied in compliance with relevant FIFRA requirements and, for the reasons described above, are not pollutants.

Moreover, the court's holding that chlorine was a pollutant also referred to the chlorine in the aqueduct at the time it discharged into the reservoir, not at the time it was first added to the water. The court held that the chlorine was a pollutant, no matter how useful it may earlier have been, citing to the Eighth Circuit's decision in *Minnehaha Creek. Id.* at 1101. Similarly, EPA is not concluding that the question of whether substances listed in section 502(6) are pollutants depends on the purpose for which they are discharged. Rather, EPA is interpreting what specific terms in section 502(6) (terms other than those addressed in *Minnehaha Creek*) mean in the context of these two types of pesticide applications.

Finally, while EPA's interpretation is not inconsistent with either *Hudson River* or *Minnehaha Creek*, it is further supported by the Ninth Circuit's decision in *Fairhurst* v. *Hagener.* In *Fairhurst*, the Ninth Circuit specifically considered the purpose for which the pesticide was applied—the same factor commenters claim is not relevant under *Hudson River* and *Minnehaha Creek*—and the fact that it was applied consistent with the product's FIFRA label, in concluding that it was not a pollutant under the CWA. *Fairhurst* v. *Hagener*, 422 F.3d 1146, 1150 (''Because intentionally applied and properly performing pesticides are not 'pollutants,' a potential discharger is not required to secure an NPDES permit for such pesticides before discharge.'')

Some commenters also claimed that EPA's interpretation is inconsistent with positions taken by the government in several *amicus curiae* briefs related to the issues addressed by the interpretation. As mentioned above, these briefs reflected the government's evaluation of the law in the context of the specific factual situations at issue and did not result from the deliberative consideration through an administrative process, as today's rule does. As such, the briefs were not a comprehensive statement of EPA's legal position on the precise questions addressed in today's rule, nor did they reflect the exercise of EPA's legal and policy judgment after consideration of public comments. See Memorandum from Ann R. Klee to Benjamin Grumbles and Susan Hazen, ''Analysis of Previous Federal Government Statements on Application of Pesticides to Waters of the United States in Compliance with FIFRA,'' Jan. 24, 2005.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule merely identifies two circumstances in which the application of a pesticide to waters of the United States consistent with all relevant requirements under FIFRA does not constitute the discharge of a pollutant that requires an NPDES permit under the Clean Water Act.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business based on Small Business Administration (SBA) size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Because EPA is identifying two circumstances in which the application of a pesticide to waters of the United States consistent with all relevant requirements under FIFRA does not constitute the discharge of a pollutant

that requires a NPDES permit under the Clean Water Act, this action will not impose any requirement on any small entity.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA is merely identifying two circumstances in which the application of a pesticide to waters of the United States consistent with all relevant requirements under FIFRA does not constitute the discharge of a pollutant that requires a NPDES permit under the Clean Water Act. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. EPA additionally consulted with state officials in the development of the final rule. Especially important were consultations regarding the manner in which States in the Ninth Circuit currently permit pesticides in response to the *Talent* decision and how states use TMDLs and other authorities to address pesticide residuals.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''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 final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. EPA is merely identifying two circumstances in which the application of a pesticide to waters of the United States consistent with all relevant requirements under FIFRA does not constitute the discharge of a pollutant that requires a NPDES permit under the Clean Water Act. Thus, Executive Order 13175 does not apply to this rule. Moreover, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited comment on the proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This regulation is not subject to Executive Order 13045 because it is not economically significant as defined under Executive Order 12866 and because the Agency does not have reason to believe the environmental health and safety risks addressed by this action present a disproportionate risk to children. The regulation only interprets the legal scope of the NPDES permit requirement under the CWA and does not change how pesticide applications are addressed under FIFRA.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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)). The only effect of this rule is to identify two circumstances in which the application of a pesticide to waters of the United States consistent with all relevant requirements under FIFRA does not constitute the discharge of a pollutant that requires a NPDES permit under the Clean Water Act.

I. National Technology Transfer and Advancement Act

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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards.

J. 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 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). This rule will be effective January 26, 2007.

List of Subjects in 40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 20, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is to be amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. Section 122.3 is amended by adding paragraph (h) to read as follows:

§ 122.3 Exclusions.

* * * * *

(h) The application of pesticides consistent with all relevant requirements under FIFRA (i.e., those relevant to protecting water quality), in the following two circumstances:

(1) The application of pesticides directly to waters of the United States in order to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds, or other pests that are present in waters of the United States.

(2) The application of pesticides to control pests that are present over waters of the United States, including near such waters, where a portion of the pesticides will unavoidably be deposited to waters of the United States in order to target the pests effectively; for example, when insecticides are aerially applied to a forest canopy where waters of the United States may be present below the canopy or when pesticides are applied over or near water for control of adult mosquitoes or other pests.

[FR Doc. E6–20002 Filed 11–24–06; 8:45 am]

BILLING CODE 6560–50–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–1, 51–2, 51–3, 51–4, and 51–6

RIN 3037–AA07

AbilityOne Program

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule; change to program name.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) has deliberated and voted to change the name of the JWOD Program to the AbilityOne Program. The name of the program is being changed to AbilityOne to give a stronger, more unified identity to the program and to show a connection between the program name and the abilities of those who are blind or have other severe disabilities.

DATES: *Effective Date:* November 27, 2006.

ADDRESSES: The Committee office is located at Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259.

FOR MORE INFORMATION CONTACT: Kimberly Zeich, Director, JWOD Business Development, by telephone (703) 603–7740, or by facsimile at (703) 603–0030, or by mail at the Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Hwy, Suite 10800, Arlington, VA 22202–3259.

SUPPLEMENTARY INFORMATION: The Committee's statutory authority includes making rules and regulations necessary to carry out the Javits-Wagner-O'Day (JWOD) Act (41 U.S.C. 46–48c). The program implementing the Act provides employment opportunities for people who are blind or have other severe disabilities in the manufacture and delivery of products and services to the Federal Government. The Committee has designated two Central Nonprofit Agencies (CNAs), National Industries for the Blind (NIB) and NISH (serving people with a wide range of disabilities) to provide technical and financial assistance to qualified nonprofit agencies nationwide. These qualified nonprofit agencies employ the blind or severely disabled in the fulfillment of product and service requirements deemed suitable by the Committee and placed on its Procurement List.

In the 1980s, the Committee informally adopted the ''JWOD'' acronym to serve as a program and umbrella name, and subsequently made changes to its regulations referencing the JWOD Program. However, the Committee has long recognized that confusion regarding the JWOD Program and the roles and identities of the governing and participating organizations continues to exist among Federal customers and other key audiences, including advocates for people with disabilities, the business

community, elected representatives and the workforce. The Committee believes that a more unified program identity, as part of a strategic communications plan, would be more effective in communicating the program's mission and benefits to many diverse stakeholders. The Committee intends to establish a national program identity or affiliation that participating nonprofit agencies can use in conjunction with their local identities and existing name recognition.

Working closely with its CNAs, the Committee conducted a strategic program identity exploration, to include name research with several stakeholder groups. The study found that the JWOD acronym is not a descriptive or compelling name, and it does not clearly communicate information about the program, its workforce or its benefits. The JWOD acronym had relatively high recognition among Government employees who make small purchases with purchase cards, but not as high as the recognition of SKILCRAFT®, the registered trademark licensed and managed by National Industries for the Blind. The SKILCRAFT® name is used on most of the common, retail-type items in the JWOD Program and is not affected by this rulemaking. The JWOD name did not have high levels of recognition among Government program managers, or audiences outside of the Executive Branch such as Congress, the disability community or the public. It was further noted that the JWOD Act is scheduled to be routinely codified in the U.S. Code, which would result in a repeal of the underlying legislation and which would further distance the acronym ''JWOD'' from the employment program that will continue.

The Committee considered the strengths and weaknesses of the current program name, the estimated benefits and costs of a name change, and the risk mitigation strategies that would minimize both the potential for loss of current program familiarity and the potential financial burden on participating nonprofit agencies that currently use the JWOD name on their business materials. It also looked at the availability of appropriate naming alternatives from an effective communication and trademark perspective. After an informed and deliberative process, and with full participation, a majority of Committee members voted in favor of changing the JWOD Program name.

In deciding to change the JWOD name, the Committee recognized that success in the 21st century requires an improved ability to communicate the employment mission and the customer value delivered by the program. While the enabling Act remains critical to success, changes in the competitive and Federal procurement environment require the Committee to build a program brand identity beyond that legislation in order to fulfill its mission. The Committee sought a new program name that would best reflect the workforce comprised of people who are blind or who have other severe disabilities; a name that would sound more official or professional than ''JWOD,'' that would align with the program's value proposition and that would be expansive enough to cover all participating organizations, among other criteria. In September 2006, the Committee selected ''AbilityOne'' to be the future program name. AbilityOne has a much closer linkage to the program's workforce and capabilities, and alludes to the intersection of all program participants into one umbrella organization and one total solution.

In order to ensure that all program stakeholders who are familiar with the JWOD name are able to recognize and transfer their support to the new program name, the Committee will continue to use the JWOD acronym as a part of the program name for a transition period of at least 18 months. The transition period will enable participating organizations to deplete business materials that contain the JWOD name and to begin using the new name voluntarily when they refresh their materials as part of the normal supply cycle.

Executive Order 12866: This agency has made the determination that this rule is not significant for the purposes of EO 12866.

Administrative Procedure Act: The Committee finds under 5 U.S.C. 553(b)(3)(A) that the statute does not apply to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice. This final rule simply changes the name of the program from the JWOD Program to the AbilityOne Program. Further, pursuant to 5 U.S.C. 553 (b)(3)(A), this rule of agency organization, procedure and practice is not subject to the requirement to provide prior notice and an opportunity for public comment. The Committee also finds that the 30-day delay in effectiveness, required under 5 U.S.C. 553(d), is inapplicable because this rule is not a substantive rule.

Regulatory Flexibility Act: Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

List of Subjects

41 CFR Part 51–1

Government procurement, Individuals with disabilities.

41 CFR Part 51–2

Government procurement, Individuals with disabilities, Organization and functions (Government agencies).

41 CFR Part 51–3

Government procurement, Individuals with disabilities.

41 CFR Part 51–4

Government procurement, Individuals with disabilities, Reporting and recordkeeping requirements.

41 CFR Part 51–6

Government procurement, Individuals with disabilities.

■ For the reasons set out in the preamble, Parts 51–1, 51–2, 51–3, 51–4, 51–6 of Title 41, Chapter 51 of the Code of Federal Regulations are amended as follows:

PART 51–1—GENERAL

■ 1. The authority citation for part 51–1 continues to read as follows:

Authority: 41 U.S.C. 46–48c

§ 51–1.3 [Amended]

■ 2. In § 51–1.3, revise the definition heading ''JWOD Program'' to read ''AbilityOne Program''.

PART 51–2—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

■ 3. The authority citation for part 51–2 continues to read as follows:

Authority: 41 U.S.C. 46–48c

§ 51–2.2 [Amended]

■ 4. Remove the words ''JWOD Program'' and add in their place the words ''AbilityOne Program'' wherever they occur in the following places:

■ a. Section 51–2.2(e); and

■ b. Section 51–2.2(f).

PART 51–3—CENTRAL NONPROFIT AGENCIES

■ 5. The authority citation for part 51–3 continues to read as follows:

Authority: 41 U.S.C. 46–48c

§ 51–3.2 [Amended]

■ 6. Remove the words ''JWOD Program'' from the heading of § 51–3.2

and add in their place the words ''AbilityOne Program''.

§ 51–3.5 [Amended]

■ 7. In § 51–3.5, remove the words ''JWOD Program'' and add in their place ''AbilityOne Program''.

PART 51–4—NONPROFIT AGENCIES

■ 8. The authority citation for part 51–4 continues to read as follows:

Authority: 41 U.S.C. 46–48c

§ 51–4.1 [Amended]

■ 9. In § 54–4.1, remove the words ''JWOD Program'' and add in their place the words ''AbilityOne Program''.

§ 51–4.3 [Amended]

■ 10. In § 51–4.3, remove the words ''JWOD Program'' and add in their place the words ''AbilityOne Program'' in paragraphs (b) introductory text, (b)(9), and (c) introductory text.

PART 51–6—PROCUREMENT PROCEDURES

■ 11. The authority citation for part 51–6 continues to read as follows:

Authority: 41 U.S.C. 46–48c

§ 51–6.3 [Amended]

■ 12. In § 51–6.3(b), remove the words ''JWOD Program'' and add in their place the words ''AbilityOne Program''.

§ 51–6.8 [Amended]

■ 13. In § 51–6.8(e), remove the words ''JWOD Program'' and add in their place the words ''AbilityOne Program''.

Dated: November 20, 2006.

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. E6–19971 Filed 11–24–06; 8:45 am]

BILLING CODE 6353–01–P

Proposed Rules

Federal Register
Vol. 71, No. 227
Monday, November 27, 2006

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 37

[Docket Nos. RM05–25–000 and RM05–17–000]

Preventing Undue Discrimination and Preference in Transmission Service

November 15, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Request for Supplemental Comments.

SUMMARY: On May 19, 2006, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this proceeding. *Preventing Undue Discrimination and Preference in Transmission Service*, 71 FR 32636 (June 6, 2006). In the NOPR, the Commission proposed, inter alia, to modify the redispatch obligations associated with long-term firm point-to-point service and, in addition, sought comments on whether the creation of a conditional firm product would represent a superior approach to address circumstances under which firm transmission service can be provided in most, but not all, of the hours of the request. Based on the comments received in response to the NOPR, the Commission is seeking further comment on the following two topics: the proposal of the Transparent Dispatch Advocates for transmission providers to post redispatch cost information and provide real-time redispatch; and specific questions related to the provision of conditional firm service.

DATES: Comments are due December 15, 2006.

ADDRESSES: You may submit comments, identified by Docket Nos. RM05–25–000 and RM05–17–000, by one of the following methods:

- *Agency Web Site: http://www.ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures section of the preamble of the May 19, 2006 NOPR.
- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC, 20426. Please refer to the Comment Procedures section of the preamble of the May 19, 2006 NOPR for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

Daniel Hedberg, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6243, *daniel.hedberg@ferc.gov.*

Jennifer Amerkhail, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8650, *jennifer.amerkhail@ferc.gov.*

Mason Emnett, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6540, *mason.emnett@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Request for Supplemental Comments

On May 19, 2006, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this proceeding. *Preventing Undue Discrimination and Preference in Transmission Service*, 71 FR 32,636 (June 6, 2006), FERC Stats. & Regs. ¶ 32,603 (2006). In the NOPR, the Commission proposed, *inter alia*, to modify the redispatch obligations associated with long-term firm point-to-point service and, in addition, sought comments on whether the creation of a conditional firm product would represent a superior approach to address circumstances under which firm transmission service can be provided in most, but not all, of the hours of the request. Based on the comments received in response to the NOPR, the Commission is seeking further comment on the following two topics:

1. Transparent Dispatch Advocates (TDA) Proposal

In Reply Comments submitted on September 20, 2006, the TDA submitted a proposal that, among other things, would require transmission providers to: (1) Post the real-time cost estimate of providing redispatch service from their resources at congested locations; (2) accept bids from third parties that choose to offer and are capable of providing redispatch service; and (3) provide real-time redispatch to resolve transmission constraints. In order to provide an opportunity for others to respond to the TDA proposal, the Commission is allowing an additional period to file comments on the proposal generally and, more specifically, the following questions:

- Is the TDA proposal required to remedy undue discrimination?
- What are the implementation impediments to requiring greater transparency of redispatch cost information? For example, if long-term point-to-point service is granted based on redispatch of the transmission provider's generation, would it be reasonable to require the transmission provider to post its daily or hourly redispatch cost for the constraint implicated by that request?
- Are there confidentiality or anticompetitive issues associated with requiring posting of this type of information? Are any concerns alleviated or exacerbated if the transmission provider were required to post the differential in costs between redispatched generators?
- Would the TDA proposal for the transmission provider to provide real-time redispatch using third party resources require the establishment of limited markets and, if so, what are the costs or benefits of doing so?

2. Conditional Firm Service

In the NOPR, the Commission sought comment on whether a new conditional firm transmission service would provide a better means than redispatch for addressing circumstances in which insufficient transfer capacity exists to grant a long-term point-to-point request. Subsequent to the NOPR, the Commission held a technical conference on October 12, 2006, that addressed, among other things, conditional firm service. In addition, Commission staff has held informal outreach sessions

with industry stakeholders on conditional firm service. During these discussions, certain additional issues regarding conditional firm service have arisen that merit further comment by the industry. The Commission invites comments on the following issues, to the extent supplemental comments add to the record rather than repeat arguments already made:

- Should conditional firm be offered as an alternative to redispatch or are they complementary services? For example, if redispatch is not available, should the transmission provider nevertheless be required to offer conditional firm service if available?
- Should conditional firm service be available for all long-term requests (including those of 20–30 years) or should it be offered only as a ''bridge'' service where the customer agrees to pay for transmission system upgrades and conditional firm service is provided until those relevant upgrades are constructed? For example, for a 20-year request for service, should the transmission provider be required to offer conditional firm service only during the first few years until relevant upgrades are constructed?
- Do limitations on system modeling present problems in offering conditional firm service over long periods (e.g., 10–30 years)? For example, do standard modeling techniques make it easier to analyze system conditions in the near term (e.g., 1–5 years) than over the long term (e.g., 10–30 years)?
- If conditional firm service is considered as a ''bridge'' product, should special rules apply when the necessary upgrades are extremely expensive (e.g., 10 times the embedded cost rate)?
- If any necessary upgrades produce ''lumpy'' capacity (e.g., a request for 100 MW of point-to-point service results in upgrades that create 1,000 MW of additional flowgate capacity), how should the lumpy capacity be handled? Should the costs be assigned exclusively to the requesting customer or, alternatively, be shared with other customers? If costs are assigned to the requesting customers, should it obtain rights to the lumpy capacity that can be resold in the marketplace? Alternatively, could a ''bridging'' application of conditional firm service even out the ''lumpiness'' of the upgrade requirement by permitting deferral of the upgrade until load growth or new customers are prepared to absorb and help pay for the excess capacity from the upgrade and, if so, how could the transmission provider implement such a mechanism?
- In responding to a request for conditional firm service, should the transmission provider be required to provide customers with a choice between conditional curtailment based on specified system conditions and the maximum number of hours per year?
- Should conditional firm service qualify as a network resource when the associated resource is imported by a network customer on an adjacent system?

Commenters are invited to file supplemental comments with the Commission on or before December 15, 2006. Commenters are invited to file joint supplemental comments in lieu of individually-filed comments. The Commission strongly discourages repetition of prior arguments.

By direction of the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19998 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–HA–0210; RIN 0720–AB12]

32 CFR Part 199

TRICARE; TRICARE Retiree Dental Program (TRDP) Basic Benefit Descriptions and Administrative Corrections

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends TRICARE Retiree Dental Program (TRDP) Basic benefit descriptions by replacing specific American Dental Association (ADA) dental procedure codes and nomenclature with general benefit categories and descriptions. This revision is necessary to keep the regulation current, since dental procedure codes are added, revised, and deleted on a regular basis. This proposed rule does not change or eliminate any benefits that are currently available under the TRDP program. This proposed rule also revises several incorrect, obsolete, or historical terms pertaining to the TRICARE program.

DATES: Written comments received at the address indicated below by January 26, 2007 will be accepted.

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: Debra Hatzel, Program Requirements Division, TRICARE Management Activity, telephone (303) 676–3572.

SUPPLEMENTARY INFORMATION: This proposed rule amends TRICARE Retiree Dental Program (TRDP) Basic benefit descriptions by removing specific American Dental Association (ADA) dental procedure codes and nomenclature, and replacing them with general benefit categories and descriptions from the most recent Current Dental Terminology (CDT) Manual (CDT–2005). This action is required because dental procedure codes and nomenclature are added, revised, and deleted by the ADA every two years; when this occurs, the regulation must also be revised to reflect the new codes and nomenclature. Maintaining specific procedure codes and nomenclature in the regulation is unnecessary, since the TRDP contract and TRDP marketing materials (available at *http://www.tricare.osd.mil/dental/dm2.cfm*) already contain detailed benefit descriptions. Also, the TRDP contractor and enrollees are notified when the Government directs any changes to TRDP benefits, limits, or exclusions. The TRDP contract and TRDP marketing materials will continue to be the primary vehicles for communicating specific benefit information to the TRDP contractor and beneficiaries. Removal of specific procedure codes and nomenclature from this section does not change or eliminate any benefits that are currently available under the TRDP. The general categories of benefits that are listed in this proposed rule will be adjusted periodically to conform to the current CDT Manual.

Although there are many similarities between the TRDP and the TRICARE Dental Program (TDP), the benefits are not identical. Also, there are different

dental benefits available under the TRDP Basic program and the TRDP Enhanced program. The general benefit categories in this TRDP proposed rule differ from the TDP benefit categories listed in 32 CFR 199.13. This variance exists because some of the benefits offered under the TDP are not benefits under the TRDP Basic program (e.g., prosthodontic and orthodontic services), and because the TDP benefit categories were derived from an earlier version of the CDT Manual.

This proposed rule also revises several incorrect, obsolete or historical terms; specifically, ''Director, OCHAMPUS'' is revised to ''Director, TRICARE Management Activity''; ''Assistant Secretary of Defense (Human Affairs)'' is revised to ''Assistant Secretary of Defense (Health Affairs)''; ''Active Duty Dependents Dental Program'' is revised to ''TRICARE Dental Program''; ''CHAMPUS'' is revised to ''TRICARE/CHAMPUS''; and ''OCHAMPUS'' is revised to ''TRICARE Management Activity.''

Regulatory Procedures

Executive Order 12866 directs agencies to assess all costs and benefits available, regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity. The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including having an annual effect on the national economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. DoD has examined the economic, legal, and policy implications of this proposed rule and has concluded that it is not a significant regulatory action. The changes set forth in the proposed rule are minor administrative revisions to the existing regulation which do not change the basic TRDP benefit structure. This is neither a significant regulatory action under Executive Order 12866, nor would it have a significant impact on small entities.

Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues a Regulation which would have a significant impact on a substantial number of small entities.

This proposed rule is not a major rule under the Congressional Review Act because its economic impact will be less than $100 million.

Executive Order 13132 requires that each Federal Agency shall consult with State and local officials and obtain their input if a rule has federalism implications which 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. We have examined the impact of the proposed rule under Executive Order 13132 and it does not have policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government; therefore, consultation with State and local officials is not required. In addition, this proposed rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.22 is proposed to be amended by revising the last sentence of paragraph (b)(1), paragraph (b)(4), paragraph (c), paragraph (d)(1)(v), the first sentence of paragraph (d)(4)(ii), paragraph (f) introductory text, paragraph (f)(1) introductory text, paragraphs (f)(1)(i) through (f)(1)(vii), first sentence of paragraph (f)(3) introductory text, paragraph (g), and the first sentence of paragraph (k); and by removing paragraphs (f)(1)(viii) and (f)(1)(ix) to read as follows:

§ 199.22 TRICARE Retiree Dental Program (TRDP).

* * * * *

(b) * * *

(1) * * * Additional services comparable to those contained in paragraph (e)(2) of § 199.13 may be covered pursuant to benefit policy decisions made by the Director, TRICARE Management Activity, or designee.

* * * * *

(4) Except as otherwise provided in this section or by the Assistant Secretary of Defense (Health Affairs) or designee, the TRDP is administered in a manner similar to the TRICARE Dental Program under § 199.13 of this part.

* * * * *

(c) Except as may be specifically provided in this section, to the extent terms defined in § 199.2 and § 199.13(b) are relevant to the administration of the TRICARE Retiree Dental Program, the definitions contained in § 199.2 and § 199.13(b) shall apply to the TRDP as they do to TRICARE/CHAMPUS and the TRICARE Dental Program.

(d) * * *

(1) * * *

(v) The unremarried surviving spouse and eligible child dependents of a deceased member who died while in status described in paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section; the unremarried surviving spouse and eligible child dependents who receive a surviving spouse annuity; or the unremarried surviving spouse and eligible child dependents of a deceased member who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible or no longer eligible for the TRICARE Dental Program.

* * * * *

(4) * * *

(ii) *Enrollment period for enhanced benefits.* The initial enrollment period for enhanced benefit coverage described in paragraph (f)(2) of this section shall be established by the Director, TRICARE Management Activity, or designee, when such coverage is offered, to be a period of not less than 12 months and not more than 24 months. * * *

* * * * *

(f) *Plan benefits.* The Director, TRICARE Management Activity, or designee, may modify the services covered by the TRDP to the extent determined appropriate based on developments in common dental care practices and standard dental programs. In addition, the Director, TRICARE Management Activity, or designee, may establish such exclusions and limitations as are consistent with those established by dental insurance and prepayment plans to control utilization and quality of care for the services and items covered by the TRDP.

(1) The minimum TRDP benefit is basic dental care to include diagnostic

services, preventive services, restorative services, endodontic services, periodontic services, oral surgery services, and other general services. The following is the minimum TRDP covered dental benefit:

(i) *Diagnostic services.*

(A) Clinical oral examinations.

(B) Radiographs and diagnostic imaging.

(C) Tests and laboratory examinations.

(ii) *Preventive services.*

(A) Dental prophylaxis.

(B) Topical fluoride treatment (office procedure).

(C) Sealants.

(D) Other preventive services.

(E) Space maintenance.

(iii) *Restorative services.*

(A) Amalgam restorations.

(B) Resin-based composite restorations.

(C) Other restorative services.

(iv) *Endodontic services.*

(A) Pulp capping.

(B) Pulpotomy and pulpectomy.

(C) Root canal therapy.

(D) Apexification and recalcification procedures.

(E) Apicoectomy and periradicular services.

(F) Other endodontic procedures.

(v) *Periodontic Services.*

(A) Surgical services.

(B) Periodontal services.

(vi) *Oral surgery.*

(A) Extractions.

(B) Surgical extractions.

(C) Alveoloplasty.

(D) Biopsy.

(E) Other surgical procedures.

(vii) *Other general services.*

(A) Palliative (emergency) treatment of dental pain.

(B) Therapeutic drug injection.

(C) Other drugs and/or medicaments.

(D) Treatment of postsurgical complications.

* * * * *

(3) *Alternative course of treatment policy.* The Director, TRICARE Management Activity, or designee, may establish, in accordance with generally accepted dental benefit practices, an alternative course of treatment policy which provides reimbursement in instances where the dentist and TRDP enrollee select a more expensive service, procedure, or course of treatment than is customarily provided. * * *

* * * * *

(g) *Maximum coverage amounts.* Each enrollee is subject to an annual maximum coverage amount for non-orthodontic dental benefits and, if an orthodontic benefit is offered, a lifetime maximum coverage amount for orthodontics as established by the Director, TRICARE Management Activity, or designee.

* * * * *

(k) All levels of appeals and grievances established by the Contractor for internal review shall be exhausted prior to forwarding to TRICARE Management Activity for a final review. * * *

* * * * *

Dated: November 20, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E6–19975 Filed 11–24–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AL65

Loan Guaranty: Loan Servicing and Claims Procedures Modifications

AGENCY: Department of Veterans Affairs.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document provides supplemental notice regarding a proposal to amend the Department of Veterans Affairs (VA) Loan Guaranty regulations related to several aspects of the servicing and liquidating of guaranteed housing loans in default, and submission of guaranty claims by loan holders. It provides specific information regarding the computer-based system that VA proposes to implement as part of the loan servicing and claims procedure modifications in this rulemaking. VA is reopening the comment period for the limited purpose of accepting public comments concerning the supplemental information provided in this notice.

DATES: Comments must be received on or before December 11, 2006. All comments previously received following publication of the proposed rule referenced above are being considered and do not need to be resubmitted.

ADDRESSES: Written comments may be submitted through *www.regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AL65.''; Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Document Management System (FDMS). Comments previously received regarding the notice of proposed rulemaking for RIN 2900–AL65, published February 18, 2005 (70 FR 8472), will still be considered in the rulemaking process and do not need to be resubmitted.

FOR FURTHER INFORMATION CONTACT: Mike Frueh, Assistant Director for Loan Management (261), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, at 202–273–7325. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: VA published a notice of proposed rulemaking in the **Federal Register** on February 18, 2005 (70 FR 8472), to amend regulations concerning the servicing and claims submission requirements on VA-guaranteed home loans. Included in that proposed rule were requirements for reporting information to VA under new 38 CFR 36.4315a. Under the Revised Reporting Requirements preamble heading, 70 FR 8474–8475, VA stated that proposed § 36.4315a would require all loan holders to electronically report information to the Department by use of a computer system, and that VA would be providing more specific information on this system prior to implementation. As VA has progressed in developing the VA Loan Electronic Reporting Interface (VALERI) necessary to receive reports from loan servicers, it has more clearly defined the system events and data elements that would be reported under § 36.4315a and is now ready to submit for public comment this more detailed information on VALERI. VA identifies these events and data elements in the supplementary information that follows.

Event Definitions

(1) *Loan paid in full*—when the loan obligation has been fully satisfied by receipt of funds and not a servicing transfer.

(2) *Transfer of ownership*—when the title holder of the property changes.

(3) *Release of liability*—when an obligor has been released from liability.

(4) *Unauthorized transfer of ownership*—when the servicer discovers

that the loan has been assumed without prior approval (only on loans originated on or after March 1, 1988).

(5) *SCRA relief filed*—when any obligor on the loan requests or is deemed to be entitled to relief with regard to the loan under the Servicemembers Civil Relief Act (SCRA).

(6) *Partial release of security*—when pursuant to 38 CFR 36.4324, the holder has released the lien on a part of the security for the loan.

(7) *Insurable loss occurred*—when an insurable loss has occurred on the loan.

(8) *Servicing transfer (transferring servicer)*—when a servicer of a loan transfers servicing to a new servicer.

(9) *Servicing transfer (receiving servicer)*—when the new servicer boards the loan.

(10) *Electronic Default Notification (EDN)*—when the loan becomes at least 61 days delinquent.

(11) *Delinquency status*—when the holder notifies VA of any updates to the delinquency information on loans for which an EDN has been submitted.

(12) *Contact information change*—when there is a change to the contact information for current owners or a property or mailing address change.

(13) *Occupancy status change*—when there is a change in property occupancy status.

(14) *Bankruptcy filed*—when any owner files a petition under the Bankruptcy Code.

(15) *Bankruptcy update*—when a significant event related to the bankruptcy has occurred.

(16) *Loss mitigation letter sent*—when the holder sends the loss mitigation letter to the borrower as required by 38 CFR 36.4346(g)(1)(iv).

(17) *Partial payment returned*—when the holder returns a partial payment to the borrower.

(18) *Default cured/loan reinstated*—when a previously reported default (i.e., an EDN was filed) has been cured and the loan reinstated.

(19) *Cure/reinstatement reversal*—when a defaulted loan was reported ''default cured/loan reinstated'' and it must later be reversed.

(20) *Default reported to credit bureau*—when the holder notifies any of the credit bureaus of a defaulted loan or loan termination.

(21) *Extenuating property circumstances*—when extenuating property circumstances occur.

(22) *Repayment plan approved*—when the holder approves a repayment plan.

(23) *Repayment plan infeasible*—when the holder determines that a repayment plan is not feasible.

(24) *Special forbearance approved*—when the holder approves a special forbearance agreement.

(25) *Special forbearance infeasible*—when the holder determines that a special forbearance agreement is not feasible.

(26) *Loan modification approved*—when the holder approves a loan modification.

(27) *Loan modification complete*—when both the holder and the owner(s) have executed the modification agreement.

(28) *Loan modification infeasible*—when the holder determines the loan modification option infeasible.

(29) *Compromise sale approved*—when the holder approves a compromise sale.

(30) *Compromise sale complete*—when a compromise sale closes.

(31) *Compromise sale infeasible*—when the holder determines the compromise sale option infeasible.

(32) *Deed-in-lieu of foreclosure approved*—when the holder approves a deed-in-lieu of foreclosure.

(33) *Deed-in-lieu of foreclosure complete*—when the holder records the deed-in-lieu of foreclosure.

(34) *Deed-in-lieu of foreclosure infeasible*—when the holder determines the deed-in-lieu of foreclosure option infeasible.

(35) *Foreclosure referral*—when the loan is referred to legal counsel for foreclosure.

(36) *Foreclosure sale scheduled*—when the foreclosure sale is scheduled.

(37) *Substantial equity case*—when the holder determines that equity of at least 25 percent exists per 38 CFR 36.4319a(e).

(38) *Foreclosure sale postponed or cancelled*—when the foreclosure sale is postponed or cancelled.

(39) *Results of sale*—when the foreclosure sale is complete, the holder reports the results of the foreclosure sale.

(40) *Transfer of custody*—when the holder notifies VA of the holder's intent to convey the property.

(41) *Improper transfer of custody*—when the holder discovers that the conveyance of the property to VA was improper.

(42) *Invalid sale results*—when the foreclosure sale is invalid.

(43) *Changed sale results*—when the foreclosure sale results were changed.

(44) *Confirmed sale date with no transfer of custody*—when the loan is terminated, the property is not conveyed, and the property is located in a confirmation/ratification of sale state.

(45) *Basic claim information*—when the holder files a claim under guaranty.

(46) *Refunding Settlement*—when VA refunds a loan and the holder reports the tax and insurance information.

DATA ELEMENT DEFINITIONS

Event name	Data elements	Business definition of data element
Header information for all event reporting.	VA loan number	12 position unique identifier for each loan guaranteed by VA. The VA Loan Number consists of a two-position numeric code for the regional office which has jurisdiction over the loan (OJ), a two-position numeric code for the regional office which originated the loan (OO), a one-position code for the type of loan (T), and a seven-position serial number or loan number (NNNNNNN). The format is OJOOTNNNNNNN. VALERI uses the twelve-digit VA loan number as the primary means of identifying loan data.
Header information	Date of the loan	Month, day, and year that the loan originated.
Header information	Original loan amount	Total amount of principal owed on the mortgage at loan origination before any payments are made on the loan.
Header information	Property state abbreviation	The state abbreviation of the expanded property address.
Header information	Current servicer identification number.	Unique VA-issued number for the servicer location that is responsible for billing, collecting and disbursing payments, and filing reports on the VA loan. VALERI also uses this as secondary loan identification data, as needed, to identify records.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Header information	Servicer loan number	Unique servicer-issued number given to the VA loan for record keeping on the servicer system. VALERI also uses this as secondary loan identification data, as needed, to identify records.
Header information	Unique event ID	Unique event identification number for event the servicer is reporting.
Monthly loan status update	Unpaid principal balance	Present portion of the loan not yet repaid, exclusive of interest or other charges.
Monthly loan status update	Payment due date (a.k.a. date of first uncured default).	Month, day, and year of the earliest payment not fully satisfied by the proper application of available credits or deposits.
Loan paid in full	Date loan was paid in full	Month, day, and year of full satisfaction of a guaranteed loan.
Transfer of ownership	Date of transfer of ownership	Month, day, and year that loan is assumed by another party (date of settlement).
Transfer of ownership	Last name of transferee, if applicable.	Last name of individual assuming the loan; reported if an individual and not an entity is assuming the loan.
Transfer of ownership	First name of transferee, if applicable.	First name of individual assuming the loan; reported if an individual and not an entity is assuming the loan
Transfer of ownership	Middle initial of transferee, if applicable.	Middle initial of individual assuming the loan; reported if an individual and not an entity is assuming the loan.
Transfer of ownership	Suffix of transferee, if applicable	Suffix (Jr., Sr., III, etc.), if any, of individual assuming loan; reported if an individual and not an entity is assuming the loan.
Transfer of ownership	Social security number of transferee, if applicable.	Social security number of individual assuming loan; reported if an individual and not an entity is assuming the loan.
Transfer of ownership	Name of entity assuming loan, if applicable.	Name of entity assuming loan, if applicable; reported if an entity and not an individual is assuming the loan.
Transfer of ownership	Taxpayer identification number, if applicable.	Taxpayer identification number of entity assuming the loan; reported if an entity and not an individual is assuming the loan.
Transfer of ownership	Last name of co-transferee, if applicable.	Last name of second individual assuming the loan; reported if there is a co-transferee.
Transfer of ownership	First name of co-transferee, if applicable.	First name of second individual assuming the loan; reported if there is a co-transferee.
Transfer of ownership	Middle initial of co-transferee, if applicable.	Middle initial of second individual assuming the loan; reported if there is a co-transferee.
Transfer of ownership	Suffix of co-transferee, if applicable.	Suffix (Jr., Sr., III, etc.), if any, of second individual assuming loan; reported if there is a co-transferee.
Transfer of ownership	Social security number of co-transferee, if applicable.	Social security number of second individual assuming loan; reported if there is a co-transferee.
Release of liability	Date of release	Month, day, and year on which the former obligor is no longer responsible for the loan.
Unauthorized transfer of ownership	Date servicer discovers unauthorized transfer.	Month, day, and year servicer discovers that a transfer of ownership occurred without prior approval by VA and/or servicer.
SCRA relief filed	Date SCRA relief requested	Month, day, and year assistance under the SCRA was requested (explicit request or discovery of eligibility during servicing).
SCRA relief filed	Effective date of SCRA relief (can be prior to request date).	Month, day, and year that the veteran became eligible for assistance under the SCRA.
SCRA relief filed	Expected SCRA relief end date	Month, day, and year the relief is expected to end pursuant to the requirements of the Act.
Partial release of security	Date partial release of security document was executed.	Month, day, and year that the security document releasing a portion of the secured property is executed.
Partial release of security	Amount of the proceeds from the partial release of security that are applied to the outstanding loan balance.	Amount that is applied to the outstanding loan balance from the partial release of security; if the loan to value ratio is greater than or equal to 80 percent, the servicer must apply sufficient proceeds from the release to the outstanding loan balance to bring LTV to less than 80 percent.
Partial release of security	Amount of consideration offered for the property.	Amount offered for the portion of the security being released.
Partial release of security	Date applied to principal	Month, day, and year that proceeds from the partial release of security are applied to the loan balance.
Partial release of security	Unpaid principal balance after application of proceeds.	Loan balance that is outstanding after application of proceeds from the partial release of security.
Partial release of security	Value of remaining security	Appraised value of the remaining security after the release is completed.
Insurable loss occurred	Type of damage	Type of property damage that resulted in an insurance claim being filed.
Insurable loss occurred	Fire Damage	Type of property damage that resulted in an insurance claim being filed is fire damage.
Insurable loss occurred	Neglect	Type of property damage that resulted in an insurance claim being filed is neglect.
Insurable loss occurred	Vandalized	Type of property damage that resulted in an insurance claim being filed is property vandalism.
Insurable loss occurred	Freeze	Type of property damage that resulted in an insurance claim being filed is the result of a freeze.
Insurable loss occurred	Storm	Type of property damage that resulted in an insurance claim being filed is caused by a storm.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Insurable loss occurred	Flood	Type of property damage that resulted in an insurance claim being filed is flood damage.
Insurable loss occurred	Unknown	Type of property damage that resulted in an insurance claim being filed is unknown.
Insurable loss occurred	Hurricane	Type of property damage that resulted in an insurance claim being filed is caused by a hurricane.
Insurable loss occurred	Hail	Type of property damage that resulted in an insurance claim being filed is hail damage.
Insurable loss occurred	Tornado	Type of property damage that resulted in an insurance claim being filed is tornado damage.
Insurable loss occurred	Wind	Type of property damage that resulted in an insurance claim being filed is wind damage.
Insurable loss occurred	Mud/Landslide	Type of property damage that resulted in an insurance claim being filed is mud or landslide damage.
Insurable loss occurred	Earthquake	Type of property damage that resulted in an insurance claim being filed is earthquake damage.
Insurable loss occurred	Boiler Explosion	Type of property damage that resulted in an insurance claim being filed was caused by a boiler explosion.
Insurable loss occurred	Untypical Damage	Type of property damage that resulted in an insurance claim being filed is other than the typical specified reasons.
Insurable loss occurred	Date damage discovered	Month, day, and year the damage is discovered by the servicer.
Insurable loss occurred	Date insurance claim filed	Month, day, and year that the insurance claim for damage is filed, either by the borrower or the servicer.
Insurable loss occurred	Total loss (Y/N)	Decision made by the insurance company as to whether or not the property can be repaired.
Servicing transfer (transferring servicer).	Servicing release date	Month, day, and year that a servicer transfers responsibility for servicing a guaranteed loan to another servicer.
Servicing transfer (transferring servicer).	Name of new servicer	Name of servicer receiving responsibility for servicing a guaranteed loan.
Servicing transfer (receiving servicer).	Date loan acquired	Month, day, and year on which a servicer became responsible for servicing a guaranteed loan.
Servicing transfer (receiving servicer).	Previous servicer loan number	Loan number associated with the loan on the previous servicer's system.
Electronic default notification	Date of first payment on the original loan.	Month, day, and year of the first scheduled payment on the loan (per the loan instruments).
Electronic default notification	Payment due date	Month, day, and year of the earliest payment not fully satisfied by the proper application of available credits or deposits.
Electronic default notification	Property address line 1	The first line of the expanded property address.
Electronic default notification	Property address line 2	The second line of the expanded property address.
Electronic default notification	Property address unit number	The unit number of the expanded property address.
Electronic default notification	Property address city	The city name of the expanded property address.
Electronic default notification	Property address zip code	A group of fields containing the zip code.
Electronic default notification	Property address suffix	The zip code suffix of the expanded property address.
Electronic default notification	Property address state abbreviation.	The state abbreviation of the expanded property address.
Electronic default notification	Last name of current owner, if applicable.	Surname of the individual who currently owns the property; if owner is an individual and not an entity.
Electronic default notification	First name of current owner, if applicable.	First name of the individual who currently owns the property.
Electronic default notification	Middle initial of current owner, if applicable.	First letter of the middle name, if any, of the individual who currently owns the property; if owner is an individual and not an entity.
Electronic default notification	Suffix of current owner, if applicable.	Suffix (Jr., Sr., III, etc.), if any, of the individual who currently owns the property; if owner is an individual and not an entity.
Electronic default notification	Social security number of current owner; if current owner is an individual.	Unique SSA-issued number assigned to the individual who currently owns the property; if owner is an individual and not an entity.
Electronic default notification	Last name of current co-owner, if applicable.	Surname of the individual who currently co-owns the property, if applicable.
Electronic default notification	First name of current co-owner, if applicable.	First name of the individual who currently co-owns the property, if applicable.
Electronic default notification	Middle initial of current co-owner, if applicable.	First letter of the middle name, if any, of the individual who currently co-owns the property, if applicable.
Electronic default notification	Suffix of current co-owner, if applicable.	Suffix (Jr., Sr., III, etc.), if any, of the individual who currently co-owns the property, if applicable.
Electronic default notification	Social security number of current co-owner; if applicable.	Unique SSA-issued number assigned to the individual who currently co-owns the property, if applicable.
Electronic default notification	Name of entity that is current owner, if applicable.	Name of entity that currently owns the property, if owner is an entity and not an individual.
Electronic default notification	Taxpayer identification number, if current owner is an entity.	Unique IRS-issued number assigned to the entity who currently owns the property, if owner is an entity and not an individual.
Electronic default notification	Mailing address line 1 (if different from property address).	First line of the mailing address of current owners.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Electronic default notification	Mailing address line 2 (if different from property address).	Second line of the mailing address of current owners.
Electronic default notification	Mailing address suffix (if different from property address).	The zip code suffix of the mailing address.
Electronic default notification	Mailing address unit number (if different from property address).	The unit number of the expanded mailing address.
Electronic default notification	Mailing address city (if different from property address).	The city name of the expanded mailing address.
Electronic default notification	Mailing address zip code (if different from property address).	A group of fields containing the zip code +4 of the expanded mailing address.
Electronic default notification	Mailing address state abbreviation (if different from property address).	The state abbreviation of the expanded mailing address.
Electronic default notification	Interest rate on loan	Rate of interest charged on the loan, expressed as a percentage, per the loan instruments.
Electronic default notification	Unpaid principal balance	Present portion of the loan not yet repaid, exclusive of interest or other charges.
Electronic default notification	Principal and interest (P&I) portion of monthly installment.	Amount of principal and interest due monthly under the terms of the loan agreement.
Electronic default notification	Taxes and insurance (T&I) portion of monthly installment.	Amount of the tax and insurance deposit due monthly under the terms of the loan agreement and determined by the servicer in accordance with Real Estate Settlement Procedures Act (RESPA).
Electronic default notification	Other portion of monthly installment.	Amount due monthly that does not pertain to principal and interest, taxes and insurance or late charges due under the terms of the obligation as of notice date (e.g., Homeowner Association (HOA) fees).
Electronic default notification	Late charges due	Amount due as a result of penalties imposed by the servicer that a borrower must pay when a payment is missed or made after the due date under the terms of the obligation as of notice date.
Electronic default notification	Occupant of property	Status of who currently resides in the property securing the loan obligation, or reason why no one resides there.
Electronic default notification	Original veteran	Individual who signed the loan documents and originated the loan.
Electronic default notification	Tenant	Individual who rents or leases the property securing the loan obligation.
Electronic default notification	Transferee	Individual who purchased the property and may have assumed the loan.
Electronic default notification	Vacant	Property is not occupied by anyone but appears to be maintained and is secure.
Electronic default notification	Abandoned	Property is vacant, is not being maintained, is not offered for sale or rent, and there has been no contact with the current owner.
Electronic default notification	First phone number (obligor 1)	First phone number (obligor 1).
Electronic default notification	Phone number type for first phone number (obligor 1).	Phone number type for first phone number (obligor 1).
Electronic default notification	Home	Home.
Electronic default notification	Work	Work.
Electronic default notification	Cell	Cell.
Electronic default notification	Second phone number (obligor 1)	Second phone number (obligor 1).
Electronic default notification	Phone number type for second phone number (obligor 1).	Phone number type for second phone number (obligor 1).
Electronic default notification	Home	Home.
Electronic default notification	Work	Work.
Electronic default notification	Cell	Cell.
Electronic default notification	Phone number (obligor 2)	Phone number (obligor 2).
Electronic default notification	Phone number type (obligor 2)	Phone number type (obligor 2).
Electronic default notification	Home	Home.
Electronic default notification	Work	Work.
Electronic default notification	Cell	Cell.
Electronic default notification	Phone number 1 (other authorized party).	Phone number 1 (other authorized party).
Electronic default notification	Primary reason for default (servicer may report only one).	Reason obligor is unable to or did not remit monthly payments.
Electronic default notification	Business failure	Reason for default is the occupation, work, or trade in which obligor is engaged did not generate enough funds for obligor to meet his financial obligations.
Electronic default notification	Casualty loss	Reason for default is the damage to the property as a result of a fire, storm, accident, flood, earthquake, or other catastrophic event.
Electronic default notification	Curtailment of income	Reason for default is a reduction or the curtailment of obligor's income from employment, investment, or other sources.
Electronic default notification	Death of borrower	Reason for default is that the obligor died.
Electronic default notification	Death of borrower's family member.	Reason for default is the death of obligor's relative who was contributing towards the loan (directly or indirectly) and/or that obligor has incurred extraordinary expenses as a result of such death.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Electronic default notification	Distant employment transfer	Reason for default is the result of the borrower being transferred or relocated to a distant job location.
Electronic default notification	Energy/environmental cost	Reason for default is the result of the borrower incurring excessive energy related costs or costs associated with removal of an environmental hazard in or near the property.
Electronic default notification	Excessive obligations	Reason for default is obligor(s) incurred excessive debt in addition to the mortgage obligation or the mortgage payment has increased significantly.
Electronic default notification	Fraud	Reason for default is a legal dispute arising out of a fraudulent or illegal action that occurred in connection with the origination of the mortgage or at a later date.
Electronic default notification	Illness of borrower	Reason for default is a serious illness that keeps the borrower from working and generating income, and/or the borrower has incurred extraordinary expenses as a result of the illness.
Electronic default notification	Illness of borrower's family	Reason for default is the result of obligor(s) incurring extraordinary expenses as the result of the illness of a family member.
Electronic default notification	Inability to rent property	Reason for default is obligor has insufficient income and/or assets to make the monthly mortgage payment and the rental property is vacant.
Electronic default notification	Inability to sell property	Reason for default is obligor has insufficient income and/or assets to make the monthly mortgage payment and is unable to sell the property.
Electronic default notification	Incarceration	Reason for default is the result of obligor being jailed or imprisoned, regardless of whether obligor is still incarcerated.
Electronic default notification	Marital difficulties	Reason for default is problems associated with separation or divorce including dispute over payments during divorce settlement, reduction in income available to pay the mortgage debt, etc.
Electronic default notification	Military service	Reason for default is the result of obligor being called into active duty status and the military pay is insufficient to make the monthly mortgage payment.
Electronic default notification	Payment adjustment	Reason for default is the result of the borrower being unable to make new payments that resulted from an increase in the monthly payment.
Electronic default notification	Payment dispute	Reason for default is the result of a disagreement between obligor and the mortgage servicer about the amount of the mortgage payment, the acceptance of a partial payment, the application of previous payments, etc., that result in obligor refusing to make payments until the dispute is resolved.
Electronic default notification	Property problems	Reason for default is the result of the condition of the property such as substandard construction, expensive and extensive repairs required, etc.
Electronic default notification	Servicing problems	Reason for default is the result of obligor being dissatisfied with the servicer of the loan or with the fact that servicing has been transferred to a new servicer.
Electronic default notification	Tenant not paying	Reason for default is the result of the obligor's tenant not paying rent.
Electronic default notification	Transfer of ownership	Reason for default is the result of the obligor not making payments while sale of the property is pending.
Electronic default notification	Unemployment notification	Reason for default is the result of a reduction in obligor's income due to loss of job.
Electronic default notification	Borrower never responded to outreach.	Reason for default is unknown (unable to get contact or unable to determine the reason).
Delinquency status	Unpaid principal balance (UPB)	Amount of principal due under the terms of the obligation as of payment due date.
Delinquency status	Payment due date	Month, day, and year of the earliest payment not fully satisfied by the proper application of available credits or deposits.
Delinquency status	Principal and interest (P&I) portion of monthly installment, if changed.	Amount of principal and interest due monthly under the terms of the loan agreement, if changed from last report.
Delinquency status	Taxes and insurance (T&I) portion of monthly installment, if changed.	Amount of taxes and insurance due monthly under the terms of the loan agreement, if changed from last report.
Delinquency status	Other portion of monthly installment, if changed.	Amount due that does not pertain to principal and interest and/or taxes and insurance, due under the terms of the obligation (example is HOA fees), if changed from last report.
Delinquency status	Late charges due	Amount due as a result of penalties imposed by the servicer that a borrower must pay when a payment is missed or made after the due date under the terms of the obligation as of notice date.
Delinquency status	Expenses incurred to date	Any costs that have been paid by the servicer and can be charged to the loan.
Contact information change	Updated mailing address line 1 (if different from property address).	First line of the mailing address of current owners, if changed from last report.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Contact information change	Updated mailing address line 2 (if different from property address).	Second line of the mailing address of current owners, if changed from last report.
Contact information change	Updated mailing address unit number (if different from property address).	The unit number of the expanded mailing address, if changed from last report.
Contact information change	Updated mailing address city (if different from property address).	The city name of the expanded mailing address, if changed from last report.
Contact information change	Updated mailing address zip code (if different from property address).	A group of fields containing the zip code of the expanded mailing address, if changed from last report.
Contact information change	Updated mailing address suffix (if different from property address).	The zip code suffix of the mailing address, if changed from last report.
Contact information change	Updated mailing address state abbreviation (if different from property address).	The state abbreviation of the expanded mailing address, if changed from last report.
Contact information change	Updated first phone number (obligor 1).	First phone number (obligor 1).
Contact information change	Updated phone number type for first phone number (obligor 1).	Phone number type for first phone number (obligor 1).
Contact information change	Home	Home.
Contact information change	Work	Work.
Contact information change	Cell	Cell.
Contact information change	Updated second phone number (obligor 1).	Second phone number (obligor 1).
Contact information change	Updated phone number type for second phone number (obligor 1).	Phone number type for second phone number (obligor 1).
Contact information change	Home	Home.
Contact information change	Work	Work.
Contact information change	Cell	Cell.
Contact information change	Updated phone number (obligor 2)	Phone number (obligor 2).
Contact information change	Updated phone number type (obligor 2).	Phone number type (obligor 2).
Contact information change	Home	Home.
Contact information change	Work	Work.
Contact information change	Cell	Cell.
Contact information change	Updated phone number 1 (other authorized party).	Phone number 1 (other authorized party).
Occupancy status change	Date the change in occupancy status is discovered by servicer.	Month, day, and year that occupancy status change was discovered by the servicer.
Occupancy status change	Occupancy status	Status of who currently resides in the property securing the loan obligation, or reason why no one resides there.
Occupancy status change	Original veteran	Original veteran currently resides in the property securing the loan obligation.
Occupancy status change	Tenant	Individual rents or leases the property securing the loan obligation.
Occupancy status change	Transferee	A conveyance was made and an individual/entity currently resides in the property securing the loan obligation.
Occupancy status change	Vacant	Property is not occupied by anyone but appears to be maintained and is secure.
Occupancy status change	Abandoned	Property is vacant, is not being maintained, and is not offered for sale or rent.
Bankruptcy filed	Date bankruptcy filed	Month, day, and year that obligor filed for protection under U.S. bankruptcy codes.
Bankruptcy filed	Type of bankruptcy	Type of bankruptcy (chapter number) under which the obligor filed for protection.
Bankruptcy filed	Chapter 7	Chapter of the U.S. bankruptcy code providing for the sale of an obligor's nonexempt property and assets and the distribution of the proceeds to creditors.
Bankruptcy filed	Chapter 11	Chapter of the U.S. bankruptcy code providing obligor or obligor's failing firm protection against all creditors while being reorganized to pay off debts.
Bankruptcy filed	Chapter 12	Chapter of the U.S. bankruptcy code designed to give special relief to obligor if obligor is a family farmer with seasonal income.
Bankruptcy filed	Chapter 13	Chapter of the U.S. bankruptcy code allowing obligor to begin debt repayment without forfeiting property.
Bankruptcy filed	Bankruptcy case number	Case number assigned by the bankruptcy court.
Bankruptcy filed	Bankruptcy code	Indicates whether the mortgagor, co-mortgagor, or both are filing bankruptcy.
Bankruptcy filed	Only the obligor has filed	Indicates that only the obligor has filed for bankruptcy.
Bankruptcy filed	Only the co-obligor has filed	Indicates that only the co-obligor has filed for bankruptcy.
Bankruptcy filed	Both the obligor and co-obligor have filed.	Indicates that both obligor and co-obligor have filed for bankruptcy

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Bankruptcy filed	Name(s) of debtor(s)–report all applicable.	Name of obligor(s) that filed petition for relief under the U.S. bankruptcy code–report all applicable.
Bankruptcy filed	Alternate debtor	This field indicates the second alternate debtor (if any) for the loan.
Bankruptcy filed	Social security number (SSN)(s) of debtor(s).	Unique SSA-issued number or unique IRS-issued number (TIN) of the obligor(s) that filed a petition for relief under the U.S. bankruptcy code.
Bankruptcy filed	Alternate debtor social security number (SSN).	This field indicates the second alternate debtor social security number (if any) for the loan.
Bankruptcy update	Bankruptcy event	Any significant action taken during the bankruptcy process as defined in the eight following items.
Bankruptcy update	Date relief of stay filed	Date a petition was filed by servicer requesting relief from the stay so that servicer may proceed to terminate the loan.
Bankruptcy update	Date of discharge	Date of the court order terminating bankruptcy proceedings, usually relieving the obligor of his/her obligation.
Bankruptcy update	Date of dismissal	Date of the court order terminating the case without either the entry of a discharge or a denial of discharge.
Bankruptcy update	Date stay lifted	Date of the court order permitting collection/termination actions against the obligor and/or the property that secures the loan.
Loss mitigation letter sent	Date that the letter was sent	Month, day, and year loss mitigation (foreclosure avoidance) notice sent by the servicer.
Partial payment returned	Reason why the partial payment was returned.	VA-authorized reason for the return of a payment of any amount less than the full amount due under the loan terms.
Partial payment returned	Tenant payments not being forwarded.	Property is completely or partially tenant-occupied and rental payments are not being paid to servicer for application to the loan account.
Partial payment returned	Less than 50 percent of total due and no repayment plan is in place.	Payment is less than 50 percent of the total amount then due, and the amount has not been agreed to in a documented repayment plan.
Partial payment returned	Personal checks not accepted	Amount tendered is in the form of a personal check and the borrower has been previously notified in writing that only cash or certified payments are acceptable.
Partial payment returned	Foreclosure process started	Foreclosure has been started with the first action required for foreclosure under local law.
Partial payment returned	Less than one monthly installment and no repayment plan in place.	Payment is less than one full monthly installment, including escrow and late charges, and the amount has not been agreed to in a documented repayment plan.
Partial payment returned	Less than repayment plan agreed amount.	Payment is less than the amount agreed to in a documented repayment plan.
Partial payment returned	Unpaid delinquency over six months and no repayment plan in place.	Delinquency of any amount has continued for at least 6 months since the account first became delinquent and no documented repayment plan has been arranged.
Partial payment returned	Servicer lien would be jeopardized	Holder's lien position would be jeopardized by acceptance of partial payment.
Partial payment returned	Date partial payment returned	Month, day, and year that servicer returned the partial payment.
Partial payment returned	Amount of partial payment returned.	Amount of partial payment that servicer returned.
Default cured/loan reinstated	Date loan reinstated	Month, day, and year all delinquent amounts were fully repaid; a loan is current if the payment due date is the first day of the next month (as of the last day of the previous month).
Cure/reinstatement reversal	Date of reversal	Month, day, and year the servicer discovered that a previously reported cure was in error.
Cure/reinstatement reversal	Payment due date	Month, day, and year the last full monthly obligation was applied; as of the date of the cure reversal.
Cure/reinstatement reversal	Reason for reversal	Basis for determination that all delinquent amounts thought to be fully repaid were not.
Cure/reinstatement reversal	NSF check	Reason for reversal of cured default is that obligor's bank account has insufficient funds available to pay the check.
Cure/reinstatement reversal	Misapplication of funds	Reason for reversal of cured default is that funds were applied to the loan in error.
Cure/reinstatement reversal	Reporting error (includes erroneously reported servicing transferred).	Reason for reversal of cured default is that the servicer reported the cure in error.
Default reported to credit bureau	Date reported	Month, day, and year that servicer reports to the credit bureau that obligor has failed to comply with the terms of the loan agreement.
Extenuating property circumstances	Date the extenuating property circumstance was discovered.	The date the property damage was discovered.
Extenuating property circumstances	Type of unusual property circumstance.	Basis for determination that foreclosure process should be sped up or delayed due to the condition of obligor's property.
Extenuating property circumstances	Hazardous conditions or materials	Reason for extenuating property circumstances is the presence of conditions or materials on the property which create an immediate or potential danger to the public health or safety or to the environment.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Extenuating property circumstances	Significant property deterioration	Reason for extenuating property circumstances is property has deteriorated significantly.
Extenuating property circumstances	Condemned	Reason for extenuating property circumstances is property is deemed legally unfit for occupancy or continued existence due to its physical defects or for other causes or the property is being acquired by a governmental body for public uses as per receipt of official notice from the appropriate local government office.
Extenuating property circumstances	Natural disaster	Reason for extenuating property circumstances is the result of a natural disaster, such as fire, storm, accident, flood, earthquake, or other catastrophic event.
Extenuating property circumstances	Property seizure	Law enforcement officials have taken a property that has been used (a) in connection with or acquired by illegal activities or (b) in satisfaction of an unpaid judgment.
Extenuating property circumstances	Demolished	Reason for extenuating property circumstances is property has been razed.
Extenuating property circumstances	Other	Reason for extenuating property circumstances is other than one of the reasons listed.
Repayment plan approved	Date repayment plan approved	Month, day, and year servicer approved written agreement with the obligor for reinstatement of the loan through a schedule of increased payments.
Repayment plan approved	Plan start date (month and year)	Month and year that repayment plan is documented to begin.
Repayment plan approved	Estimated cure date	Estimated month, day, and year the delinquency will be fully satisfied by the proper application of available credits or deposits resulting from the repay plan.
Repayment plan infeasible	Date of determination	Month, day, and year that servicer determines that a repay plan with the obligor is not a home retention option.
Repayment plan infeasible	Reason for infeasibility	Basis for determination that repay plan with the obligor is not a home retention option.
Repayment plan infeasible	Unwilling borrower(s)	Reason for infeasibility of the repay plan is that obligor does not agree to a repay plan.
Repayment plan infeasible	Unable to contact	Reason for infeasibility of the repay plan is that servicer is not able to contact obligor to negotiate.
Repayment plan infeasible	Current owner not liable	Reason for infeasibility of the repay plan is current owner of the property is not the obligor on the loan.
Repayment plan infeasible	Property abandoned	Reason for infeasibility of the repay plan is the property is vacant, is not being maintained, is not offered for sale or rent, and no contact with the borrower has been established.
Repayment plan infeasible	Insufficient income	Reason for infeasibility of the repay plan is that obligor does not have enough income to meet the obligations under a repay plan.
Special forbearance approved	Estimated cure date	Estimated month, day, and year the delinquency will be fully satisfied by the proper application of available credits or deposits resulting from the proposed special forbearance.
Special forbearance infeasible	Date of determination	Month, day, and year that servicer determines that neither suspension nor reduction of obligor's payments for one or more months is a home retention option.
Special forbearance infeasible	Reason for infeasibility	Basis for determination that special forbearance with the obligor is not a home retention option.
Special forbearance infeasible	Unwilling borrower	Reason for infeasibility of the special forbearance is that obligor does not agree to special forbearance.
Special forbearance infeasible	Unable to contact	Reason for infeasibility of the special forbearance is that servicer is not able to contact obligor to negotiate.
Special forbearance infeasible	Insufficient income	Reason for infeasibility of the special forbearance is that obligor does not have enough income to meet the obligations under a special forbearance.
Special forbearance infeasible	Current owner not liable	Reason for infeasibility of the special forbearance is current owner of the property is not the obligor on the loan.
Special forbearance infeasible	Property abandoned	Reason for infeasibility of the special forbearance is the property is vacant, is not being maintained, is not offered for sale or rent, and no contact with the homeowner has been established.
Special forbearance infeasible	No means to reinstate	Reason for infeasibility of the special forbearance is that reducing payments and/or forbearing payments will have no impact on the obligor's inability to cure the delinquency and reinstate the loan.
Loan modification approved	Date modification of loan approved	Month, day, and year that servicer approves a permanent change in one or more of the terms of the loan and usually includes re-amortization of the balance due.
Loan modification complete	Date loan modification fully executed.	Month, day, and year that servicer and borrower execute the modification agreement thereby completing a permanent change in one or more of the terms of the loan that results in loan reinstatement.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Loan modification complete	Modified loan amount	Total amount of principal owed on the mortgage after the loan modification and before any payments are made; only unpaid principal, accrued interest, deficits in the taxes and insurance impound accounts, and advances required to preserve the lien position, such as HOA fees, special assessments, water and sewer liens, etc., may be included in the modified indebtedness; late fees and other charges may not be capitalized.
Loan modification complete	Term	Number of months over which the unpaid balance of the modified loan will be repaid.
Loan modification complete	Modified loan maturity date	Month, day, and year that modified loan will be paid in full.
Loan modification complete	Interest rate	Rate of interest charged on the loan, expressed as a percentage, per the modified loan instruments.
Loan modification complete	Date of first payment	Month, day, and year that first installment on modified loan is due.
Loan modification complete	New principal and interest (P&I) payment.	Monthly amount due (for principal and interest) on the modified loan.
Loan modification infeasible	Date of determination	Month, day, and year that servicer determines that loan modification is not a home retention option.
Loan modification infeasible	Reason for infeasibility	Basis for determination that loan modification with the obligor is not a home retention option.
Loan modification infeasible	Unwilling borrower	Reason for infeasibility of the loan modification is that obligor does not agree to a loan modification.
Loan modification infeasible	Unable to contact	Reason for infeasibility of the loan modification is that servicer is not able to contact obligor to negotiate.
Loan modification infeasible	Insufficient income	Reason for infeasibility of the loan modification is that obligor does not have enough income to meet the obligations under a loan modification.
Loan modification infeasible	Insufficient borrower contribution	Reason for infeasibility of the loan modification is that obligor has insufficient cash to satisfy all delinquent amounts not included in the new loan amount.
Loan modification infeasible	Junior lien issues	Reason for infeasibility of the loan modification is that junior lien holder refuses to subordinate.
Loan modification infeasible	Ineligible–prior approval denied	Reason for infeasibility of the loan modification is that VA denied a prior approval of a non-conforming loan modification.
Loan modification infeasible	Ineligible–not submitted for prior approval.	Reason for infeasibility of the loan modification is that the servicer did not submit a non-conforming loan modification for prior approval.
Loan modification infeasible	Current owner not liable	Reason for infeasibility of the loan modification is that the current owner is not legally liable on the loan.
Loan modification infeasible	Ginnie Mae pooling issues	Reason for infeasibility of the loan modification is that the servicer is unwilling to bear the cost of repurchasing the loan from the pool and/or repooling.
Loan modification infeasible	Property abandoned	Reason for infeasibility of the loan modification is the property is vacant, is not being maintained, and is not offered for sale or rent.
Loan modification infeasible	Not owner occupied	Reason for infeasibility of the loan modification is that the owner does not currently reside in the property.
Compromise sale approved	Date purchase offer submitted by borrower for consideration.	Month, day, and year that obligor submits a purchase offer to the servicer for consideration where the proceeds of the private sale will be less than the amount required to pay the mortgage in full.
Compromise sale approved	Date compromise sale approved	Month, day, and year that servicer approves obligor's request to complete a private sale where the proceeds will be less than the amount required to pay the mortgage in full.
Compromise sale approved	Estimated settlement date	Estimated month, day, and year that obligor's property is scheduled to close by private sale and the proceeds will be less than the amount required to pay the mortgage in full.
Compromise sale complete	Actual settlement date	Actual month, day, and year that obligor's property was sold to a third party in a private sale and the proceeds were less than the amount required to pay the mortgage in full.
Compromise sale complete	Payoff of first mortgage loan (line 504 from HUD–1).	Net proceeds from the sale, listed in line 504 from HUD–1 form (also known as the ''closing statement'' or ''settlement sheet''), which will be applied toward the payoff of the first mortgage loan.
Compromise sale infeasible	Date of determination	Month, day, and year that servicer determines that the compromise sale is not an alternative to foreclosure.
Compromise sale infeasible	Reason for infeasibility	Basis for determination that compromise sale is not an alternative to foreclosure.
Compromise sale infeasible	No buyers	Reason for infeasibility of the compromise sale is that there are no buyers interested in the obligor's property.
Compromise sale infeasible	Closing not consummated	Reason for infeasibility of the compromise sale is that a potential sale did not legally close.
Compromise sale infeasible	Unwilling borrower(s)	Reason for infeasibility of the compromise sale is that obligor does not agree to a compromise sale.
Compromise sale infeasible	Property abandoned	Reason for infeasibility of the compromise sale is the property is vacant, is not being maintained, is not offered for sale or rent, and no contact with the homeowner has been established.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Compromise sale infeasible	Unable to contact	Reason for infeasibility of the compromise sale is that servicer is not able to contact obligor to negotiate.
Compromise sale infeasible	Junior lien issues	Reason for infeasibility of the compromise sale is that junior lien holder is unwilling to participate in the compromise sale.
Compromise sale infeasible	Title problems	Reason for infeasibility of the compromise sale is that the owner is unable to provide clear title to the prospective purchaser.
Deed-in-lieu approved	Date DIL was requested	Month, day, and year that the obligor requests a voluntary transfer of the property to the holder in exchange for a release of all obligations under the mortgage.
Deed-in-lieu approved	Date of approval	Month, day, and year that a deed in lieu of foreclosure is approved by the servicer.
Deed-in-lieu complete	Date that deed was recorded	Month, day, and year that the deed in lieu of foreclosure was recorded with the local government office.
Deed-in-lieu complete	Net value	The fair market value of the property minus the VA cost factor (net value = fair market value of the property * (1-the net value factor)).
Deed-in-lieu complete	Total eligible indebtedness	The unpaid principal balance, accrued unpaid interest, allowable advances, liquidation expenses, and property preservation expenses (if incurred prior to the actual foreclosure sale date or the end of the foreclosure timeframe, whichever is earlier), less any credits.
Deed-in-lieu infeasible	Date of determination	Month, day, and year that servicer determines that the deed in lieu of foreclosure is not an alternative to foreclosure.
Deed-in-lieu infeasible	Reason for infeasibility	Basis for determination that deed in lieu of foreclosure is not an alternative to foreclosure.
Deed-in-lieu infeasible	Junior lien(s)	Reason for infeasibility of the deed in lieu of foreclosure is that there is a junior lien on the property.
Deed-in-lieu infeasible	Title problems	Reason for infeasibility of the deed in lieu of foreclosure is that the owner is unable to transfer clear title.
Deed-in-lieu infeasible	Unwilling borrower(s)	Reason for infeasibility of the deed in lieu of foreclosure is that one or more of the owners do not agree to a deed in lieu of foreclosure.
Deed-in-lieu infeasible	Property abandoned	Reason for infeasibility of the deed in lieu of foreclosure is the property is vacant, is not being maintained, is not offered for sale or rent, and contact with the homeowner has not been established.
Deed-in-lieu infeasible	Unable to contact	Reason for infeasibility of the deed in lieu of foreclosure is that servicer is not able to contact obligor to negotiate.
Foreclosure referral	Date of referral to attorney	Month, day, and year servicer refers obligor's loan to legal counsel to initiate the foreclosure process.
Foreclosure referral	Date of most recent property inspection.	Month, day, and year of the most recently performed property inspection for the current default.
Foreclosure referral	Date 30 day delinquency letter sent (if no successful phone contact).	Month, day, and year that servicer sent 30 day delinquency letter (letter to the borrower if payment has not been received within 30 days after it was due and telephone contact could not be made—38CFR 36.4346(g)).
Foreclosure referral	Date phone contact successful	Month, day, and year that servicer successfully contacted obligor via telephone for the current default (''right party'' contact).
Foreclosure referral	Updated reason for default at time of foreclosure.	Basis for determination that foreclosure process should be initiated.
Foreclosure referral	Business failure	Reason for default is the occupation, work, or trade in which obligor is engaged did not generate enough funds to meet his financial obligations.
Foreclosure referral	Casualty loss	Reason for default is the damage to the property as a result of a fire, storm, accident, flood, earthquake, or other catastrophic event.
Foreclosure referral	Curtailment of income	Reason for default is a reduction or the curtailment of obligor's income from employment, investment, or other sources.
Foreclosure referral	Death of borrower	Reason for default is that the obligor died.
Foreclosure referral	Death of borrower's family member.	Reason for default is the death of obligor's relative who is contributing towards the loan (directly or indirectly) and/or that obligor has incurred extraordinary expenses as a result of such death.
Foreclosure referral	Distant employment transfer	Reason for default is the result of the borrower being transferred or relocated to a distant job location.
Foreclosure referral	Energy/environmental cost	Reason for default is the result of the borrower incurring excessive energy related costs or costs associated with removal of an environmental hazard in or near the property.
Foreclosure referral	Excessive obligations	Reason for default is obligor incurred excessive debt in addition to the mortgage obligation or the mortgage payment has increased significantly.
Foreclosure referral	Fraud	Reason for default is a legal dispute arising out of a fraudulent or illegal action that occurred in connection with the origination of the mortgage or at a later date.
Foreclosure referral	Illness of borrower	Reason for default is a serious illness that keeps the borrower from working and generating income, and/or the borrower has incurred extraordinary expenses as a result of the illness.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Foreclosure referral	Illness of borrower's family	Reason for default is the result of obligor incurring extraordinary expenses as the result of the illness of a family member.
Foreclosure referral	Inability to rent property	Reason for default is obligor has insufficient income and/or assets to make the monthly mortgage payment and the rental property is vacant.
Foreclosure referral	Inability to sell property	Reason for default is obligor has insufficient income and/or assets to make the monthly mortgage payment and is unable to sell the property.
Foreclosure referral	Incarceration	Reason for default is the result of obligor being jailed or imprisoned, regardless of whether obligor is still incarcerated.
Foreclosure referral	Marital difficulties	Reason for default is problems associated with separation or divorce including dispute over payments during divorce settlement, reduction in income available to pay the mortgage debt, etc.
Foreclosure referral	Military service	Reason for default is the result of obligor being called into active duty status and the military pay is insufficient to make the monthly mortgage payment.
Foreclosure referral	Payment adjustment	Reason for default is the result of the borrower being unable to make new payments that resulted from an increase in the monthly payment.
Foreclosure referral	Payment dispute	Reason for default is that a disagreement between obligor and the mortgage servicer about the amount of the mortgage payment, the acceptance of a partial payment, the application of previous payments, etc. resulted in obligor refusing to make payments until the dispute is resolved.
Foreclosure referral	Property problems	Reason for default is the result of the condition of the property such as substandard construction, expensive and extensive repairs required, etc.
Foreclosure referral	Servicing problems	Reason for default is the result of obligor being dissatisfied with the servicer of the loan or with the fact that servicing has been transferred to a new servicer.
Foreclosure referral	Tenant not paying	Reason for default is the result of the obligor's tenant not paying rent.
Foreclosure referral	Transfer of ownership	Reason for default is the result of the obligor not making payments while sale of the property is pending.
Foreclosure referral	Unemployment notification	Reason for default is the result of a reduction in obligor's income due to loss of job.
Foreclosure referral	Borrower never responded to outreach.	Reason for default is unknown (unable to get contact or unable to determine the reason).
Foreclosure sale scheduled	Date of scheduled foreclosure sale	Month, day, and year the property will be sold to satisfy the loan obligation (or month, day, and year it is anticipated the property will be sold to satisfy the loan obligation for states such as South Dakota).
Foreclosure sale scheduled	Foreclosure type	Type of legal process by which the property is sold to satisfy the loan obligation.
Foreclosure sale scheduled	Judicial	Type of foreclosure process done through court action.
Foreclosure sale scheduled	Non-judicial	Type of foreclosure process done through the power of sale.
Substantial equity case	Total eligible indebtedness	The unpaid principal balance, accrued unpaid interest, allowable advances, liquidation expenses, and property preservation expenses (if incurred prior to the actual foreclosure sale date or the end of the foreclosure timeframe, whichever is earlier), less any credits.
Substantial equity case	Estimated unpaid principal balance of all other liens.	The unpaid balance of any outstanding liens against the property.
Substantial equity case	Calculated equity amount (fair market value less all liens).	The fair market value of the property minus all monies owed on other liens.
Foreclosure sale postponed or cancelled.	Date postponed or cancelled	Month, day, and year that foreclosure sale is postponed or cancelled.
Foreclosure sale postponed or cancelled.	Postponed or cancelled indicator	Indicator denoting whether the foreclosure sale was postponed or whether it was cancelled.
Foreclosure sale postponed or cancelled.	Reason	Basis for postponement or cancellation of foreclosure sale.
Foreclosure sale postponed or cancelled.	Reinstatement	Reason for postponement or cancellation of foreclosure sale is to allow additional time for obligor to reinstate the loan.
Foreclosure sale postponed or cancelled.	Bankruptcy	Reason for postponement or cancellation of foreclosure sale is petition for relief was filed under U.S. bankruptcy codes by or on behalf of the obligor.
Foreclosure sale postponed or cancelled.	Repayment plan	Reason for postponement or cancellation of foreclosure sale is servicer has an agreement with the obligor for reinstatement of the loan through a schedule of increased payments.
Foreclosure sale postponed or cancelled.	Special forbearance	Reason for postponement or cancellation of foreclosure sale is servicer has an agreement with the obligor to suspend foreclosure for a specified period of time to allow for loan reinstatement.
Foreclosure sale postponed or cancelled.	Loan modification	Reason for postponement or cancellation of foreclosure sale is servicer has modified or is considering modification of the loan that will result in loan reinstatement.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Foreclosure sale postponed or cancelled.	Private sale	Reason for postponement or cancellation of foreclosure sale is to allow additional time for obligor to complete a sale of the property, in which there is equity.
Foreclosure sale postponed or cancelled.	Compromise sale	Reason for postponement or cancellation of foreclosure sale is to allow additional time to complete a sale of the property, even though the sale proceeds will be less than the total indebtedness.
Foreclosure sale postponed or cancelled.	Title problems	Reason for postponement or cancellation of foreclosure sale is that title search disclosed problems which must be resolved prior to foreclosure.
Foreclosure sale postponed or cancelled.	VA requested (includes refund consideration).	Reason for postponement or cancellation of foreclosure sale is VA requested.
Foreclosure sale postponed or cancelled.	Procedural errors (failure to give notice, legal issues, failure to comply with foreclosure laws, incorrect publication, trustee appointments, recording issues).	Reason for postponement or cancellation of foreclosure sale is procedural error, such as failure to give notice, legal issues, failure to comply with foreclosure laws, incorrect publication, trustee appointments, recording issues, etc.
Foreclosure sale postponed or cancelled.	Late appraisal	Reason for postponement or cancellation of foreclosure sale is that appraisal was not performed in time to proceed to foreclosure sale.
Foreclosure sale postponed or cancelled.	Contested foreclosure	Reason for postponement or cancellation of foreclosure sale is the obligor or other party contests the validity or priority of the mortgage or lien being foreclosed or creates an issue with respect to mortgage holder's right to foreclose it.
Foreclosure sale postponed or cancelled.	Property damage	Reason for postponement or cancellation of foreclosure sale is damage to the property occurred subsequent to completion of liquidation appraisal which could change or invalidate the bid amount.
Foreclosure sale postponed or cancelled.	Hazardous conditions or materials (when a municipality requires property clean-up prior to foreclosure).	Reason for postponement or cancellation of foreclosure sale is municipality requires property clean-up of hazardous conditions and/or materials prior to foreclosure sale, or servicer discovers hazardous conditions and/or materials that will have an impact on final value determination.
Foreclosure sale postponed or cancelled.	Condemned (with need to demolish or eminent domain) or demolished.	Reason for postponement or cancellation of foreclosure sale is property is (a) deemed legally unfit for occupancy or continued existence due to its physical defects or for other causes, (b) property is being acquired by a governmental body for public uses, or (c) property has already been torn down as a result of being condemned.
Foreclosure sale postponed or cancelled.	Natural disaster	Reason for postponement or cancellation of foreclosure sale is result of a natural disaster, such as fire, storm, accident, flood, earthquake, or other catastrophic event.
Foreclosure sale postponed or cancelled.	Property seizure	Reason for postponement or cancellation of foreclosure sale is the result of law enforcement officials taking the property that has been used in connection with or acquired by illegal activities or to satisfy an unpaid judgment.
Foreclosure sale postponed or cancelled.	SCRA	Reason for postponement or cancellation of foreclosure sale is obligor has filed for relief under or is deemed to be entitled to the (SCRA).
Foreclosure sale postponed or cancelled.	Other	Reason for postponement or cancellation of foreclosure sale is other than one of the reasons listed.
Results of sale	Date of sale	Month, day, and year the foreclosure sale was held.
Results of sale	Sherriff's appraised value (if applicable, Kentucky, Ohio. Louisiana, and Oklahoma only).	Value of the property as determined by the court-ordered sheriff's appraisal.
Results of sale	Successful bidder	Designates whether the successful bidder was the holder or a third party.
Results of sale	Holder	The property was acquired by the holder of the loan.
Results of sale	Third party	The property was acquired by a third party.
Results of sale	Amount of successful bid	The amount of money bid to acquire the property.
Results of sale	Net value	The fair market value of the property minus the VA cost factor (net value = fair market value of the property * (1-the net value factor)).
Results of sale	Total eligible indebtedness	The unpaid principal balance, accrued unpaid interest, allowable advances, liquidation expenses, and property preservation expenses (if incurred prior to the actual foreclosure sale date or the end of the foreclosure timeframe, whichever is earlier), less any credits.
Transfer of custody	Insurance type (flood, earthquake, forced place, homeowner's, wind, fire)–report all applicable.	Information about insurance policy(ies) in force at the time of transfer of custody to VA.
Transfer of custody	Flood	Reported insurance type is flood insurance.
Transfer of custody	Earthquake	Reported insurance type is earthquake insurance.
Transfer of custody	Forced place	Reported insurance type is forced place insurance.
Transfer of custody	Homeowner's	Reported insurance type is homeowner's insurance.
Transfer of custody	Wind	Reported insurance type is wind insurance.
Transfer of custody	Fire	Reported insurance type is fire insurance.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Transfer of custody	Policy number	Unique insurance company issued number identifying the specific insurance coverage plan.
Transfer of custody	Name of carrier	Name of the company that provides the insurance coverage.
Transfer of custody	Expiration date	Month, day, and year that the insurance coverage terminates.
Transfer of custody	Tax parcel/identification number(s)–report as many as are applicable.	Unique number assigned by the local taxing authority to identify the property.
Transfer of custody	Redemption expiration date (if applicable).	Month, day, and year on which the redemption period terminates.
Transfer of custody	Date of confirmation/ratification of sale.	Month, day, and year the foreclosure sale was confirmed or ratified (as required by State law).
Transfer of custody	Mortgage holder's payee vendor ID (per internal VA financial system).	Unique VA-assigned number used to identify the payee for VA purposes; servicer reports own vendor ID if servicer is payee.
Transfer of custody	Payee loan number (if payee differs from servicer).	Unique payee-assigned custody number used to identify the account.
Improper transfer of custody	Reason for the improper transfer of custody.	Reason servicer erroneously transferred custody of a property to VA.
Improper transfer of custody	Holder wanted to keep the property.	Holder intended to retain property but conveyed to VA in error.
Improper transfer of custody	Third party was the successful bidder.	Third party was successful bidder so holder did not have the option to convey to VA.
Invalid sale results	Reason sale invalidated	Basis for determining that results changed or sale was invalid.
Invalid sale results	Bankruptcy	Reason sale was determined to be invalid is that petition for relief was filed under U.S. bankruptcy codes by or on behalf of the obligor.
Invalid sale results	Contested foreclosure	Reason sale was determined to be invalid is that the foreclosure was contested.
Invalid sale results	Third party fails to consummate sale.	Reason sale was determined to be invalid is that third party purchaser did not complete the purchase requirements.
Invalid sale results	Procedural errors	Reason sale was determined to be invalid is procedural error, such as failure to give notice, legal issues, failure to comply with foreclosure laws, incorrect publication, trustee appointments, recording issues, etc.
Invalid sale results	SCRA	Reason sale was determined to be invalid is that obligor has filed for relief under or is deemed to be entitled to the SCRA.
Changed sale results	Date third party failed to consummate the sale.	Month, day, and year the third party failed to consummate the sale as per consummation requirements in the applicable state (i.e. the timeframe for consummation expired).
Confirmed sale date with no transfer of custody.	Confirmation or ratification date (when no transfer of custody).	Month, day, and year of sale confirmation or ratification when the servicer chooses to retain the property and the property is located in a confirmation or ratification of sale state.
Basic Claim Information	Claim type (for the claim submission—initial, supplemental, appeal).	Type of claim servicer is submitting, either initial, supplemental, or appeal.
Basic Claim Information	Payee vendor ID (per FMS)	Unique FMS-assigned number used to identify the payee for VA purposes.
Basic Claim Information	Payee loan number (if payee differs from servicer).	Unique payee-assigned number, used to identify the account.
Basic Claim Information	Borrower prepayment amount	Any unscheduled payment to principal by the borrower.
Basic Claim Information	Date of prepayment	Month, day, and year each prepayment was applied.
Basic Claim Information	Interest Rate Changes	Interest Rate Changes.
Basic Claim Information	Effective date of change for SCRA (change date), if applicable.	Effective date of change for SCRA (change date).
Basic Claim Information	Interest rate for SCRA change, if applicable.	Interest rate for SCRA change.
Basic Claim Information	ARM Loans (report all changes)	ARM Loans (report all changes).
Basic Claim Information	Effective date of change for ARM loans (change date).	Effective date of change for ARM loans (change date).
Basic Claim Information	Margin (for ARM interest rate changes).	Margin (for ARM interest rate changes).
Basic Claim Information	Date loan termination reported to credit bureaus.	Month, day, and year that servicer reports to the credit bureau that the loan has been terminated.
Basic Claim Information	Credits	Any monies being held to be applied to the account indebtedness.
Basic Claim Information	Refunds of insurance premiums	Any monies received from refunds of insurance premiums.
Basic Claim Information	Tenant rents	Any monies received from collection of rents from tenants.
Basic Claim Information	Insurance loss information	The following elements detail the allocation of insurance proceeds.
Basic Claim Information	Date insurance claim payment received by servicer.	Month, day, and year monies were paid to servicer as a result of insurable loss.
Basic Claim Information	Date denied (if applicable)	Month, day, and year that the insurance claim for damages was denied.
Basic Claim Information	Proceeds from insurance claim	Amount of insurance loss proceeds received.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Basic Claim Information	Disposition of insurance proceeds	Whether the insurance monies received were (a) applied to the unpaid principal balance, (b) used to restore the security, or (c) held in suspense.
Basic Claim Information	Applied to UPB	Whether the monies were (a) above.
Basic Claim Information	Used to restore security	Whether the monies were (b) above.
Basic Claim Information	Held in suspense	Whether the monies were (c) above.
Basic Claim Information	Amount applied to principal (if applicable).	Amount of monies from the insurance loss proceeds that were applied to the unpaid principal balance.
Basic Claim Information	Date applied to UPB (if applicable)	Month, day, and year that the insurance loss proceeds were applied to the unpaid principal balance.
Basic Claim Information	Escrow credit balance	Amount of monies, if any, remaining in tax and insurance escrow account.
Basic Claim Information	Suspended credits (partial payments in suspense).	Any other monies being held in suspense.
Basic Claim Information	Buydown credits from origination (seller buydowns).	Any unapplied seller buydown credits from loan origination.
Basic Claim Information	Buydown credits from foreclosure (only for pre-VALERI claims).	Amounts applied to (1) principal balance, (2) interest, or (3) escrow to obtain specified bid (pre-VALERI terminations). Buydown funds should have been applied, not held in suspense.
Basic Claim Information	Date of buydown or buydowns	Date or dates of foreclosure buydowns (pre-VALERI terminations).
Basic Claim Information	Interest on escrow	Amount of monies earned from obligor's escrow account as a result of interest payments.
Basic Claim Information	Itemized Advances (payment date and amount must be provided for each).	Amounts required to be advanced by the servicer to preserve and protect the property and/or the lien position. Need date and amount for every advance).
Basic Claim Information	Insurance	Amounts advanced by the servicer to obtain and/or continue insurance coverage.
Basic Claim Information	Forced place (annual), must also provide effective date.	Amounts advanced by the servicer to obtain and/or continue yearly forced place insurance coverage; including month, day, and year that coverage became effective.
Basic Claim Information	Forced place (monthly binder)	Amounts advanced by the servicer to obtain and/or continue monthly forced place insurance coverage.
Basic Claim Information	Flood	Amounts advanced by the servicer to obtain and/or continue flood insurance coverage.
Basic Claim Information	Homeowner's/Fire/Hazard	Amounts advanced by the servicer to obtain and/or continue homeowner's, fire, and/or hazard insurance coverage.
Basic Claim Information	Wind	Amounts advanced by the servicer to obtain and/or continue wind insurance coverage.
Basic Claim Information	Earthquake	Amounts advanced by the servicer to obtain and/or continue earthquake insurance coverage.
Basic Claim Information	Taxes	Amounts advanced by the servicer to pay amounts which were levied by a government authority upon the property.
Basic Claim Information	City	Amounts advanced by the servicer to pay city taxes.
Basic Claim Information	County/Parish	Amounts advanced by the servicer to pay county/parish taxes.
Basic Claim Information	School	Amounts advanced by the servicer to pay school taxes.
Basic Claim Information	Levee	Amounts advanced by the servicer to pay levee taxes.
Basic Claim Information	Township	Amounts advanced by the servicer to pay township taxes.
Basic Claim Information	Municipal Utility District (MUD)	Amounts advanced by the servicer to pay MUD taxes.
Basic Claim Information	Public Utility District (PUD)	Amounts advanced by the servicer to pay PUD taxes.
Basic Claim Information	Special assessments	Amounts advanced by the servicer to pay special assessments against the property.
Basic Claim Information	Ground rent	Amounts advanced by the servicer to pay ground rent due on the property.
Basic Claim Information	Association fees	Amounts advanced by the servicer to pay HOA, CIA, PUD, and/or condo association fees.
Basic Claim Information	Property preservation	Amounts advanced by the servicer to protect and preserve the property.
Basic Claim Information	Yard maintenance	Amounts advanced by the servicer for required yard maintenance services performed on the property.
Basic Claim Information	Initial cut up to 5,000 s.f.	Amounts advanced by the servicer for initial mowing services of up to 5,000 square feet.
Basic Claim Information	Initial cut 5,001–10,000 s.f.	Amounts advanced by the servicer for initial mowing services of between 5,001 and 10,000 square feet.
Basic Claim Information	Initial cut 10,000 s.f. or larger	Amounts advanced by the servicer for initial mowing services of greater than 10,000 square feet.
Basic Claim Information	Recut cut up to 5,000 s.f.	Amounts advanced by the servicer for additional mowing services of up to 5,000 square feet.
Basic Claim Information	Recut cut 5,001–10,000 s.f.	Amounts advanced by the servicer for additional mowing services of between 5,001 and 10,000 square feet.
Basic Claim Information	Recut cut 10,000 s.f. or larger	Amounts advanced by the servicer for additional mowing services of greater than 10,000 square feet.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Basic Claim Information	Trim shrubs	Amounts advanced by the servicer for shrub trimming services performed on the property.
Basic Claim Information	Snow removal	Amounts advanced by the servicer for snow removal services performed on the property.
Basic Claim Information	Winterization	Amounts advanced by the servicer to prepare the property to withstand cold winter conditions.
Basic Claim Information	Dry heat–1 unit	Amounts advanced by the servicer to winterize one property unit with dry heat.
Basic Claim Information	Dry heat–addl. units	Amounts advanced by the servicer to winterize any additional property units with dry heat.
Basic Claim Information	Wet heat–1unit	Amounts advanced by the servicer to winterize one property unit with wet heat.
Basic Claim Information	Wet heat–addl. unit	Amounts advanced by the servicer to winterize any additional property units with wet heat.
Basic Claim Information	Radiant heat–1 unit	Amounts advanced by the servicer to winterize one property unit with radiant heat.
Basic Claim Information	Radiant heat–addl. unit	Amounts advanced by the servicer to winterize any additional property units with radiant heat.
Basic Claim Information	Reduced pressure zone (RPZ) valve.	Amounts advanced by the servicer to repair, replace, or install (as necessary to comply with state health department requirements) a reduced pressure zone (RPZ) valve.
Basic Claim Information	Pools, spas, and hot tubs winterization.	Amounts advanced by the servicer to winterize pools, spas, and hot tubs.
Basic Claim Information	Utilities	Amounts advanced by the servicer to pay for necessary utility services.
Basic Claim Information	Electricity	Amounts advanced by the servicer to pay for electricity.
Basic Claim Information	Gas	Amounts advanced by the servicer to pay for gas.
Basic Claim Information	Oil	Amounts advanced by the servicer to pay for oil.
Basic Claim Information	Propane	Amounts advanced by the servicer to pay for propane.
Basic Claim Information	Water and sewer	Amounts advanced by the servicer to pay for water and sewer services.
Basic Claim Information	Equipment repair or replacement	Amounts advanced by the servicer for necessary equipment repair or replacement.
Basic Claim Information	Sump pump repair	Amounts advanced by the servicer to pay for repair of a required sump pump.
Basic Claim Information	Sump pump installation	Amounts advanced by the servicer to pay for installation of a required sump pump.
Basic Claim Information	Pumping water from basement	Amounts advanced by the servicer to pay for services related to removing water from the basement of the property.
Basic Claim Information	Water well (pump, tank, and lines)	Amounts advanced by the servicer to pay for necessary water well equipment repair or replacement.
Basic Claim Information	Securing	Amounts advanced by the servicer to properly secure, protect, and preserve vacant and abandoned properties.
Basic Claim Information	Securing of the property	Amounts advanced by the servicer to initially secure the property.
Basic Claim Information	Resecure property	Amounts advanced by the servicer to resecure the property.
Basic Claim Information	Temporary roof repairs	Amounts advanced by the servicer to make required temporary roof repairs.
Basic Claim Information	Pools, spas, and hot tubs securing	Amounts advanced by the servicer to properly secure pools, spas, and hot tubs.
Basic Claim Information	In-ground pools	Amounts advanced by the servicer to properly secure in-ground pools.
Basic Claim Information	Above ground	Amounts advanced by the servicer to properly secure above ground pools.
Basic Claim Information	Hot tubs or spas	Amounts advanced by the servicer to properly secure hot tubs or spas.
Basic Claim Information	Pools, spas, and hot tubs maintenance.	Amounts advanced by the servicer to pay for necessary maintenance to pools, spas, and hot tubs.
Basic Claim Information	Boarding	Amounts advanced by the servicer to properly board any openings in the property (windows and doors) with plywood.
Basic Claim Information	Boarding–½″ plywood	Amounts advanced by the servicer to pay for boarding with ½″ plywood.
Basic Claim Information	Boarding–⅝″ plywood	Amounts advanced by the servicer to pay for boarding with ⅝″ plywood.
Basic Claim Information	Boarding–¾″plywood	Amounts advanced by the servicer to pay for boarding with ¾″ plywood.
Basic Claim Information	Hazard Abatement	Amounts advanced by the servicer to take necessary actions in compliance with federal, state and local regulations with regards to environmental hazards (such as asbestos and radon).
Basic Claim Information	Debris removal	Amounts advanced by the servicer to remove debris from the property, in compliance with federal, state and local regulations.
Basic Claim Information	Cubic yards removed	Total number of cubic yards of debris removed.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Basic Claim Information	Amount paid per cubic yard	Amounts advanced by the servicer to remove debris from the property, per cubic yard.
Basic Claim Information	Number of units (1, 2, 3, or 4)	Amounts advanced by the servicer for debris removal from one unit.
Basic Claim Information	Vehicle removal	Amounts advanced by the servicer to remove abandoned vehicle(s) from the property in compliance with state and local requirements.
Basic Claim Information	Liquidation expenses	Expenses incurred by the servicer necessary to terminate the loan.
Basic Claim Information	Attorney fees	Expenses incurred by the servicer for legal representation necessary to terminate the loan.
Basic Claim Information	Foreclosure attorney fees	Expenses incurred by the servicer for necessary legal representation related to terminating the loan by foreclosure.
Basic Claim Information	DIL attorney fees	Expenses incurred by the servicer for necessary legal representation related to terminating the loan by deed in lieu of foreclosure.
Basic Claim Information	Bankruptcy attorney fees—chapter 7.	Expenses incurred by the servicer for necessary legal representation related to filing for a relief of stay in a Chapter 7 bankruptcy proceeding.
Basic Claim Information	Bankruptcy attorney fees—chapter 13/11.	Expenses incurred by the servicer for necessary legal representation related to filing for a relief of stay in a Chapter 13 or 11 bankruptcy proceeding.
Basic Claim Information	Bankruptcy attorney fees—multiple	Expenses incurred by the attorney fees–servicer for necessary legal multiple representation related to filing for a relief of stay in multiple bankruptcy proceedings.
Basic Claim Information	Ad litem/ curator fees/ warning order attorney fees.	Expenses incurred by the servicer for legal representation appointed by a court to act on behalf of another party, which is necessary to terminate the loan.
Basic Claim Information	Attorney service tax	Expenses incurred by the servicer for payment of taxes imposed on attorney service fees.
Basic Claim Information	Attorney fee for foreclosure restarts.	Expenses incurred by the servicer for necessary legal representation related to terminating the loan in the event that the initial foreclosure was cancelled (not postponed) due to events outside the servicer's control and must be restarted.
Basic Claim Information	Appraisals	Expenses incurred by the servicer to have a VA-assigned appraiser determine the market value of the property.
Basic Claim Information	Single unit	Expenses incurred by the servicer to have a VA-assigned appraiser determine the market value of the single unit property.
Basic Claim Information	Duplex	Expenses incurred by the servicer to have a VA-assigned appraiser determine the market value of the two unit property.
Basic Claim Information	Three units	Expenses incurred by the servicer to have a VA-assigned appraiser determine the market value of the three unit property.
Basic Claim Information	Four units	Expenses incurred by the servicer to have a VA-assigned appraiser determine the market value of the four unit property.
Basic Claim Information	Condominium	Expenses incurred by the servicer to have a VA-assigned appraiser determine the market value of the condominium property.
Basic Claim Information	Appraisal service tax	Expenses incurred by the servicer for payment of taxes imposed on services of appraiser.
Basic Claim Information	Court appraisal	Expenses incurred by the servicer to have a court ordered appraisal completed to determine the market value of the property.
Basic Claim Information	Mileage	Expenses incurred by the servicer to have a VA-assigned appraiser travel to the property to perform an appraisal.
Basic Claim Information	Appraisal update	Expenses incurred by the servicer to have a VA-assigned appraiser update the original appraisal of the property.
Basic Claim Information	Title	Expenses incurred by the servicer for title related costs necessary to terminate the loan.
Basic Claim Information	Title search	Expenses incurred by the servicer for search of records (performed by title company or attorney) prior to a foreclosure sale (to insure a valid foreclosure).
Basic Claim Information	Title examination	Expenses incurred by the servicer for a close examination of all public records that affect the title to the property, including reviewing past deeds, wills, and trusts to make sure the title has passed correctly to each owner and to verify that all prior mortgages have been extinguished.
Basic Claim Information	Title commitment	Expenses incurred by the servicer for a written commitment from the title company stating the conditions under which the title company will insure title to the property.
Basic Claim Information	Trustee sale guaranty (TSG)	Expenses incurred by the servicer for a written commitment from the title company stating the conditions under which it will insure title to the property following a proper foreclosure.
Basic Claim Information	Title endorsement	Expenses incurred by the servicer to pay required endorsement fees.
Basic Claim Information	Title update	Expenses incurred by the servicer to pay for required updates to the title commitment.
Basic Claim Information	Title policy	Expenses incurred by the servicer to pay for the title policy.
Basic Claim Information	Title opinion/abstracting legal opinion.	Expenses incurred by the servicer for a statement issued by an attorney as to the quality of title after examining an abstract of title.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Basic Claim Information	Abstracting update	Expenses incurred by the servicer to pay for required updates to the abstract.
Basic Claim Information	Title service tax	Expenses incurred by the servicer to pay taxes imposed on title services.
Basic Claim Information	Certificate of regularity	Expenses incurred by the servicer to establish sufficiency of probate (wills) proceedings, or other proceedings held outside the county in which the property is situated.
Basic Claim Information	Filing fees	Expenses incurred by the servicer as charged by public officials in the property's area for recording or filing documents related to the loan obligation.
Basic Claim Information	Judgment	Expenses incurred by the servicer as charged by public officials for the recording or filing of a judgment.
Basic Claim Information	Bankruptcy	Expenses incurred by the servicer as charged by public officials for the recording or filing of bankruptcy-related motions.
Basic Claim Information	Lis pendens	Expenses incurred by the servicer as charged by public officials for the recording or filing of notice of the filing of a suit.
Basic Claim Information	Summons	Expenses incurred by the servicer as charged by public officials for the recording or filing of a summons.
Basic Claim Information	Complaint	Expenses incurred by the servicer as charged by public officials for the recording or filing of a complaint.
Basic Claim Information	Petition	Expenses incurred by the servicer as charged by public officials for the recording or filing of a petition.
Basic Claim Information	Order confirming sale	Expenses incurred by the servicer as charged by public officials for the recording or filing of an order confirming sale.
Basic Claim Information	Posting notice of sale	Expenses incurred by the servicer as charged by public officials for the posting of the notice of sale.
Basic Claim Information	Notice affidavit	Expenses incurred by the servicer as charged by public officials for the recording or filing of the affidavit stating that proper notice of sale was posted.
Basic Claim Information	Military affidavit	Expenses incurred by the servicer for a sworn, written statement, affirming that the property owner is not entitled to any rights under the SCRA.
Basic Claim Information	Notice of publication affidavit	Expenses incurred by the servicer as charged by public officials for the recording or filing of the affidavit stating that proper notice of sale was published.
Basic Claim Information	Index number	Expenses incurred by the servicer as charged by public officials for the recording or filing of the index number.
Basic Claim Information	Request for judicial intervention	Expenses incurred by the servicer as charged by public officials for the recording or filing of a request for judicial intervention.
Basic Claim Information	Recording fees—foreclosure	Expenses incurred by the servicer as charged by public officials for recording or filing foreclosure documents.
Basic Claim Information	Foreclosure deed (sheriff's, trustee's, referee's, or commissioner's deed).	Expenses incurred by the servicer as charged by public officials for recording or filing of the deed following foreclosure.
Basic Claim Information	Assignment of sheriff's deed	Expenses incurred by the servicer as charged by public officials for recording or filing the assignment of the deed following foreclosure.
Basic Claim Information	Sheriff's certificate of sale	Expenses incurred by the servicer as charged by public officials for recording or filing the Sheriff's certificate of sale.
Basic Claim Information	Assignment of sheriff's certificate of sale.	Expenses incurred by the servicer as charged by public officials for recording or filing the assignment of the Sheriff's certificate of sale.
Basic Claim Information	Deed to VA	Expenses incurred by the servicer as charged by public officials for recording or filing the deed to VA.
Basic Claim Information	Notice of foreclosure	Expenses incurred by the servicer as charged by public officials for recording or filing the notice of foreclosure.
Basic Claim Information	Substitution of trustee (appointment, agreement, or document).	Expenses incurred by the servicer as charged by public officials for recording or filing the substitution of trustee.
Basic Claim Information	Notice of default/foreclosure notice	Expenses incurred by the servicer as charged by public officials for recording or filing the notice of default/foreclosure notice.
Basic Claim Information	Judgment	Expenses incurred by the servicer as charged by public officials for the recording or filing of a judgment.
Basic Claim Information	Summons	Expenses incurred by the servicer as charged by public officials for the recording or filing of a summons.
Basic Claim Information	Certificate of non-redemption	Expenses incurred by the servicer as charged by public officials for the recording or filing of a certificate of non-redemption.
Basic Claim Information	Recording Fees—DIL	Expenses incurred by the servicer as charged by public officials for recording or filing deed in lieu of foreclosure documents.
Basic Claim Information	Warranty deed from owner to holder.	Expenses incurred by the servicer as charged by public officials for recording or filing the deed from owner to holder.
Basic Claim Information	Estoppel affidavit	Expenses incurred by the servicer as charged by public officials for recording or filing the estoppel affidavit.
Basic Claim Information	Deed to VA	Expenses incurred by the servicer as charged by public officials for recording or filing the deed to VA.

DATA ELEMENT DEFINITIONS—Continued

Event name	Data elements	Business definition of data element
Basic Claim Information	Satisfaction of mortgage	Expenses incurred by the servicer as charged by public officials for recording or filing the satisfaction of mortgage/release of mortgage.
Basic Claim Information	Deed of reconveyance/full release	Expenses incurred by the servicer as charged by public officials for recording or filing the deed of reconveyance/full release.
Basic Claim Information	Foreclosure facilitation fees	Expenses incurred by the servicer as charged by public officials to facilitate the foreclosure process.
Basic Claim Information	Sheriff's/administrator/commissioner fees and costs (includes court costs).	Expenses payable with respect to sheriff/administrator/commissioner fees and costs.
Basic Claim Information	Trustee/referee/master in equity fees.	Expenses incurred by the servicer to pay the trustee/referee/master in equity for fees charged.
Basic Claim Information	Auctioneer's fee	Expenses incurred by the servicer to pay the auctioneer to conduct the foreclosure sale.
Basic Claim Information	Court recorder fee	Expenses incurred by the servicer to pay the court recorder for recording services.
Basic Claim Information	Prothonatory/clerk's fee	Expenses incurred by the servicer to pay the prothonotary/clerk for fees charged.
Basic Claim Information	Other fees and costs	Expenses incurred by the servicer to pay for any liquidation Expenses not previously listed.
Basic Claim Information	Publication of sale/advertisement in newspaper or on the internet.	Expenses incurred by the servicer to pay for publication/advertisement of the notice of sale in an appropriate newspaper.
Basic Claim Information	Service of process	Expenses incurred by the servicer to serve papers on any necessary party of interest.
Basic Claim Information	Personal (sheriff or private entity)	Expenses incurred by the servicer to pay for fees charged to personally serve papers on any necessary party of interest.
Basic Claim Information	By publication	Expenses incurred by the servicer to pay for fees charged to serve legal notice on any necessary party of interest by publication.
Basic Claim Information	By certified Mail	Expenses incurred by the servicer to send required notices by certified mail to all parties of interest.
Basic Claim Information	Investigation fee	Expenses incurred by the servicer to pay the investigator for fees charged.
Basic Claim Information	Non-extinguishable liens	Expenses incurred by the servicer to pay for any liens that are not extinguished by the foreclosure action.
Basic Claim Information	Committee fees and costs	Fees and costs incurred by the servicer to convene the committee to confirm the sale when there is equity and/or IRS liens.
Basic Claim Information	Transfer tax/documentary stamps	Expenses incurred by the servicer for the state or local tax payable upon the transfer of a title.
Basic Claim Information	Property inspections	Expenses incurred by the servicer for required property inspections.
Basic Claim Information	Dates inspections completed	Months, days, years, property inspections were completed.
Basic Claim Information	Property inspection fee	Expenses incurred by the servicer to pay fees charged for required property inspections.
Basic Claim Information	Municipal lien certificate	Expenses incurred by the servicer to obtain a municipal lien certificate.
Basic Claim Information	Title V septic (Massachusetts)	Expenses incurred by the servicer to inspect for and certify compliance with Title V septic requirements.
Basic Claim Information	Poundage	Fee charged by the court for handling the funds received from the sale of the property for third party bids.
Basic Claim Information	Mennonite notices	Expenses incurred by the servicer to notify every party holding a legally protected property interest whose name and address can reasonably be determined by diligent efforts.

Paperwork Reduction Act of 1995

While the proposed rule sets forth collections of information pertaining to proposed § 36.4315a, this supplemental notice contains no new or proposed revised collections of information outside of those referenced in the proposed rule.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this supplemental notice of proposed rulemaking has been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This supplemental notice of proposed rulemaking would have no such effect on State, local, or tribal governments, or the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this supplemental notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This notice provides additional information concerning the computer-based system that VA proposed to implement in its prior rulemaking notice. The additional information does not alone have any economic impact on small entities. Therefore, pursuant to 5 U.S.C. 605(b), the supplemental notice of proposed rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number is 64.114, Veterans Housing Guaranteed and Insured Loans.

Approved: November 20, 2006.

R. James Nicholson,

Secretary of Veterans Affairs.

[FR Doc. 06–9403 Filed 11–21–06; 12:29 pm]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0016; FRL–8248–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Reid Vapor Pressure Requirements for Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by Texas on October 4, 2001. The revisions pertain to Reid Vapor Pressure (RVP) requirements for gasoline. The revisions add exemptions to RVP requirements for research laboratories and academic institutions, competition racing, and gasoline that is being stored or transferred that is not used in the affected counties. The revisions also reduce record keeping requirements for retail gasoline dispensing outlets in the affected counties, and correct a typographical error. We are proposing approval of the revisions pursuant to section 110 and part D of the Federal Clean Air Act.

DATES: Written comments should be received on or before December 27, 2006.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, State/Oversight Section (6PD–O), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7247; fax number 214–665–7263; e-mail address *patterson.alima@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: November 9, 2006.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E6–19992 Filed 11–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[EPA–R08–UST–2006–0295; FRL–8247–2]

Colorado: Tentative Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of tentative determination on application of state of Colorado for final approval, public hearing and public comment period.

SUMMARY: The State of Colorado has applied for final approval of its Underground Storage Tank (UST) Program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Colorado's application and made the tentative decision that the State's UST program satisfies all requirements necessary to qualify for final approval.

DATES: Any member of the public is invited to provide written comments and/or request a public hearing on this determination by December 27, 2006. A public hearing will be held if sufficient public interest is expressed and communicated to EPA in writing by December 27, 2006. EPA will determine by January 26, 2007, whether there is significant interest to hold a public hearing. The State of Colorado will participate in any public hearing held by EPA on this subject. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details.

ADDRESSES: Written comments and requests for a public hearing shall be addressed to: Robert E. Roberts, Regional Administrator, c/o Francisca Chambus (8P–W–GW), U.S. EPA, Region 8, 999 18th Street, Suite 200, Denver, CO 80202–2466. Comments, as well as requests to present oral testimony, must be received by the close of business on December 27, 2006.

All documents relating to this determination are available for public inspection and copying at the following locations: (1) U.S. EPA, Library, Region 8, 999 18th Street, Suite 144, Denver, CO 80202–2466 from 9AM to 4PM, (2) Colorado Department of Labor & Employment, Division of Oil and Public Safety, Public Records Center, 633 17th Street, Suite 200, Denver, CO 80202 from 8AM to Noon, or (3) online at: *http://www.regulations.gov,* with reference to Docket ID No. EPA–R08–UST–2006–0295. However, based on sensitivity, certain materials are available in hardcopy only. Comments

can be submitted via *www.regulations.gov.* 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. If EPA cannot read your comments 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 FURTHER INFORMATION CONTACT: Francisca Chambus at 303–312–6782.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA enables EPA to approve implementation of State UST programs in lieu of the Federal UST program. Approval is granted when it has been determined that the State program: (1) is ''no less stringent'' than the overall Federal program and includes notification requirements of Section 9004(a) (8), 42 U.S.C. 6991c(a)(8), and (2) provides for adequate enforcement of compliance with UST standards of Section 9004(a), 42 U.S.C. 6991c(a).

B. State of Colorado

The Colorado Department of Labor & Employment, Division of Oil & Public Safety (OPS) is the lead implementing agency for the UST program in Colorado. OPS has broad statutory authority to regulate UST releases under Colorado Revised Statutes, Title 8, Labor and Industry, Articles 20 and 20.5. Specific authority to regulate the installation, operation, maintenance, and closure of USTs is found under Colorado Department of Labor and Employment; Division of Oil and Public Safety; Storage Tank Regulation 7 CCR 1101–14.

Colorado is not authorized to carry out its UST program in ''Indian country.'' This includes all lands within the exterior boundaries of the Southern Ute and Ute Mountain Ute Indian Reservations; any land held in trust by the United States for an Indian tribe, and any other areas that are ''Indian country'' within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing, (2) a brief statement of the requester's interest in the RA's determination and of information that he/she intends to submit at such hearing, (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity, and (4) the associated Docket ID Number, if available.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing, and will be made by the RA in the **Federal Register** and newspapers of general circulation in the State. A notice will also be sent to both the person(s) requesting the hearing and the State. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The RA will issue a final determination upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held. Please bring this notice to the attention of any persons known by you to have an interest in this determination.

D. Statutory and Executive Order (EO) Review

This rule only applies to Colorado's UST Program requirements pursuant to RCRA Section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows: (1) Under EO 12866: Regulatory Planning Review, the Office of Management & Budget (OMB) has exempted this rule from review; (2) under Paperwork Reduction Act, this rule does not impose an information collection burden; (3) under Regulatory Flexibility Act, and after considering economic impacts, I certify that this rule will not have significant economic impact on a substantial number of small entities; (4) as described in the Unfunded Mandates Reform Act, because this rule codifies 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; (5) under EO 13132: Federalism, this rule does not apply because it will not have federalism implications; (6) under EO 13175: Consultation & Coordination with Indian Tribal Governments, this rule does not apply because it will not have tribal implications; (7) under EO 13045: Protection of Children from Environmental Health & Safety Risks, this rule is not subject because it is not economically significant, nor is it based on health or safety risks; (8) under EO 13211: Actions that Significantly Affect Energy Supply, Distribution or Use, this rule is not subject because it is not a significant regulatory action as defined in EO 12866; and (9) under the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note), EPA is directed to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (i.e., materials specifications, test methods, sampling procedures and business practices) developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 17, 2006.

Kerrigan G. Clough,

Deputy Regional Administrator, Region 8.

[FR Doc. E6–19988 Filed 11–24–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 401

[CMS–6032–P]

RIN 0938–AO27

Medicare Program; Use of Repayment Plans

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify Medicare regulations to implement a provision of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 pertaining to the use of repayment plans (also known as extended repayment schedules or ''ERS''). Under this provision, we propose to grant a provider or a supplier an extended repayment schedule under certain terms and conditions as defined in the statute. The proposed rule would establish criteria and procedures to apply this requirement and to define the concepts of ''hardship'' and ''extreme hardship.''

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 26, 2007.

ADDRESSES: In commenting, please refer to file code CMS–6032–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Submit electronic comments on CMS regulations with an open comment period.'' (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6032–P, P.O. Box 8020, Baltimore, MD 21244–8032.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6032–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Tom Noplock, (410) 786–3378.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code, CMS–6032–P, and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Electronic Comments on CMS Regulations'' on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

[If you choose to comment on issues in this section, please include the caption ''BACKGROUND'' at the beginning of your comments.]

A. Medicare Overpayment

Medicare overpayments are Medicare funds an individual, provider, or supplier has received that exceed amounts due and payable under the Medicare statute and regulations (plus any applicable interest and penalties assessed on the overpayment). We note that Medicare regulations at 42 CFR 400.202 define a ''supplier'' as ''a physician or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare.''

Generally, overpayments result when payment is made by Medicare for noncovered items or services that exceeds the amount allowed by Medicare for an item or service, or when payment is made for items or services that should have been paid by another insurer (Medicare secondary payer obligations). Once a determination and any necessary adjustments in the amount of the overpayment have been made, the remaining amount is a debt owed to the United States Government.

Section 1870 of the Social Security Act (the Act) provides a framework within which liability for such Medicare overpayments is determined and recoupment of overpayments is pursued. This framework prescribes a decision making process that the agency follows when pursuing the recoupment of Medicare overpayments.

The regulation governing the liability for Medicare overpayments is located at 42 CFR part 401 (subpart F).

B. Statutory Authority

The Federal Claims Collection Act (FCCA) of 1966, Public Law 89–508, 80 Stat. 308 (1966) (amended by the Debt Collection Improvement Act of 1966, Pub. L. 104–134 (1996) (codified at 31 U.S.C. 3711) is the Federal government's basic statutory authority for debt management practices. The Congress intended the FCCA to reduce the amount of litigation previously required to collect claims and to reduce the volume of private relief legislation in

the Congress. The FCCA is independent of the other authorities we use to collect debt and was intended by the Congress to add to, rather than to supplant, other authorities, including common law authority.

The FCCA authorizes the head of an agency to collect claims in any amount. This statute also provides that the head of an agency may, under certain conditions, compromise a claim, or suspend or terminate collection action on a claim. Uncollectible claims in excess of $100,000, exclusive of interest, must be referred to the Department of Justice for compromise.

On November 2, 1977, the Secretary of the Department of Health and Human Services published a rule in the **Federal Register** (42 FR 57351) to delegate authority to the Department Claims Officer generally, and the Administrator of the Centers for Medicare & Medicaid Services (formerly Health Care Financing Administration (HCFA)) for necessary claims collection actions under our programs. The authority delegated to the Administrator covers all of our activities in the Medicare program (title XVIII) and pertains to claims up to $20,000. (This amount has been increased to $100,000; see 31 U.S.C. 3711.)

On August 29, 1983, we published a final rule with comment period titled ''Federal Claims Collection Act; Claims Collection and Compromise'' in the **Federal Register** (48 FR 39060) in accordance with the FCCA. In this final rule, the agency adopted the applicable debt collection tools made available to it under the FCCA including the ability to collect or compromise claims, or suspend or terminate collection action, as appropriate. The final rule also set forth the requirements we would use to evaluate debtors' requests for extended repayment agreements specified in § 401.607.

As part of the Health Insurance Portability and Accountability Act of 1996, the Congress added section 1893 to the Act establishing the Medicare integrity program (MIP) to carry out Medicare program integrity activities that are funded from the Medicare Trust Fund. Section 1893 of the Act expands our contracting authority to allow us to contract with ''eligible entities'' to perform Medicare program integrity activities. These activities include review of provider and supplier activities, including medical, fraud, and utilization review; cost report audits; Medicare secondary payer determinations; education of providers, suppliers, beneficiaries, and other persons regarding payment integrity and benefit quality assurance issues; and developing and updating a list of durable medical equipment items that are subject to prior authorization (42 U.S.C. 1395ddd). These MIP contractors assist us in the identification and collection of provider and supplier Medicare overpayments.

Overview of Current Policy

The current policy CMS and its contractors use for the evaluation of extended repayment schedules (ERSs) is based on the existing regulations at § 401.607(c)(2) [which we are proposing to redesignate as § 401.607(c)(3)] and guidance in the Medicare Financial Management Manual, Pub. 100–6 (Chapter 4, Section 50). Under our current policy, we determine the frequency and amount of the installment payments based on the factors set forth at § 401.607(c)(2) which include: (i) The amount of the claim; (ii) the debtor's ability to pay; and (iii) the cost to CMS of administering an installment agreement.

Under the current ERS review process, we primarily focus on the second factor, the debtor's ability to repay the overpayment, by conducting a review of the debtor's financial status, similar to how banks assess applicants for a loan. In almost all cases, we try to work with the provider or supplier to recover the overpayment. In general, it has been our experience that it is in both CMS and the debtor's best interests to work out a reasonable repayment schedule to recoup an overpayment rather than demand immediate collection of the debt, which could place a provider or supplier at financial risk or force the provider or supplier into bankruptcy.

Under our existing procedures we review financial documentation submitted by the provider or supplier to assess the provider's or supplier's ability to repay the Medicare overpayment. This documentation must include, at a minimum, a statement of financial position (for example, balance sheet), a statement of financial performance (for example, income statement), and a statement of future viability (for example, projected statement of cash flow). In addition, the provider must include a letter from a financial institution proving that it cannot obtain financing from an alternative source.

C. Medicare Prescription Drug, Improvement, and Modernization Act of 2003

1. Hardship Provision

[If you choose to comment on issues in this section, please include the caption ''HARDSHIP PROVISION'' at the beginning of your comments.]

On December 8, 2003, the Congress enacted the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. 108–173). This new legislation contained provisions affecting the recovery of provider and supplier overpayments under the Medicare program. Section 935(a) of the MMA amended title XVIII of the Act by adding a new section 1893(f)(1) to the Act to require us to use certain statutory criteria in evaluating whether a provider or supplier should be granted a repayment schedule of at least 6 months and up to 5 years. Under section 1893(f)(1) of the Act, we may grant a provider or a supplier upon request, a repayment schedule of at least 6 months, if repaying an overpayment within 30 days would constitute a ''hardship'' on the provider or supplier, provided that certain criteria are met.

The new statute at section 1893(f)(1)(B)(i) of the Act defines ''hardship'' based on the relationship between the amount of the overpayment(s) not covered under an existing ERS owed by a provider or supplier and the total amount of Medicare payments made to that provider or supplier over the most recently submitted cost report or for the previous calendar year.

Under section 1893(f)(1)(B) of the Act, a provider or supplier is deemed to be in ''hardship'' when the total amount of all outstanding overpayments not included in an approved, existing repayment schedule, is 10 percent or greater than the total Medicare payments made for the cost reporting period covered by the most recently submitted cost report (for a provider filing a cost report), or the previous calendar year (for a supplier or non cost-report provider). We propose to interpret ''outstanding overpayments'' to include both principal and accrued interest. We read the newly added section 1893(f)(1)(B)(iii) of the Act to exclude overpayments already being repaid under an approved ERS.

We propose to interpret the new ''hardship'' test under section 935(a) of the MMA as not to supersede our extended repayment schedule regulations currently at § 401.607(c)(2), (which we are proposing to redesignate as § 401.607(c)(3) in this proposed rule). Since our existing regulations governing ERSs are promulgated under the FCCA, we do not plan to eliminate the criteria and procedures currently used to grant providers and suppliers ERSs. Instead, we propose adding an initial ''hardship'' test to existing regulations and

procedures for determining a debtor's ERS.

We are proposing that all requests for an ERS first be evaluated under the new ''hardship'' test. Under this MMA provision, if ''hardship'' is determined and no statutory exception applies under § 401.607(c)(2)(iv), then the statute requires that the Secretary grant a provider or supplier a repayment period of at least 6 months but not longer than 3 years.

Section 935(a) of the MMA requires that the Secretary establish rules for cases when a provider or a supplier was not paid during the previous year or paid for only a portion of that year. For these cases, we propose using the last 12 months of Medicare payments made to the provider or supplier. In cases where there is less than a 12-month payment history, we propose that the number of months available be annualized to equal an approximate yearly Medicare payment level for the provider or supplier.

Using the new ''hardship'' test provided in section 1893(f)(1) of the Act, the contractor would calculate ''hardship'' as described in the following examples:

If the debt is from a provider that files cost reports, then the contractor will—

Step 1: Determine cost reporting year covered by most recently filed cost report;

Step 2: Determine total amount of Medicare dollars paid to provider for that cost report year;

Step 3: Determine amount of all outstanding overpayments (principal and accrued interest) not under an existing ERS; and

Step 4: Divide result in Step 3 by result in Step 2.

If result in Step 4 is .10 or greater, then the provider meets the ''hardship'' test.

We note that Medicare dollars paid for providers that file cost reports include all interim payments including tentative settlement amounts.

Example: The provider submits cost report on 05/31/2004 for the cost report year from 01/01/2003 through 12/31/2003. For the cost report year ending 12/31/2003, the provider was paid a total of $1,000,000. On 8/31/2004, a notice of program reimbursement is issued as a result of the final settlement for the cost report year ending 12/31/2002 showing an overpayment of $105,000. Therefore, the provider meets the ''hardship'' test: $105,000 divided by $1,000,000 = .105. (Calculations should be carried out to three decimal points.)

If the debt is from a provider or supplier that does not file cost reports, then the contractor will—

Divide amount of all outstanding overpayments (principal and accrued interest) not under an existing ERS by the Medicare dollars paid by the contractor to the provider or supplier for the previous calendar year. If result is .10 or greater, the provider or supplier meets the ''hardship'' test.

Example: On 09/01/2004, the provider or supplier is issued a demand letter for overpayments resulting from Medical Review of Part A Claims that total $110,000. For calendar year 2003, the provider or supplier was paid $1,000,000 by Medicare. $110,000 divided by $1,000,000 = 11. Based on this calculation, the provider or supplier meets the ''hardship'' test.

If the provider or supplier does not qualify under the ''hardship'' test, we would then analyze the ERS request under the existing ERS procedures, found at newly redesignated § 401.607(c)(3).

2. Exceptions Under the ''Hardship'' Provision in Section 935(a) of the MMA

As stated above, section 935(a) of the MMA sets out exceptions to granting a provider or supplier an extended repayment schedule even if the provider or supplier meets the ''hardship'' test. These exceptions are when there is reason to suspect the provider or supplier may file for bankruptcy, cease to do business, discontinue participation in the program, or when there is an indication of fraud or abuse committed against the program. We propose that contractors continue to use existing procedures and definitions applicable to bankruptcy and fraud or abuse.

3. Extreme Hardship Provision

[If you choose to comment on issues in this section, please include the caption ''EXTREME HARDSHIP PROVISION'' at the beginning of your comments.]

Under section 935(a) of the MMA, the Secretary may grant a provider or a supplier a repayment schedule of 36 months and up to 60 months if repaying an overpayment would constitute an ''extreme hardship'' unless a statutory exception applies under § 401.607(c)(2)(iv). Since the Congress left the definition of ''extreme hardship'' to our discretion, we are considering different approaches for defining ''extreme hardship'' and seek public comment on this section.

We considered proposing a new financial threshold to determine if a provider or supplier was in extreme financial hardship, such as using a 15 percent threshold. We rejected this approach because it could result in discriminating against providers and suppliers who may be similarly financially situated but may attribute more of their total revenue to Medicare income. This could occur for example with a home health agency (HHA) which may attribute 100 percent of its revenue to Medicare business and a skilled nursing facility (SNF) which may only attribute 20 percent of its business to Medicare. The following example may help illustrate the inequitable results that may occur. If a HHA reporting $1 million in total revenue (100 percent of which was attributed to Medicare income), was subject to a 15 percent extreme hardship test, the HHA would need to owe an overpayment of 15 percent of $1 million, or at least $150,000, to qualify as being in extreme hardship. However, if a SNF reporting $1 million in total revenue had only 20 percent of its income attributed to Medicare ($200,000), this SNF would need to owe an overpayment of 15 percent of $200,000, or at least $30,000, in order to qualify as being in extreme hardship. This example illustrates the problems inherent with using a set threshold in defining ''extreme hardship'' for purposes of evaluating a provider's or supplier's ability to make payment on a Medicare debt. In fact, we believe that using any fixed financial variables in this type of evaluation poses limitations on CMS's ability to maintain the regulatory flexibility needed to properly evaluate a Medicare provider or supplier's request for an ERS. Using one fixed set of financial variables to determine the length of an ERS would be problematic and inefficient since the ERS evaluation is a multi-variable analysis. We need to review several variables contained in financial documents that include statements of a provider or supplier's financial position, financial performance, and future viability in order to properly assess a provider or debtor's ability to pay. Moreover, it is difficult for CMS to predict which financial variables will be the most useful in its analysis for each provider or supplier since this may vary on a case-by-case basis.

We propose to define ''extreme hardship'' when a provider or supplier qualifies under the ''hardship'' provision defined above and the provider's or supplier's request for an ERS is approved under newly redesignated § 401.607(c)(3). If we determine the request meets the criteria in newly redesignated § 401.607(c)(3) and meets the CMS manual guidance set forth in the Medicare Financial Management Manual, Pub. 100–6, Chapter 4, Section 50, the provider or supplier may be granted an ERS between 36 and 60 months. We are also proposing that contractors apply the

statutory exceptions to ''extreme hardship'' cases in a similar manner as they do to ''hardship'' cases. We solicit comments on other alternative approaches to define ''extreme hardship'' that could distinguish between the most extreme cases requiring ERSs between 36 and 60 months.

4. Extended Repayment Schedules

[If you choose to comment on issues in this section, please include the caption ''EXTENDED REPAYMENT SCHEDULES'' at the beginning of your comments.]

We propose to initially handle ERS requests differently than we have under our current regulations. The proposed rule would allow providers or suppliers that meet the ''hardship'' test and request only a 6-month ERS period, the opportunity to pay back the Medicare debt in 6 months without having to submit financial documentation to the contractor in accordance with the existing instructions given in the Medicare Financial Management Manual, CMS, Pub. 100–6, Chapter 4, Section 50. Not requiring financial documentation, such as financial statements, a bank denial letter, etc., may provide a provider or supplier time to generate or secure the necessary capital to liquidate the debt without having to file extensive documentation in order to secure a repayment schedule.

Under the proposed regulation, a provider or supplier that requests a 6-month repayment schedule, meets the ''hardship'' test, does not fall within an exception, and elects not to submit financial documentation would be approved for a 6-month repayment schedule. Any provider or supplier qualifying for the 6-month ERS under the ''hardship'' provision has the choice to turn down the 6-month ERS and either pay off the debt within 30 days of the date of determination or request a longer than 6-month ERS. In addition, we would not prohibit any provider or supplier under the 6-month ''hardship'' provision ERS from applying for a longer ERS if it later desires to do so under § 401.607(c)(3).

For all ERS requests, with the exception of those 6-month ERSs granted without a submission of financial documentation, we propose to rely on current regulations and procedures that require the provider or supplier to submit financial documentation in accordance with the Medicare Financial Management Manual, CMS Pub. 100–6, Chapter 4, Section 50. A provider or supplier must continue to submit a written request that refers to the specific overpayment for which an ERS is being requested, the number of months requested, and include the first payment with its request. The contractor would determine the duration of the ERS based on its review of the provider or supplier's documentation in accordance with CMS manual guidance.

While the statute permits us to immediately collect on an entire overpayment, if a provider or supplier misses one installment payment in any ERS granted under section 935(a) of the MMA, we are proposing to impose this penalty only on the automatic 6-month repayment schedules. With all other ERSs, we propose to continue to use the existing procedures that define a default of an ERS as missing two consecutive installment payments.

II. Provisions of the Proposed Regulations

[If you choose to comment on issues in this section, please include the caption ''PROVISIONS OF THE PROPOSED REGULATIONS'' at the beginning of your comments.]

We are proposing to revise paragraph (a) in § 401.601, *Basis and scope*, to read as follows: ''This subpart implements for CMS the Federal Claims Collection Act (FCCA) of 1966 (amended 1996) (31 U.S.C. 3711), and conforms to the regulations (31 CFR parts 900–904) issued jointly by the Department of the Treasury and the Department of Justice that generally prescribe claims collection standards and procedures under the FCCA for the Federal government. This subpart also implements section 1893(f)(1) of the Act regarding the use of repayment plans.''

In addition, we are proposing in § 401.603 to add a definition for an ''Extended repayment schedule.''

We are proposing to redesignate § 401.607(c)(2), ''CMS decision,'' as § 401.607(c)(3). In addition, we are proposing a new § 401.607(c)(2), ''Extended repayment schedule,'' in accordance with 1893(f)(1) of the Act. The provisions of section 1893(f)(1) of the Act, as amended by section 935(a) of the MMA, would be implemented by new § 401.607(c)(2), ''Extended repayment schedule.''

III. Collection of Information Requirements

This proposed rule does not impose any new information collection or recordkeeping requirements. The burden associated with the collection activities discussed in the preamble that pertain to the extension of repayment schedules is currently approved under Office of Management and Budget (OMB) control number 0938–0270, with an expiration date of September 30, 2007.

However, in addition to the requirements discussed in this proposed rule, we plan to submit a revised information collection request (ICR) to OMB for approval. As discussed in Section I.C.4. of the preamble, providers or suppliers that meet the ''hardship'' test and request only a 6-month ERS period, will have the opportunity to pay back the Medicare debt in 6 months without having to submit financial documentation to the contractor. This new requirement reduces the information collection burden placed on providers and suppliers. As part of the OMB approval process for the revised ICR, the revisions to 0938–0270 will be announced in **Federal Register** notices and made available to the public for comment.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule would not reach the economic threshold and thus is not considered a major rule. There would be no additional costs or documented savings resulting from the implementation of

this rule. The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, approximately 95 percent of the health care industry is considered small businesses according to the Small Business Administration's size standards with total revenues of $6 million to $29 million or less in any 1 year. Individuals and States are not included in the definition of a small entity. Because there are no additional costs or documented savings resulting from the implementation of this rule, this rule would not have a significant impact on small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because there are no additional costs or documented savings resulting from the implementation of this rule, this rule would not have a significant impact on small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This rule would not have an effect on the governments mentioned and the private sector costs would be less than $120 million threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule would not have a substantial effect on State or local governments.

B. Anticipated Effects

1. Effects on Medicare Providers

This rule could affect all Medicare provider types with a Medicare overpayment. This proposed rule would allow Medicare providers falling within these provisions a 6-month period to pay back debt owed to Medicare without being required to file extensive financial documentation. We believe that this short time period may permit a provider to generate or secure the necessary capital to liquidate the debt without filing the financial documentation required to secure a longer repayment schedule.

2. Effects on Other Providers

There would be no effect on other providers.

3. Effects on the Medicare and Medicaid Programs

There would be no additional costs or documented savings resulting from the implementation of this rule. There may be savings due to a possible reduction in paperwork.

C. Alternatives Considered

We considered adopting mathematically precise distinctions between ''hardship'' and ''extreme hardship,'' but rejected this approach. To select any type of numerical threshold, for example, defining ''extreme hardship'' as 15 percent of total overpayments in an effort to distinguish it from the test for ''hardship,'' would result in inequitable outcomes for different providers and suppliers as discussed in the ''extreme hardship'' section of the preamble. We believe the proposed approach will lead to more equitable solutions.

In implementing section 935 of the MMA, we want to assure providers and suppliers that we will be looking closely at the financial picture each of them has that has prompted them to seek an ERS. Analyzing these financial profiles is a complex undertaking that does not lend itself to overly simplified numerical cutoffs that may qualify some for longer repayment periods but deny them to others that ought to be just as eligible. We seek comment on other alternative ways to distinguish between ''hardship'' and ''extreme hardship'' in an effort to establish a standardized approach to applying the two definitions.

D. Executive Order 12866 Statement

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services would amend 42 CFR chapter IV as set forth below:

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 401 continues to read as follows:

Authority: Secs. 1102, 1871, and 1893 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ddd). Subpart F is also issued under the authority of the Federal Claims Collection Act (amended 1996) (31 U.S.C. 3711).

2. In § 401.601, paragraph (a) is revised to read as follows:

§ 401.601 Basis and scope.

(a) *Basis.* This subpart implements for CMS the Federal Claims Collection Act (FCCA) of 1966 (amended 1996) (31 U.S.C. 3711), and conforms to the regulations (31 CFR parts 900–904) issued jointly by the Department of the Treasury and the Department of Justice that generally prescribe claims collection standards and procedures under the FCCA for the Federal government. This subpart also implements section 1893(f)(1) of the Act regarding the use of repayment plans.

* * * * *

3. In § 401.603, add a new definition for ''Extended repayment schedule'' to read as follows:

§ 401.603 Definitions.

* * * * *

Extended repayment schedule means installment payments to pay back a debt.

§ 401.607 [Amended]

4. In § 401.607—

A. Redesignate paragraph (c)(2) as paragraph (c)(3).

B. Add a new paragraph (c)(2).

The revisions read as follows:

§ 401.607 Claims collection.

* * * * *

(c) * * *

(2) *Extended repayment schedule.*

(i) For purposes of this paragraph (c)(2), the following definitions apply:

Hardship exists when the total amount of all outstanding overpayments (principal and interest) not included in an approved, existing repayment schedule is 10 percent or greater than the total Medicare payments made for the cost reporting period covered by the most recently submitted cost report for a provider filing a cost report, or for the

previous calendar year for a supplier or non cost-report provider.

Extreme hardship exists when a provider or supplier qualifies as being in ''hardship'' as defined in this paragraph and the provider's or supplier's request for an extended repayment schedule (ERS) is approved under paragraph (c)(3) of this section.

(ii) CMS or its contractor reviews a provider's or supplier's request for an ERS. For a provider or a supplier not paid by Medicare during the previous year or paid only during a portion of that year, the contractor or CMS will use the last 12 months of Medicare payments. If less than a 12-month payment history exists, the number of months available is annualized to equal an approximate yearly Medicare payment level for the provider or supplier.

(iii) For a provider or supplier requesting an ERS, CMS or its contractor evaluates the request based on the definitions and information submitted under this paragraph (c)(2). For a provider or supplier whose situation does not meet the definitions in paragraph (c)(2)(i) of this section, CMS or its contractor evaluates the ERS request using the information in paragraph (c)(3) of this section in deciding to grant an ERS.

(iv) CMS or its contractor is not required to grant an ERS to a provider or supplier if there is reason to suspect the provider or supplier may file for bankruptcy, cease to do business, discontinue participation in the Medicare program, or there is an indication of fraud or abuse committed against the Medicare program.

(v) CMS or its contractor may grant a provider or a supplier an ERS of at least 6 months if repaying an overpayment within 30 days would constitute a ''hardship'' as defined in paragraph (c)(2)(i) of this section. If a provider or supplier is granted an ERS for 6 months under paragraph (c)(2)(i) of this section, missing one installment payment constitutes a default and the total balance of the overpayment will be recovered immediately.

(vi) CMS or its contractor may grant a provider or a supplier an ERS of 36 months and up to 60 months if repaying an overpayment would constitute an ''extreme hardship'' as defined in paragraph (c)(2)(i) of this section.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: April 5, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: May 17, 2006.

Michael O. Leavitt,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on November 20, 2006.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AT67

[Docket No.061109296–6296–01; I.D. 110606A]

Fisheries of the Northeastern United States; Atlantic Bluefish Fisheries; 2007 Atlantic Bluefish Specifications; 2007 Research Set-Aside Project

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2007 specifications for the Atlantic bluefish fishery, including state-by-state commercial quotas, a recreational harvest limit, and recreational possession limits for Atlantic bluefish off the east coast of the United States. The intent of these specifications is to establish the allowable 2007 harvest levels and possession limits to attain the target fishing mortality rate (F), consistent with the stock rebuilding program in Amendment 1 to the Atlantic Bluefish Fishery Management Plan (FMP).

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on December 27, 2006.

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

- E-mail: *Bluespecs2007@noaa.gov*. Include in the subject line the following identifier: ''Comments on 2007 Bluefish Specifications.''
- 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 2007 Bluefish Specifications.''
- Fax: (978) 281–9135.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The specifications document is also accessible via the Internet at *http://www.nero.noaa.gov*.

The Northeast Fisheries Science Center (Center) 41st Stock Assessment Review Committee (SARC) Bluefish Assessment Report (updated for 2006) is available at: *http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0514/*.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, (978) 281–9103, or Michael Pentony, Senior Fishery Policy Analyst, (978) 281–9283.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the Atlantic Bluefish Fishery Management Plan (FMP) are prepared by the Mid-Atlantic Fishery Management Council (Council) and appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The management unit for bluefish (*Pomatomus saltatrix*) is U.S. waters of the western Atlantic Ocean.

The FMP requires that the Council recommend, on an annual basis, total allowable landings (TAL) for the fishery, consisting of a commercial quota and recreational harvest limit (RHL). A research set aside (RSA) quota is deducted from the bluefish TAL (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors. The annual review process for bluefish requires that the Council's Bluefish Monitoring Committee (Monitoring Committee) review and make recommendations based on the best available data including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee, the Council makes a recommendation to the Northeast Regional Administrator (RA). This FMP is a joint plan with the Atlantic States Marine Fisheries Commission (Commission); therefore, the

Commission meets during the annual specification process to adopt complimentary measures.

The Council's recommendations must include supporting documentation, concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**. After considering public comment, NMFS will publish final specifications in the **Federal Register**.

In July 2006, the Monitoring Committee met to discuss the updated estimates of bluefish stock biomass and project fishery yields for 2007. In August 2006, the Council approved the Monitoring Committee's recommendations and the Commission's Bluefish Board (Board) adopted complementary management measures.

Proposed Specifications

Updated Model Estimates

According to Amendment 1 to the FMP (Amendment 1), overfishing for bluefish occurs when F exceeds the fishing mortality rate that allows maximum sustainable yield (F_{MSY}), or the maximum F threshold to be achieved. The stock is considered overfished if the biomass (B) falls below the minimum biomass threshold, which is defined as $1/2_{BMSY}$. The Amendment also established that the long term target F ($F_{0.1}$) is 90 percent of F_{MSY}, and the long term target B is B_{MSY}. The rebuilding plan established through Amendment 1 stipulates that the target fishing mortality rate (F_{target}) in 2007 be set at F = 0.31, or the status quo fishing mortality rate (F_{year}), whichever is less.

An age-structured assessment program (ASAP) model presented by the bluefish SARC in 2005 estimated annual biomass and F through the 2004 fishing year, as well as associated biological reference points. The original ASAP model output was revised in 2006. The corrected values were made available by the Center in August of 2006 as follows: B_{2004} = 230 million lb (104,136 mt), which was greater than the minimum biomass threshold, $1/2B_{MSY}$ = 162 million lb (73,526 mt), and F_{2004} = 0.15, which was less than the maximum F threshold, F_{MSY} = 0.19. These revisions indicated that the bluefish stock was not overfished and that overfishing was not occurring (see **ADDRESSES** for link to revised report).

The ASAP model was updated for the purpose of estimating the current status of the bluefish stock; i.e., 2005 biomass and F estimates were compared to the corrected ASAP model output, in order to enable the Monitoring Committee to recommend 2007 specifications using landing information through the 2005 fishing year. Additionally, a projection of biomass through 2010 was done using $F_{target} = F_{2005}$ = 0.15. This projection identified a target yield for 2007 and also indicated that biomass is likely to reach the target by the rebuilding deadline; i.e., the year 2010. The Monitoring Committee supported the model updates that derived the following new estimates of biomass and projected fishery yields based on the corrected biological reference points for 2004: (1) An estimated stock biomass for 2005, B_{2005} = 310 million lb (140,614 mt); and (2) projected yields for 2007 using $F_{target} = F_{2005}$ = 0.15. Based on the updated biological reference points, and the 2005 estimate of bluefish stock biomass, the bluefish stock is not considered overfished: B_{2005} = 310 million lb (140,614 mt) is greater than the minimum biomass threshold, 1/2 B_{MSY} = 162 million lb (73,526 mt). Estimates of fishing mortality have declined from 0.41 in 1991 to 0.15 in 2005. The new model results also conclude that the Atlantic stock of bluefish is not experiencing overfishing; i.e., the most recent F (F_{2005} = 0.15) is less than the maximum F overfishing threshold (F_{MSY} = 0.19).

2007 TAL

The FMP specifies that the bluefish stock is to be rebuilt to BMSY over a 9–year period. The FMP requires the Council to recommend, on an annual basis, a level of total allowable catch (TAC) consistent with the rebuilding program in the FMP. An estimate of annual discards is deducted from the TAC to calculate the total allowable landings (TAL) that can be made during the year by the commercial and recreational fishing sectors combined. The TAL is composed of a commercial quota and a RHL. The FMP rebuilding program requires the TAC for any given year to be set based either on the target F resulting from the stock rebuilding schedule specified in the FMP (0.31 for 2007), or the F estimated in the most recent fishing year (F_{2005} = 0.15), whichever is lower. Therefore, the 2007 recommendation is based on an estimated F of 0.15. An overall TAC of 32.033 million lb (14,530 mt) was recommended as the coast-wide TAC by the Council at its August 2006 meeting to achieve the target fishing mortality rate, (F = 0.15) in 2007, and to ensure that the bluefish stock continues toward the long term biomass target, B_{MSY} = 324 million lb (147,052 mt), consistent with the rebuilding schedule specified in Amendment 1. Based on the 2005 biomass estimate (310 million lb (140,614 mt)) the bluefish stock is well above the minimum biomass threshold (1/2 B_{MSY} = 162 million lb (73,526 mt)), but is still slightly below the long-term biomass target (B_{MSY} = 324 million lb (147,052 mt)).

The TAL for 2007 is derived by subtracting an estimate of discards of 4.271 million lb (1,937 mt), the average discard level from 2001–2005, from the TAC. After subtracting estimated discards, the 2007 TAL would be approximately 12 percent greater than the 2006 TAL, or 27.762 million lb (12,593 mt). Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2007 would be 4.720 million lb (2,141 mt), and the RHL would be 23.043 million lb (10,452 mt) in 2007. In addition, up to 3 percent of the TAL may be allocated as RSA quota. The discussion below describes the recommended allocation of TAL between the commercial and recreational sectors, and its proportional adjustment downward to account for the recommended bluefish RSA quota.

Proposed Commercial Quota and Recreational Harvest Limit

The FMP stipulates that in any year in which 17 percent of the TAL is less than 10.500 million lb (4,763 mt), the commercial quota may be increased up to 10.500 million lb (4,763 mt) as long as the recreational fishery is not projected to land more than 83 percent of the TAL in the upcoming fishing year, and the combined projected recreational landings and commercial quota would not exceed the TAL. At the Monitoring Committee meeting, Council staff presented a new mechanism for estimating projected recreational landings (simple linear regression of the recent (2000–2005) temporal trend in recreational landings) for the 2007 fishing year. The rationale provided for why this method was preferred was that the Marine Recreational Fisheries Statistics Survey (MRFSS) sampling coverage in wave 1 increased dramatically in 2005 compared to previous years, and to extrapolate this wave 1 landing level to the upcoming year would result in a higher estimate of projected landings than would likely be achieved. The Monitoring Committee, which met in July 2006, reviewed and recommended using the linear projection approach for projecting 2007 recreational landings. Recreational landings are projected to reach 17.813 million lb (8,080 mt) in 2007. If the

maximum commercial quota of 10.500 million lb (4,763 mt) is established within a TAL of 27.762 million lb (12,593 mt) this would leave 17.262 million lb (7,830 mt) for the recreational fishery. This amount is less than the projected 2007 recreational landings (17.813 million lb (7,830 mt)) which when added to the maximum allowable commercial quota of 10.500 million lb (4,763 mt) would exceed the overall TAL. Therefore, because the FMP and regulations governing the bluefish fishery do not allow for this maximum allowable commercial quota, the Monitoring Committee and the Council recommended, and NMFS proposes, to transfer 4.780 million lb (2,168 mt) from the initial recreational allocation of 23.043 million lb (10,452 mt) resulting in a proposed 2007 commercial quota of 9.500 million lb (4,309 mt) and a RHL of 18.262 million lb (8,284 mt). These allocations were also recommended by the Commission to be implemented by the states for fisheries within state waters.

RSA

A request for proposals was published to solicit research proposals to utilize RSA in 2006 based on research priorities identified by the Council (December 23, 2005; 70 FR 76253). One research project that would utilize bluefish RSA has been approved by the RA and forwarded to the NOAA Grants Office. Therefore, a 363,677–lb (164,961–kg) RSA quota is proposed. Consistent with the allocation of the bluefish RSA, the proposed commercial quota for 2007 would be reduced to 9.376 million lb (4,253 mt) and the proposed RHL is reduced to 18.023 million lb (8,175 mt).

Proposed Recreational Possession Limit

The Council recommends, and NMFS proposes, to maintain the current recreational possession limit of up to 15 fish per person to achieve the RHL.

Proposed State Commercial Allocations

The proposed state commercial allocations for the recommended 2007 commercial quota are shown in Table 1 below, based on the percentages specified in the FMP. The table shows the allocations both before and after the deduction made to reflect the proposed RSA allocation.

TABLE 1. PROPOSED BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2007

States	Quota	2007 Commercial Quota		2007 Commercial Quota (lb)	2007 Commercial Quota (kg)
	Percent Share	(lb)	(kg)	With Research Set-Aside	With Research Set-Aside
ME	0.6685	63,508	28,807	62,676	28,429
NH	0.4145	39,378	17,862	38,862	17,628
MA	6.7167	638,087	289,434	629,728	285,643
RI	6.8081	646,770	293,373	638,297	289,530
CT	1.2663	120,299	54,567	118,723	53,852
NY	10.3851	986,585	447,512	973,661	441,650
NJ	14.8162	1,407,539	638,456	1,389,101	630,092
DE	1.8782	178,429	80,935	176,092	79,875
MD	3.0018	285,171	129,353	281,435	127,658
VA	11.8795	1,128,553	511,908	1,113,769	505,202
NC	32.0608	3,045,776	1,381,555	3,005,877	1,363,457
SC	0.0352	3,344	1,517	3,300	1,497
GA	0.0095	903	409	891	404
FL	10.0597	955,672	433,490	943,153	427,811
Total	**100.0001**	**9,500,000**	**4,309,172**	**9,375,562**	**4,252,727**

Classification

NMFS has determined that the proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of the IRFA can be obtained from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov*. A summary of the economic analysis follows.

There were no large entities that participated in this fishery, as defined in section 601 of the RFA. Because there are no large entities participating in this fishery, there are no disproportionate effects on small versus large entities. Information on costs in the fishery are not readily available and vessel profitability cannot be determined

directly. Therefore, changes in gross revenues were used as a proxy for profitability. In the absence of quantitative data, qualitative analyses were conducted.

The participants in the commercial sector were defined using two sets of data. First, the Northeast dealer reports were used to identify any vessel that reported having landed 1 or more pounds of bluefish during calendar year 2005 (the last year for which there is complete data). These dealer reports identify 745 vessels that landed bluefish in states from Maine to North Carolina. However, this database does not provide information about fishery participation in South Carolina, Georgia, or Florida. To identify those commercial bluefish vessels, South Atlantic Trip Ticket reports were used to identify 882 vessels that landed bluefish in North Carolina and 620 vessels that landed bluefish on Florida's east coast. The bluefish landings in South Carolina and Georgia represented less than 1/10 of 1 percent of total landings, a negligible proportion of the total bluefish landings along the Atlantic coast in 2005. In recent years, approximately 2,063 party/charter vessels may have been active and/or caught bluefish.

The IRFA analyzed three alternatives (including the no action/status quo alternative) for allocating the TAL between the commercial and recreational sectors of the fishery. Consistent with FMP's rebuilding schedule and the status of the resource as assessed by the revised SARC–41 report and the updated model projections, alternatives one and two were based on an overall TAL of 27.762 million lb (12,593 mt) and included an RSA quota of 363,677 lb (164,961 kg). The no action alternative includes an overall TAL of 24.799 million lb (11,249 mt) and an RSA quota of 363,677 lb (164,961 kg). Outside of the difference in the overall TAL specification, the alternatives differed only in the manner in which the TAL was allocated between the commercial and recreational sectors.

The recommended alternative, before RSA deduction, would allocate 9.500 million lb (4,309 mt) to the commercial sector and 18.262 million lb (8,284 mt) to the recreational sector. Alternative 2, the most restrictive alternative, would have allocated 4.720 million lb (2,141 mt) to the commercial sector and 23.043 million lb (10,452 mt) to the recreational sector, reflecting the percentage allocations specified in the FMP (i.e., the 17–percent commercial/83–percent recreational sector split). Alternative 3 would have allocated 8.082 million lb (3,666 mt) to the commercial sector and 16.718 million lb (7,583 mt) to the recreational sector, reflecting the commercial level that was place in 2006 (i.e., status quo/no action alternative).

For the commercial sector, the recommended coast-wide quota is approximately 35 percent higher than 2005 commercial landings. Impacts on individual commercial vessels were assessed by conducting a threshold analysis using the dealer reports for the 745 vessels that landed bluefish from Maine through North Carolina. The analysis projected that there would be no revenue change for 638 out of 745 vessels, while 104 vessels could incur slight revenue losses of less than 5 percent. Another three vessels could incur revenue losses of between 5 percent and 39 percent; all these vessels identified home ports in New York. According to a threshold impact analysis that compared 2005 landings from the Northeast dealer reports to the recommended 2007 adjusted commercial quota allocation, New York could experience decreases in landings up to 14 percent, while overall coast wide landings would increase by approximately 33 percent. This is due to the fact that New York's proposed 2007 quota is smaller than actual 2005 landings.

The impacts of the proposed alternative on commercial vessels in the South Atlantic were assessed using trip ticket data. The analysis concluded that as a consequence of the 2007 recommended allocation compared to 2005 landings, there would be no decreased landings in North Carolina, Florida, and Georgia. On average, the potential increase in landings in North Carolina is expected to be minimal (approximately 7 percent); whereby, no projected revenue losses are expected for vessels that landed in Florida. While the potential percentage increase in bluefish landings from Georgia appears high (136 percent), bluefish landed in Georgia represent a very small proportion of the overall coast wide landings (less than 1/10 of 1 percent), so this would represent a very small increase in absolute terms. The provision that allows commercial quota to be transferred from one state to another may result in transfers of quota to New York and possibly North Carolina, from other states, thus mitigating the potential negative revenue impacts. While not assured, such transfers have been made annually in recent years, including 2004 and 2006.

The analysis of Alternative 2 concluded that, for the commercial sector, there would be a 33–percent decrease in total potential commercial landings in 2007 compared to 2005 landings. The analysis of impacts on individual commercial vessels projected that there would be no revenue change for 93 of the 745 vessels that landed bluefish in 2005, while 585 vessels could incur slight revenue losses (less than 5 percent). Another 52 vessels could incur revenue losses between 5 percent and 39 percent, while 15 vessels could incur revenue losses of greater than 39 percent. Nearly all of the vessels projected to incur revenue losses of greater than 5 percent had home ports in Massachusetts, New York, New Jersey, Pennsylvania, or North Carolina. Again, the commercial quota transfer provision could be expected to mitigate some or all of these impacts, although to a lesser extent than in the other alternatives, as all states would have less quota to transfer.

The impacts of Alternative 2 on commercial vessels in the south Atlantic area were assessed using trip ticket data. The analysis concluded that these impacts would result in revenue reductions associated with allowable landings of approximately 47 percent for vessels that landed in North Carolina. However, on average, reductions in landings would be expected to approximate 6 percent for vessels that land in North Carolina. No projected revenue losses are expected for vessels that land in Florida.

The analysis of Alternative 3 concluded that, for the commercial sector, there would be a 15–percent increase in total potential commercial landings in 2007 compared to actual landings in 2005. The analysis of impacts on individual commercial vessels projected that there would be no revenue change for 324 of the 745 vessels that landed bluefish in 2005, while 411 could incur slight revenue losses (less than 5 percent). Another 14 vessels could incur revenue losses between 5 percent and 39 percent. The vessels projected to incur revenue losses of greater than 5 percent had home ports in New York, New Jersey, and North Carolina. Similar to the other alternatives, the commercial quota transfer provision could be utilized to mitigate revenue losses, the extent to which would be dependent on a state's willingness and ability to partake in the transfer.

The impacts of Alternative 3 on commercial vessels in the south Atlantic area were assessed using trip ticket data. The analysis concludes that these impacts would result in revenue reductions associated with allowable landings of approximately 9 percent for 882 vessels identified as landing in North Carolina and no revenue

reductions for vessels landing in Florida.

For the recreational sector of the fishery, there were no negative revenue impacts projected to occur with regard the recommended RHLs because this level would be close to the recreational landings in 2005 (16.162 million lb (7,331 mt)), and above the recreational landings projected for 2007 through the linear projection approach (17.813 million lb (8,080 mt). The recommended RHL is higher than the other two other alternatives, to account for this increase in expected landings. The recreational fishery impacts may be greater under Alternatives 3, compared to the recommended measures under Alternative 1, because the RHL under this alternative is less than the projected landings for 2007. Although there is very little empirical evidence regarding the sensitivity of charter/party anglers to regulation, it is anticipated that the proposed harvest levels will not affect the demand for charter/party boat trips.

The IRFA also analyzed the impacts on revenues of the proposed RSA amount and found that the social and economic impacts are minimal. Assuming that the full RSA of 363,677 lb (164,961 kg) is landed and sold to support the proposed research project (a supplemental finfish survey in the Mid-Atlantic) then all of the participants in the fishery would benefit from the anticipated improvements in the data underlying the stock assessments. Because the recommended overall commercial quota is higher than 2005 landings, no overall negative impacts are expected in the commercial sector. Based on recent trends in the recreational fishery, recreational landings will more than likely remain below the recommended harvest level in 2007. A full analysis is available from the Council (see **ADDRESSES**).

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

Dated: November 20, 2006.

Samuel D. Rauch III,

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

[FR Doc. E6–20005 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 227
Monday, November 27, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 20, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *oira_submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal Plant and Health Inspection Service

Title: Irradiation Phytosanitary Treatment for Fresh Fruits and Vegetables.

OMB Control Number: 0579–0155.

Summary of Collection: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests and noxious weeds. Regulations in 7 CFR part 305 provide for the use of irradiation as a phytosanitary treatment for certain fruits and vegetables imported in the United States. The irradiation treatment provides protection against 11 species of fruit flies and mango seed weevil.

Need and Use of the Information: The Animal and Plant Health Inspection Service (APHIS) will collect information using a compliance agreement, 30-day notification, labeling requirements, dosimetry recordings, requests for dosimetry device approval, recordkeeping, requests for facility approval. Without the collection of this information, APHIS would have no practical way of determining that any given commodity had actually been irradiated.

Description of Respondents: Business or other for profit; individuals or households; farms.

Number of Respondents: 25.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 760.

Animal and Plant Health Inspection Service

Title: Federal Plant Pest and Noxious Weeds Regulations.

OMB Control Number: 0579–0054.

Summary of Collection: The Plant Protection and Quarantine Program of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture is responsible for preventing plant pests and noxious weeds from entering the United States, preventing the spread of pests and weeds not widely distributed in the United States, and eradicating those imported pests and weeds when eradication is feasible. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will collect information to evaluate the risk associated with the proposed movement of plant pest, noxious weeds, and soil. APHIS will also collect information to monitor operations at facility to ensure permit conditions are being met. The information is used to determine whether a permit can be issued, and also to develop risk-mitigating conditions for the proposed movement. If the information were not collected, APHIS ability to protect the United States from a plant pest or noxious weed incursion would be significantly compromised.

Description of Respondents: Business or other for-profit; individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 55,816.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 48,435.

Ruth Brown,
Departmental Information Collection Clearance Officer.

[FR Doc. E6–19963 Filed 11–24–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farmer-Stock Peanuts Available for Sale in Online Auction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) is announcing that the inventoried farmer-stock peanuts will be available for sale as unrestricted use on November 29, 2006 on the Internet at *www.theseam.com*.

EFFECTIVE DATE: November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Jose Gonzalez, Inventory Program Manager, Warehouse and Inventory Division, Farm Service Agency, USDA, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553. Telephone: (202) 690–2534. E-mail: *jose.gonzalez@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the

USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: CCC acquires farmer-stock peanuts through the forfeiture of marketing assistance loans obtained in accordance with the Farm Security and Rural Investment Act of 2002. CCC's general sales policy is to maximize the returns to the Corporation. The authority for selling CCC-owned peanuts is the CCC Charter Act and section 165 of the Federal Agriculture Improvement and Reform Act of 1996. The regulations at 7 CFR, part 1402, contain CCC policy for certain commodities available for sale by CCC.

CCC has contracted with The Seam, LLC, of Memphis, Tennessee to provide online marketing services to sell CCC-owned peanuts on the Internet. CCC will entertain offers from prospective buyers for the purchase of CCC-owned peanuts that are included in the inventory listed on The Seam's web site.

CCC owns 41,925 tons of farmer-stock peanuts. The inventory is composed of the following: 24,329 tons of Runner-type; 10,546 tons of Spanish-type; 4,836 tons of Virginia-type; and 2,214 tons of Valencia-type peanuts. The peanuts will be made available in an auction sale format in lieu of individual negotiated sales. All CCC inventoried peanuts will be available for sale as unrestricted use at *www.theseam.com* on November 29, 2006, from 10 a.m. to 12 p.m. Central Time (CT). This inventory will be made available for advance review only, from 9 a.m. to 4 p.m. CT, on November 27 and November 28, 2006. On November 29, 2006, an additional preview period will be provided from 9 a.m. to 10 a.m. CT. Any unsold CCC peanut inventory may be placed on The Seam's website at anytime following November 29, 2006, without prior notification to the public. Interested parties are encouraged to check The Seam's website on a regular basis for inventory that may be made available for sale.

To participate in the online peanut sales, The Seam requires users to enter into a participation agreement. There are no commission charges to place bids online; however, successful bidders are charged a commission fee of $0.75 per ton for completed sales.

Additional information on The Seam is available by contacting Kevin Brinkley, by telephone at (901) 374–0374, or by e-mail at *kevin.brinkley@theseam.com* or Charles Garner at (478) 988–1125, or by e-mail at *charles.garner@theseam.com*

Any questions about this notice may be directed to Jose Gonzalez by calling (202) 690–2534 or e-mail *jose.gonzalez@wdc.usda.gov*.

Signed at Washington, DC, November 17, 2006.

Glen L. Keppy,

Acting Executive Vice President Commodity Credit Corporation.

[FR Doc. E6–19974 Filed 11–24–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Food Stamp Program: State Issuance and Participation Estimates—Form FNS–388

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is a revision of a collection currently approved under OMB No. 0584–0081 for the Food Stamp Program for the form FNS–388, State Issuance and Participation Estimates.

DATES: Comments on this notice must be received by January 26, 2007 to be assured of consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send comments and requests for copies of this information collection to Barbara Hallman, Chief, State Administration Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. Copies of the estimate of the information collection can be obtained by contacting Ms. Hallman.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman at (703) 305–2383.

SUPPLEMENTARY INFORMATION: *Title:* Form FNS–388, State Issuance and Participation Estimates.

OMB Number: 0584–0081.

Expiration Date: 1/31/2007.

Type of Request: Revision of a currently approved information collection.

Abstract: Section 18(b) of the Food Stamp Act, (the Act) 7 U.S.C. 2027(b), limits the value of allotments paid to food stamp households to an amount not in excess of the appropriation for the fiscal year. If allotments in any fiscal year would exceed the appropriation, the Secretary of Agriculture is required to direct State agencies to reduce the value of food stamp allotments to the extent necessary to stay within appropriated funding limits. Timely State monthly issuance estimates are necessary for FNS to ensure that it remains within the appropriation. The estimates will also have a direct effect upon the manner in which allotments would be reduced if necessary. While benefit reductions have never been ordered in the past under Section 18(b) nor are they anticipated based on current data, the Department must continue to monitor actual program costs against the appropriation.

Section 11(e)(12) of the Food Stamp Act, 7 U.S.C. 2020 (e)(12), requires that the State Plan of Operations provide for the submission of reports required by the Secretary of Agriculture. State agencies are required to report on a monthly basis on the FNS–388, State Issuance and Participation Estimates, estimated or actual issuance and participation data for the current month and previous month, and actual participation data for the second preceding month. The FNS–388 report provides the necessary data for an early warning system to enable the Department to monitor actual and estimated costs for all benefit types against the appropriation.

State agencies in general only submit one Statewide FNS–388 per month which covers benefits from their electronic benefit transfer (EBT) system. The exception is that State agencies which choose to operate an approved alternative issuance demonstration project such as a cash-out system submit a separate report for each additional type of issuance system. There has been a small increase in these issuance demonstration and operation projects since the last information collection submission.

In addition, State agencies are required to submit a project area breakdown on the FNS–388A of issuance and participation data twice a year. This data is useful in identifying project areas that operate fraud detection units in accordance with the Act.

As of June 2006, 90 percent of the total responses submitted the FNS–388 data electronically and 10 percent submitted paper reports. As of March 2006, the last time the FNS–388A was submitted, 73 percent of the total response submitted FNS–388A data electronically and 27 percent submitted paper reports.

Respondents: State agencies that administer the Food Stamp Program.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 13.81

Estimated Hours per Response: 7.14

Estimated Total Annual Burden on Respondents: The annual reporting and recordkeeping burden for OMB No. 0584–0081 is estimated to be 5,226 hours. This is an increase of 683.7 hours due to an increase in the number of responses from State agencies.

Dated: November 17, 2006.

Roberto Salazar,

Administrator.

[FR Doc. E6–19986 Filed 11–24–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ely Westside Rangeland Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Ely Ranger District, Humboldt-Toiyabe National Forest will prepare an environmental impact statement (EIS) on a proposal to authorize continued livestock grazing within the Ely Westside Rangeland Project area. The analysis will determine if a change in management direction for livestock grazing is needed to move existing resource conditions within the Ely Westside Rangeland Project area towards desired conditions. Allotments within the project area are Big Creek, Black Rock, Cherry Creek, Currant Creek, Ellison Basin, Hooper Canyon, Irwin Canyon, Illipah, Pine/Quinn Creek, Tom Plain, Treasure Hill, and Troy Mountain. The Black Rock, Cherry Creek, Currant Creek, Ellison Basin, Illipah, Pine/Quinn Creek, Tom Plain, and Treasure Hill, are currently permitted for grazing; Big Creek, Hooper Canyon, and Irwin Canyon allotments are currently vacant; and the Troy Mountain Allotment is currently closed. These allotments are in Lincoln, Nye, and White Pine Counties, Nevada.

DATES: Comments concerning the scope of the analysis are due by January 15, 2007. The draft environmental impact statement is expected May 2007 and the final environmental impact statement is expected September 2007.

ADDRESSES: Send written comments to District Ranger, Ely Ranger District, 825 Ave. E, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: For further information, mail correspondence to or contact David Palmer, Project Coordinator, at the Ely Ranger District, 825 Ave. E, Ely Nevada 89301. The telephone number is 775–289–5116. E-mail address is *dmpalmer@fs.fed.us.*

Purpose and Need for Action

There is a need to maintain or improve the condition of riparian resources and maintain or improve the overall health of the rangeland in the Ely Westside Rangeland Project area. The purpose of this project is to determine the management direction for livestock grazing needed to move existing resource conditions within the project area towards desired conditions.

Proposed Action

The Ely Ranger District, Humboldt-Toiyabe National Forest, is proposing to authorize continued domestic livestock grazing on approximately 569,000 acres within the Ely Westside Rangeland Project area under updated grazing management direction in order to move existing rangeland resource conditions within the project area toward desired condition. The updated direction will be incorporated in attendant grazing permits and allotment management plans to guide grazing management within the project area during the coming decade, or until amendments are warranted, based on changed condition or monitoring. The Black Rock, Cherry Creek, Currant Creek, Ellison Basin, Illipah, Pine/Quinn Creek, Tom Plain, and Treasure Hill, allotments would continue to have authorized grazing. A portion of the Troy Mountain Allotment, which is currently closed, would be re-opened to livestock grazing; the rest of the allotment would remain closed. Big Creek, Hooper Canyon, and Irwin Canyon allotments are currently vacant and would be recommended for closure.

Possible Alternatives

In addition to the proposed action, we have tentatively identified two additional alternatives that will be analyzed in the EIS.

(1.) *No Action/No Grazing:* This is not issuing new grazing permits when existing permits expire.

(2.) *Current Management:* This is continuation of current grazing management.

Responsible Official

Patricia N. Irwin, District Ranger, Ely Ranger District, 825 Ave. E, Ely, Nevada 89301

Nature of Decision To Be Made

Based on the environmental analysis in the EIS the Forest Supervisor will decide whether to continue grazing on the allotments within the Ely Westside Rangeland Project area, in accordance with the strategies in the proposed action or as modified by additional mitigation measures and monitoring requirements.

Scoping Process

The Forest Service will use a mailing of information to interested parties. Public involvement will be ongoing throughout the analysis process and at certain times, public input will be specifically requested. There are currently no scoping meetings planned.

Preliminary Issues

The following are some potential issues identified through internal Forest Service scoping based on our experience with similar projects. The list is not considered all-inclusive, but should be viewed as a starting point. We are asking you to help us further refine the issues and identify other issues or concerns relevant to the proposed project.

- Continued livestock grazing has the potential to affect water quality within the project area.
- Continued livestock grazing has the potential to affect heritage resources within the project area.
- Continued livestock grazing has the potential to affect soil quality within the project area.
- Continued livestock grazing has the potential to affect upland and riparian vegetation within the project area.
- Continued livestock grazing has the potential to affect the health of some aspen stands within the project area.
- Continued livestock grazing has the potential to affect wildlife habitat, particularly for elk and sage grouse, within the project area.

• Continued livestock grazing has the potential to affect fisheries habitat within the project area.

Comment Requested: This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Submit comments stating your concerns and issues that are relevant to the proposed project. Comments will be used to help establish the scope or studies and analysis for the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 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 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). In addition, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal, and will be available for public inspection. (Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: November 9, 2006.

Patricia N. Irwin,

District Ranger.

[FR Doc. 06–9388 Filed 11–24–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Caribou-Targhee National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The Soda Springs Ranger District of the Caribou-Targhee National Forest will begin charging a $10 fee for single family overnight camping at the Gravel Creek Campground. There will also be a $5 fee for an extra vehicle. Overnight camping at other campgrounds on the Caribou-Targhee National Forest have shown that publics appreciate and enjoy the availability of developed recreation facilities. Funds from the fee charges will be used for the continued operation and maintenance of the Gravel Creek Campground.

DATES: Gravel Creek Campground will become available for overnight camping on June 1, 2007 (weather permitting).

ADDRESSES: Forest Supervisor, Caribou-Targhee National Forest, 1405 Hollipark Dr., Idaho Falls, Idaho 83401

FOR FURTHER INFORMATION CONTACT: Doug Heyrend, Supervisory Forester, 208–547–4356

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub.L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

The Soda Spring Ranger District of the Caribou-Targhee National Forest currently has no fee campgrounds. These facilities are in close proximity to Grays Lake National Wildlife Refuge, a large marsh and riparian area. This area offers significant recreational wildlife viewing opportunities and is rich in historical and cultural importance. A market analysis indicates that the $10/per night single family camping fee is both reasonable and acceptable for this sort of unique recreation experience.

Dated: November 17, 2006.

Sheryl Bainbridge,

Acting Caribou-Targhee National Forest Supervisor.

[FR Doc. E6–19891 Filed 11–24–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Caribou-Targhee National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The Caribou-Targhee National Forest will begin charging a $40 fee for the overnight rental of Pebble Guard Station. Rentals of other cabins on the Caribou-Targhee National Forest have shown that publics appreciate and enjoy the availability of historic rental cabins. Funds from the rental will be used for the continued operation and maintenance of the Pebble Guard Station.

DATES: Pebble Guard Station will become available for rent in June, 2007.

ADDRESSES: Forest Supervisor, Caribou-Targhee National Forest, 1405 Hollipark Dr., Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Debrah Tiller, Landscape Architect, 208–236–7500.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

The Caribou-Targhee National Forest currently has nine other cabin rentals. These rentals are often fully booked throughout their rental season. A business analysis of Pebble Guard Station has shown that people desire having this sort of recreation experience on the Caribou-Targhee National Forest. A market analysis indicates that the $40/per night fee is both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent Pebble Guard Station will need to do so through the National Recreation Reservation Service, at *www.reserveusa.com* or by calling 1–877–444–6777. The National

Recreation Reservation Service charges a $9 fee for reservations.

Dated: 17 November 2006.

Sheryl Bainbridge,

Acting Caribou-Targhee National Forest Supervisor.

[FR Doc. E6–19892 Filed 11–24–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Caribou-Targhee National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The Caribou-Targhee National Forest will begin charging a $40 fee for the overnight rental of Malad Summit Guard Station. Rentals of other cabins on the Caribou-Targhee National Forest have shown that publics appreciate and enjoy the availability of historic rental cabins. Funds from the rental will be used for the continued operation and maintenance of the Malad Summit Guard Station.

DATES: Malad Summit Guard Station will become available for rent in June, 2007.

ADDRESSES: Forest Supervisor, Caribou-Targhee National Forest, 1405 Hollipark Dr., Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Debrah Tiller, Landscape Architect, 208–236–7500.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub.L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

The Caribou-Targhee National Forest currently has nine other cabin rentals. These rentals are often fully booked throughout their rental season. A business analysis of Malad Summit Guard Station has shown that people desire having this sort of recreation experience on the Caribou-Targhee National Forest. A market analysis indicates that the $40/per night fee is both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent Malad Summit Guard Station will need to do so through the National Recreation Reservation Service, at *www.reserveusa.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Dated: 17 November 2006.

Cheryl Bainbridge,

Acting Caribou-Targhee National Forest Supervisor.

[FR Doc. E6–19893 Filed 11–24–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: George Washington & Jefferson National Forests, USDA Forest Service.

ACTION: Notice of New Recreation Fee Site.

SUMMARY: George Washington & Jefferson National Forests will begin charging a $15 fee per single campsite and $25 per double campsite for overnight use at White Cedar Horse Camp, which is presently under construction. This new campground will facilitate equestrian use of George Washington & Jefferson National Forests on the Eastern Divide Ranger District. Fee revenue will support operations and maintenance of the campground and future site improvements.

DATES: White Cedar Horse Camp is scheduled to open for public use in May, 2007.

ADDRESSES: Forest Supervisor, George Washington & Jefferson National Forests, 5162 Valleypointe Parkway, Roanoke, VA 24019.

FOR FURTHER INFORMATION CONTACT: Ted Coffman, Recreation Fee Coordinator, 540–265–5217.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. George Washington & Jefferson National Forests presently manage three overnight recreation fee sites on the Eastern Divide Ranger District. Recreation fees for overnight use range from $4.00 per single campsite to $25.00 per site for group use based on the level of development. White Cedar Horse Camp will offer vault toilet facilities, water, horse trail access, and developed campsites with a picnic table, fire ring, lantern post and horse hitching area. Campsites will be available on a first come, first served basis.

Dated: November 20, 2006.

Henry B. Hickerson,

George Washington & Jefferson National Forests Deputy Forest Supervisor.

[FR Doc. E6–19994 Filed 11–24–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Fee; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: George Washington & Jefferson National Forests, USDA Forest Service

ACTION: Notice of New Recreation Fee.

SUMMARY: George Washington & Jefferson National Forests will begin charging a $5 fee per ATV/OHV for use of Taskers Gap and Peters Mill Run trail system. This trail system will facilitate ATV/OHV motorized use of George Washington & Jefferson National Forests on the Lee Ranger District. Fee revenue will support operations and maintenance of the trail system and future site improvements.

DATES: Taskers Gap and Peters Mill Run trail system is scheduled to initiate fees in June, 2007.

ADDRESSES: Forest Supervisor, George Washington & Jefferson National Forests, 5162 Valleypointe Parkway, Roanoke, Virginia, 24019.

FOR FURTHER INFORMATION CONTACT: Ted Coffman, Recreation Fee Coordinator, 540–265–5217.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. George Washington & Jefferson National Forests presently manage one ATV special recreation permit on the forest. Special Recreation Permit fees for use of the trail system are $5.00 per vehicle. Taskers Gap and Peters Mill Run trail system offer approximately 40 miles of trail, trailheads with parking and vault toilets, and information through maps and information boards.

Dated: November 20, 2006.

Henry B. Hickerson,

George Washington & Jefferson National Forests Deputy Forest Supervisor.

[FR Doc. E6–19995 Filed 11–24–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability for the Coal Creek Flood Control and Parkway Final Environmental Impact Statement

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Availability.

SUMMARY: The Record of Decision (ROD) for the Coal Creek Flood Control and Parkway Final Environmental Impact Statement is now available to the public. On September 1, 2006, the Natural Resources Conservation Service (NRCS) published a Final Environmental Impact Statement consistent with the National Environmental Policy Act of 1969, as amended, to disclose potential effects to the human environment resulting from proposed flood control improvements to Coal Creek in Cedar City, Utah. A notice of availability for the ROD was previously published in the **Federal Register** on October 3, 2006. Availability was delayed due to additional information about the proximity of Utah prairie dogs, a threatened species under the Endangered Species Act. The NRCS is now completing formal consultation with the U.S. Fish and Wildlife Service (FWS). No construction will begin until the NRCS has received a biological opinion from the FWS. The ROD authorizes implementation of Alternative C (Replace Main Street diversion/drop structure) in conjunction with the North Field Canal Option and Parkway Option C1.

DATES: *Effective Date:* November 13, 2006.

FOR FURTHER INFORMATION CONTACT: Marnie Wilson, Coal Creek EIS, USDA—NRCS, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, UT 84138–1100. Project information is also available on the Internet at: *http://www.ut.nrcs.usda.gov* under Public Notices.

SUPPLEMENTARY INFORMATION: Copies of the Final EIS and ROD are available by request from Marnie Wilson at the address listed above. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Sylvia Gillen, Utah State Conservationist.

Signed in Salt Lake City, Utah on November 9, 2006.

Sylvia A. Gillen,

State Conservationist.

[FR Doc. E6–19959 Filed 11–24–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Naji Antoine Abi Khalil and Related Person Tomer Grinberg; In the Matter of: Naji Antoine Abi Khalil, Inmate Number 52230–054 FCI Allenwood Low, Federal Correctional Institution, P.O. Box 1000, White Deer, PA 17887, Respondent: and Tomer Grinberg, also known as Tommy, Inmate Number 56347–054, FCI Allenwood Low, Federal Correctional Institution, P.O. Box 1000, White Deer, PA 17887, Related Person; Order Denying Export Privileges

A. Denial of Export Privileges of Naji Antoine Abi Khalil

On February 2, 2006, in the U.S. District Court in the Eastern District of Arkansas, Naji Antoine Abi Khalil (''Khalil'' or ''Respondent'') pleaded guilty to three charges, including one violation of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). As to the IEEPA count, Khalil pleaded guilty of unlawfully, willfully, and knowingly attempting to and making and receiving a contribution of funds, goods, and services to, and for the benefit of, Hizballah, a specially designated terrorist, by receiving and attempting to transport night vision goggles, infrared aiming lights and other military night-vision equipment to Hizballah. Khalil was sentenced to 57 months, 60 months, and 60 months for each charge respectively; and the sentences will be served concurrently. In addition, Khalil was fined $100,000.00.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–2420 (2000)) (the ''Act'') [1] and Section 766.25 of the Export Administration Regulations (''Regulations'') [2] provide, in pertinent part, that ''[t]he Director of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny export privileges of any person who has been convicted of a violation of * * * IEEPA,'' for a period not to exceed 10 years from the date of conviction. 15 CFR 766.25(a) and (d). In addition, Section 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Khalil's conviction for violating IEEPA, and have provided notice and an opportunity for Khalil to make a written submission to the Bureau of Industry and Security as provided in Section 766.25 of the Regulations. Having received no submission from Khalil, I, following consultations with the Office of Export Enforcement, including its Director, have decided to deny Khalil's export privileges under the Regulations for a period of 10 years from the date of Khalil's conviction.

B. Denial of Export Privileges of Related Persons

In addition, pursuant to Sections 766.25(h) and 766.23 of the Regulations, the director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, may take action to name persons related to the Respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business in order to prevent evasion of the Order. I gave notice to Tomer Grinberg (''Grinberg''), notifying him that his export privileges under the Regulations could be denied for up to 10 years as BIS believes that he is related to Khalil and including him in the Khalil Order is necessary to prevent evasion. The basis for naming Grinberg to the Khalil Order include the fact that Grinberg, is a co-conspirator of Khalil. Specifically, Grinberg pled guilty to conspiracy to violate IEEPA, in violation of 18 U.S.C. 371, for conspiring to export from the United States certain defense items (night vision goggles, infrared aiming devices, and other military night vision equipment) and Commerce Control List items (Astrocope night vision module classified under 6A003) without the required U.S. Government authorization. Based upon these facts, Grinberg is related to Kahlil by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business and he needs to be named to any Khalil Denial Order to prevent evasion of it.

[1] 50 U.S.C. app. 2401–2420. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006 (71 FR 44551, Aug. 7, 2006), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

[2] The Regulations are currently codified at 15 CFR parts 730–774 (2006).

Having received no submission from Grinberg, I have decided, following consultations with the Office of Export Enforcement, including its Director, to name Grinberg as a related person to the Khalil Denial Order, thereby denying his export privileges for 10 years from the date of Khalil's conviction.

I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Khalil and Grinberg had an interest at the time of Khalil's conviction. The 10-year denial period ends on February 2, 2016.

Accordingly, it is hereby *ordered*

I. Until February 2, 2016, Naji Antoine Abi Khalil, Inmate Number 52230–054, FCI Allenwood Low, Federal Correctional Institution, P.O. Box 1000, White Deer, PA 17887, and when acting for or on his behalf, his employees, agents or representatives, (''the Denied Person'') and the following person related to the Denied Person as defined by Section 766.23 of the Regulations, Tomer Grinberg, also known as Tommy, Inmate Number 56347–054, FCI Allenwood Low, Federal Correctional Institution, P.O. Box 1000, White Deer, PA 17887, and when acting for or on his behalf, his employees, agents or representatives, (''the Related Person'') (together, the Denied Person and the Related Person are ''Persons Subject To This Order'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Persons Subject To This Order any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Persons Subject To This Order of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Persons Subject To This Order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Persons Subject To This Order of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Persons Subject To This Order in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Persons Subject To This Order, or service any item, of whatever origin, that is owned, possessed or controlled by the Persons Subject To This Order if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

II. In addition to the Related person named above, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Khalil by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until February 2, 2016.

VI. In accordance with Part 756 of the Regulations, Khalil may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. In accordance with Part 756 of the Regulations, Tomer Grinberg may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VIII. A copy of this Order shall be delivered to Khalil and the Related Person. This Order shall be published in the **Federal Register**.

Dated: November 14, 2006.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 06–9389 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–OT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

Effective Date: November 27, 2006.

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.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Polyvinyl Alcohol from the People's Republic of China.

Initiation of Reviews: In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 2007.

	Period to be reviewed
Antidumping Duty Proceedings	
CANADA: Carbon and Certain Alloy Steel Wire Rod	
A–122–840	10/1/05–9/30/06
Ivaco Rolling Mills 2004 L.P.	
Mittal Canada Inc. (formerly Ispat Sidbec Inc.)	
Sivaco Ontario Processing (a division of Sivaco Wire Group 2004 L.P.)	
CANADA: Certain Hard Red Spring Wheat [1]	
A–122–847	10/1/04–09/30/05
Canadian Wheat Board	
MEXICO: Carbon and Certain Alloy Steel Wire Rod	
A–201–830	10/1/05–9/30/06
Hylsa Puebla, S.A. de C.V.	
Siderurgica Lazaro Cardenas Las Truchas S.A. de C.V.	
THE PEOPLE'S REPUBLIC OF CHINA: Polyvinyl Alcohol [2]	
A–570–879	10/1/05–9/30/06
Sinopec Sichuan Vinylon Works	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Helical Spring Lock Washers [3]	
A–570–822	10/1/05–9/30/06
Hangzhou Spring Washer, Co., Ltd.	
TRINIDAD AND TOBAGO: Carbon and Certain Alloy Steel Wire Rod	
A–274–804	10/1/05–9/30/06
Mittal Steel Point Lisas Limited	
Countervailing Duty Proceedings	
CANADA: Certain Hard Red Spring Wheat [4]	
C–122–848	1/1/04–12/31/04
Canadian Wheat Board	
IRAN: Roasted In-Shell Pistachios	
C–507–601	1/1/05–12/31/05
Tehran Negah-Nima Trading Company, Inc.	
Suspension Agreements	
None.	

[1] Pursuant to a request from the Canadian Wheat Board, the Department deferred the 10/01/2004–09/30/2005 antidumping duty review of hard red spring wheat for one year. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews,* 70 FR 72107 (December 1, 2005). The Department is now automatically initiating this review one year later because we have not received a request to withdraw from the Canadian Wheat Board. We did not receive a request for a review of the 10/01/2005–01/01/2006 period.

[2] If the above-named company does not qualify for a separate rate, all other exporters of Polyvinyl Alcohol from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[3] If the above-named company does not qualify for a separate rate, all other exporters of Certain Helical Spring Lock Washers from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[4] Pursuant to a request from the Canadian Wheat Board, the Department deferred the 01/01/2004–12/31/2004 countervailing duty review of hard red spring wheat for one year. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 70 FR 72107 (December 1, 2005). The Department is now automatically initiating this review one year later because we have not received a request to withdraw from the Canadian Wheat Board. We did not receive a request for a review of the 1/1/2005–1/1/2006 period.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States, 291 F.3d 806* (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: November 20, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–20013 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Extension of Time Limit for the Preliminary Results of the Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Effective Date: November 27, 2006.

FOR FURTHER INFORMATION CONTACT: John Drury or Patrick Edwards, 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) 482–0195 or (202) 482–8029, respectively.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Commerce (''the Department'') is conducting an antidumping new shipper review of circular welded non-alloy steel pipe and tube (''pipe and tube'') from Mexico in response to a request by Conduit S.A. de C.V. (''Conduit''). This review covers shipments to the United States for the period November 1, 2005, through April 30, 2006, by Conduit. The Department received a timely request from Conduit in accordance with 19 CFR 351.214(c) for a new shipper review of the antidumping duty order on pipe and tube from Mexico. On July 10, 2006, the Department found that Conduit's request for review met all regulatory requirements set forth in 19 CFR 351.214(b) and initiated this new shipper review covering the period November 1, 2005, through April 30, 2006. *See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Initiation of New Shipper Antidumping Duty Review*, 71 FR 38851 (July 10, 2006) (''*Initiation Notice*''). The preliminary results for this new shipper review are currently due no later than December 27, 2006.

Extension of Time Limits for Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated. The Department may, however, extend the deadline for completion of the preliminary results of a new shipper review from 180 days to 300 days if it determines that the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). The Department has determined that this new shipper review is extraordinarily complicated and that it is not practicable to complete the preliminary results within the current time limits.

As stated at initiation, the Department had concerns as to ''whether Conduit's subject sale in this new shipper review constituted its first shipment of subject merchandise made to an unaffiliated customer in the United States* * *'' See Memorandum to the File from The Team through Richard Weible, Office 7 Director, regarding Initiation of AD New Shipper Review: Circular Welded Non-Alloy Steel Pipe and Tube from Mexico, dated June 30, 2006, (''Initiation Checklist'') at 6. Accordingly, the Department requested entry documents from U.S. Customs and Border Protection (''CBP'') to further analyze this issue. The Department only recently received the requested documents from CBP relating to the entries of subject merchandise in question and it was necessary for the Department to gather additional information from CBP officials. Additionally, there are supplemental questionnaires still pending in this new shipper review. Based on the timing of this case and the additional information that must be gathered and carefully analyzed, the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days.

Accordingly, the Department is extending the time limit for the completion of the preliminary results of the new shipper review of Conduit by 120 days until no later than April 26, 2007, which is 300 days from the date on which this new shipper review was initiated. The deadline for the final results of this new shipper review continues to be 90 days after the publication of the preliminary results, unless extended.

This notice is published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: November 20, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–20021 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–820, A–570–906, A–580–856]

Initiation of Antidumping Duty Investigations: Coated Free Sheet Paper from Indonesia, the People's Republic of China, and the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Irina Itkin (Indonesia), Magd Zalok (People's Republic of China) or Joy Zhang (Republic of Korea), AD/CVD Operations, Office 2, Office 4, and Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0656, (202) 482–4162, or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On October 31, 2006, the Department of Commerce (the Department) received petitions concerning imports of coated free sheet paper (CFS) from Indonesia (Indonesian petition), the Republic of Korea (Korea) (Korean petition), and the People's Republic of China (PRC) (PRC petition) filed in proper form by NewPage Corporation (the petitioner). *See* the Petitions for the Imposition of Antidumping and Countervailing Duties Against Coated Free Sheet Paper From China, Indonesia, and Korea filed on October 31, 2006. On November 3, 13, and 16, 2006, the Department issued requests for additional information and clarification of certain areas of the petitions. Based on the Department's requests, the petitioner filed supplements to the petitions on November 9, 15, and 17, 2006. The period of investigation (POI) for Indonesia and Korea is October 1, 2005, through September 30, 2006. The POI for the PRC is April 1, 2006, through September 30, 2006.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of CFS from Indonesia, Korea, and the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf

of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act, and has demonstrated sufficient industry support with respect to the antidumping investigations that the petitioner is requesting that the Department initiate (*see* ''Determination of Industry Support for the Petition'' below).

Scope of Investigations

The merchandise covered by each of these investigations includes coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not-more-than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating. Coated free sheet paper may be surface-colored, surface-decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double-side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms ''wood free'' or ''art'' paper may also be used to describe the imported product.

Excluded from the scope are: (1) Coated free sheet paper that is imported printed with final content printed text or graphics; (2) base paper to be sensitized for use in photography; and (3) paper containing by weight 25 percent or more cotton fiber.

Coated free sheet paper is classifiable under subheadings 4810.13.1900, 4810.13.2010, 4810.13.2090, 4810.13.5000, 4810.13.7040, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.7040, 4810.19.1900, 4810.19.2010, and 4810.19.2090 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Comments on Scope of Investigations

During our review of the petitions, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether the petitions have the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC) is responsible for determining whether ''the domestic industry'' has been injured and must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product, they do so for different purposes and pursuant to separate and distinct authority. *See* section 771(10) of the Act. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information presented by the petitioner, we have determined that there is a single domestic like product, coated free sheet paper, which is defined in the ''Scope of Investigations'' section above, and we have analyzed industry support in terms of the domestic like product.

On November 15 and 16, 2006, we received submissions on behalf of Chinese and Indonesian producers of CFS questioning the industry support calculation. *See* ''Office of AD/CVD Operations Initiation Checklist for the Antidumping Duty Petition on Coated Free Sheet Paper from Indonesia,'' at Attachment II (Nov. 20, 2006) (*Indonesia Initiation Checklist*), ''Office of AD/CVD Operations Initiation Checklist for the Antidumping Duty Petition on Coated Free Sheet Paper from the Republic of Korea,'' at Attachment II (Nov. 20, 2006) (*Korea Initiation Checklist*), and ''Office of AD/CVD Operations Initiation Checklist for the Antidumping Duty Petition on Coated Free Sheet Paper from the People's Republic of China,'' at Attachment II (Nov. 20, 2006) (*PRC Initiation Checklist*), on file in the CRU. Our review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support representing at least 25 percent of the total production of the domestic like product; and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. Therefore, the domestic producers (or workers) who support the petition

[1] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), *citing Algoma Steel Corp. Ltd.* v. *United States,* 688 F. Supp. 639, 644 (1988), *aff'd* 865 F.2d 240 (Fed Cir. 1989) *cert. denied* 492 U.S. 919 (1989).

account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See Indonesia Initiation Checklist* at Attachment II, *Korea Initiation Checklist* at Attachment II, and *PRC Initiation Checklist* at Attachment II.

Allegations and Evidence of Material Injury and Causation

With regard to Indonesia, Korea, and the PRC, the petitioner alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury by reason of the individual and cumulated imports of the subject merchandise sold at less than fair value. The petitioner contends that the industry's injury is evidenced by reduced market share, increased inventories, reduced shipments, lost sales, reduced production, lower capacity and capacity utilization rates, decline in prices, lost revenue, reduced employment, and a decline in financial performance.

These allegations are supported by relevant evidence including import data, evidence of lost sales, and pricing information. We assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and have determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See Indonesia Initiation Checklist* at Attachment III, *Korea Initiation Checklist* at Attachment III, and *PRC Initiation Checklist* Attachment III.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations on imports of CFS from Indonesia, Korea, and the PRC. The sources of data for the deductions and adjustments relating to the U.S. price, constructed value (CV) (for Indonesia and Korea), and the factors of production (for the PRC only) are also discussed in the country-specific initiation checklists. *See Indonesia Initiation Checklist, Korea Initiation Checklist,* and *PRC Initiation Checklist.* Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will reexamine the information and revise the margin calculations, if appropriate.

Indonesia and Korea

Export Price (EP)

The petitioner calculated a single EP using the average unit values (AUVs) for import data collected by the U.S. Census Bureau for both Indonesia and Korea. The petitioner used a weighted average of two HTSUS numbers under which CFS is imported into the United States and that fall within the scope of the investigations. These HTSUS numbers contain imports of products which were most similar to the product on which the petitioner based normal value (NV) in the Indonesian and Korean petitions: 4810.14.19.00 and 4810.19.19.00.[2] In addition, these HTSUS numbers account for 48 percent of the volume of imports from Indonesia and 45 percent of the volume of imports from Korea. To be conservative, the petitioner did not make any adjustments to U.S. price.

Use of a Third Country Market and Sales Below Cost Allegation

With respect to NV, the petitioner stated that home market prices in Indonesia and Korea were not reasonably available. According to the petitioner, market intelligence in these countries is very difficult to obtain and sources of this information were either unable or unwilling to provide such data. The petitioner stated that it queried all available sources to identify Indonesian and Korean home market pricing data but was unsuccessful in its attempts. *See e.g.*, page 2 of the October 31, 2006, Indonesian petition and pages 1 and 2 of the November 9, 2006, supplement to the Indonesian petition; and page 2 of the October 31, 2006, Korean petition and page 1 of the November 9, 2006, supplement to the Korean petition.

Consequently, for Indonesia and Korea, the petitioner used statistics on Indonesia's and Korea's third-country exports based on official Indonesian and Korean export data for determining NV. In selecting the third-country market, the petitioner chose Malaysia for Indonesia, and Australia and Bangladesh for Korea because: (1) These countries represent the largest third-country markets (for Indonesia and Korea, respectively) for scope merchandise during the POI; (2) the aggregate quantity of scope merchandise sold by Indonesian exporters to Malaysia, and Korean exporters to Australia and Bangladesh, accounted for more than five percent of the aggregate quantity of the scope merchandise sold in the United States; and (3) the product sold to the Malaysian market (for Indonesia) and to the Australian and Bangladeshi markets (for Korea) is comparable to the product that served as the basis for EP. After examining this evidence, we found the selection of Malaysia for Indonesia, and Australia and Bangladesh for Korea, as the comparison market to be reasonable.

The petitioner calculated third-country price for Indonesia and Korea using quantities and FOB values from official Indonesian and Korean export statistics.

The petitioner has provided information demonstrating reasonable grounds to believe or suspect that sales of CFS in the comparison markets (*i.e.*, Malaysia for Indonesia, and Australia and Bangladesh for Korea) were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct country-wide sales-below-cost investigations. The Statement of Administrative Action (SAA), submitted to the Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. *See* SAA, H.R. Doc. No. 103–316 at 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have ''reasonable grounds to believe or suspect'' that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. *Id.*

[2] The petitioner based the AUV on customs data for the period October 1, 2005, through August 30, 2006, the most recently available data for the POI at the time of the petition filing.

Cost of Production

Indonesia

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM); selling, general and administrative (SG&A) expenses; financial expenses; and packing expenses. The petitioner calculated the quantity of each of the inputs into COM (except factory overhead) and packing based on the input quantities of a U.S. CFS producer during the POI, multiplied by the value of inputs used to manufacture CFS in Indonesia using publicly available data adjusted for inflation. To calculate average factory overhead, SG&A and the financial expense rate, the petitioner relied on the most current financial statements of two Indonesian producers of CFS.

Korea

Pursuant to section 773(b)(3) of the Act, COP consists of the COM; SG&A expenses; financial expenses; and packing expenses. The petitioner calculated COM (except for pulp and factory overhead) and packing expenses using input quantities based on the production experience of a U.S. CFS producer during the POI, multiplied by the value of inputs used to manufacture CFS in Korea using publicly available data. For pulp, the petitioner used input quantities from an independent study, multiplied by the costs incurred to manufacture CFS in Korea using publicly available data. To calculate average factory overhead, SG&A and the financial expense rates, the petitioner relied on the most current financial statements of six Korean producers of CFS.

Indonesia and Korea

Based on a comparison of the Malaysian market prices of CFS for Indonesia, and the Australian and Bangladeshi market prices of CFS for Korea, to the COP calculated for Indonesia and Korea, respectively, in the petitions, we find reasonable grounds to believe or suspect that sales of the foreign like products in Malaysia (for Indonesia) and Australia and Bangladesh (for Korea) were made at prices below COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating country-wide cost investigations relating to third-country sales to Malaysia (for Indonesia) and to Australia and Bangladesh (for Korea). We note, however, that if we determine that the home markets (*i.e.*, Indonesia and Korea) are viable, our initiation of country-wide cost investigations with respect to sales to the third country markets will be rendered moot. *See Indonesia Initiation Checklist* and *Korea Initiation Checklist.*

Normal Value Based on CV

Because it alleged sales below cost, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner calculated NV based on CV for Indonesia and Korea. The petitioner calculated CV using the same average COM, SG&A, financial and packing figures used to compute the COP. The petitioner then added the average profit rate based on the most recent financial statements of two Indonesian producers of CFS for Indonesia and three Korean producers of CFS for Korea. *See Indonesia Initiation Checklist* and *Korea Initiation Checklist.*

PRC

EP

The petitioner calculated a single EP using the AUVs for import data collected by the U.S. Census Bureau. The petitioner used a weighted average of two HTSUS numbers under which CFS is imported into the United States and that fall within the scope of the investigation. These HTSUS numbers containing imports of products which were most similar to the product on which the petitioner based NV in the PRC petition: 4810.14.19.00 and 4810.19.19.00.[3] In addition, the HTSUS numbers account for over 87 percent of the imports of CFS from China, by volume. To calculate EP, the petitioner deducted foreign brokerage charges from the AUV (the petitioner did not deduct foreign inland freight charges from the AUV because it was unable to establish the distances between the Chinese mills and the ports closest to them). *See PRC Initiation Checklist.*

Normal Value

The petitioner stated that the PRC was a non-market economy (NME) and no determination to the contrary has been made by the Department. In previous investigations, the Department has determined that the PRC is an NME. *See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005), *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 9037 (Feb. 24, 2005) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 7475 (Feb.14, 2005). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation of this investigation. Accordingly, because available information does not permit the NV of the merchandise to be determined under section 773(a) of the Act, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

The petitioner identified India as the surrogate country, arguing that India is an appropriate surrogate, pursuant to section 773(c)(4) of the Act, because it is a market economy country that is at a level of economic development comparable to that of the PRC and is a significant producer and exporter of CFS. *See* Volume II of the PRC petition at pages 2–3. Based on the information provided by the petitioner, we believe that its use of India as a surrogate country is appropriate for purposes of initiating this investigation. After the initiation of the investigation, the Department will solicit comments regarding surrogate country selection. Also, pursuant to 19 CFR 351.301(c)(3)(i), interested parties will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

The petitioner explained that the production process for CFS begins with the manufacture of groundwood free pulp, which involves the use of wood fiber as the primary raw material. The wood is then placed into digester cooking vessels and mixed with various chemicals to produce pulp which is then washed and bleached. The chemical pulp is then placed in a paper machine which spreads the pulp into a uniform flat surface and removes water from the pulp through both mechanical and thermal means. The last section of the paper machine consists of several calendaring rolls with a reel device for winding the paper into a roll, which is then sent through a coating process. *See* Volume II of the PRC petition at pages 3 through 6, and Exhibit I–5. The

[3] The petitioner based the AUV on customs data for the period April 1, 2006, through August 30, 2006, the most recently available data for the POI at the time of the petition filing.

petitioner stated that, to the best of its knowledge, Chinese producers manufacturing CFS use the same processes and machinery as U.S. producers, and many Chinese mills use Western technology and mills built by Western companies. According to the petitioner, many of the CFS mills in the PRC are fully integrated. *See* Volume II of the PRC petition at page 5.

The petitioner provided a dumping margin calculation using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C). *See* Volume II of the PRC petition at Exhibits II–5 and 14, as revised in Exhibits 3 and 4, respectively, of the November 9, 2006, supplement to the petition. According to the petitioner, the cost model provided in Exhibit II–5 of the PRC petition, as revised in Exhibit 2 of the November 17, 2006 supplement to the petition, reflects the cost of producing the type of paper (*i.e.*, 70 lb. (104g/m^3) basis weight, grade 2, double-sided CFS) that can be imported under either of the tariff categories used to derive U.S. price, categories which comprise the majority of subject merchandise imports from the PRC during the POI. *See PRC Initiation Checklist.*

To determine the quantities of inputs for each raw material used by the PRC producers to produce CFS, the petitioner relied on its own production experience because it claimed that it is not aware of any publicly available information regarding the factor inputs and factor consumption rates pertaining to Chinese producers of CFS. In accordance with section 773(c)(4) of the Act, the petitioner valued factors of production, where possible, using reasonably available, public surrogate country data. To value certain factors of production, the petitioner used *Monthly Statistics of the Foreign Trade of India*, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and compiled by *World Trade Data Atlas* (WTA). Since there were no Indian imports of one minor input, the petitioner used import data for Indonesia from the WTA to value this input. *See PRC Initiation Checklist.*

Since Indian and Indonesian import values are expressed in a foreign currency, the petitioner converted these values into U.S. dollars using the exchange rates on Import Administration's Web site, *ia.ita.doc.gov/exchange/india.txt*, for the period during which the imports were made. The petitioner then inflated the resulting amounts to a POI value using the Indian and, where applicable, Indonesian, Wholesale Price Index (WPI) for ''All Commodities.'' [4]

See PRC Initiation Checklist

The Department calculates and publishes the surrogate values for labor to be used in NME cases on its Web site. Therefore, to value labor, the petitioner used a labor rate of $0.97 per hour, published on the Department Web site, in accordance with the Department's regulations. *See* 19 CFR 351.408(c)(3) and the *PRC Initiation Checklist.*

The petitioner valued the various forms of energy used in the production of CFS based on the following sources: (1) the Indian electricity rate as reported by the U.S. Department of Energy for the year 2000, inflated to a POI value using the WPI for power, fuel, and lubrications published by the Reserve Bank of India (*see* Volume II of the PRC petition at page 9 and Exhibit II–9); (2) Indian natural gas prices charged to industrial users during a period overlapping the POI, as reported by CRISIL Research India (*see* Volume II of the PRC petition at page 9 and Exhibit II–10); (3) prices for hydrocarbon products (to value fuel oil) quoted by Bharat Petroleum Corporation, Ltd., which is, according to the petitioner, a major supplier of oil and other fuel products throughout India (*see* Volume II of the PRC petition at pages 9–10 and Exhibit II–11); and (4) the price of coal from the *TERI Energy Data Directory & Yearbook 2003/04*, inflated using the Indian WPI for power, fuel and lubricants, and converted from Rupees per metric ton to U.S. dollars per million British thermal units (*see* Volume II of the PRC petition at page 10 and Exhibit II–12). The Department revised the petitioner's value for natural gas to reflect the price in effect during the POI only. *See PRC Initiation Checklist* for further details.

The petitioner calculated surrogate financial ratios (overhead, SG&A, and profit) from the annual reports of two Indian producers of CFS: The 2004–2005 Annual Reports of Ballapur Industries, Ltd. (Ballapur) and the 2005–2006 Annual Report of Seshasayee Paper and Boards, Ltd. (Seshasayee). *See* Volume II of the PRC petition at page 10 and Exhibit I–13. The Department revised the petitioner's financial ratio calculations by including in the calculations certain financial statement line items that were omitted from the calculations and by reclassifying certain expenses used in the calculations. *See PRC Initiation Checklist.*

[4] Source: *International Financial Statistics*, IMF, October 2006.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of CFS from Indonesia, Korea, and the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to CV, calculated in accordance with section 773(a)(4) of the Act, the weighted-average dumping margin for CFS is 99.14 percent for Indonesia, and 71.81 percent for Korea. Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act and adjusted as noted above, the weighted-average dumping margin for CFS from the PRC is 99.65 percent.

Initiation of Antidumping Investigations

Based upon the examination of the petitions on CFS from Indonesia, Korea, and the PRC, the Department finds that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of CFS from Indonesia, Korea, and the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Separate Rates and Quantity and Value Questionnaire

The Department recently modified the process by which exporters and producers may obtain separate-rate status in NME investigations. *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (*Separate Rates and Combination Rates Bulletin*), (Apr. 5, 2005), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf*. The process requires the submission of a separate-rate status application. Based on our experience in processing the separate-rate applications in the following antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete: *Initiation of Antidumping Duty Investigations: Certain Lined Paper Products from India, Indonesia, and the People's Republic of China,* 70 FR 58374, 58379 (Oct. 6, 2005), *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China,*70 FR 21996, 21999 (Apr. 28,

2005) (*Artist Canvas from the PRC)* and *Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea,* 70 FR 35625, 35629 (June 21, 2005) (*Sawblades from the PRC and Korea*). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application is due no later than January 26, 2007.

NME Respondent Selection and Quantity and Value Questionnaire

For NME investigations, it is the Department's practice to request quantity and value information from all known exporters identified in the petition. In addition, the Department typically requests the assistance of the NME government in transmitting the Department's quantity and value questionnaire to all companies that manufacture and export subject merchandise to the United States, as well as to manufacturers that produce the subject merchandise for companies that were engaged in exporting subject merchandise to the United States during the POI. The quantity and value data received from NME exporters is used as the basis to select the mandatory respondents. Although many NME exporters respond to the quantity and value information request, at times some exporters may not have received the quantity and value questionnaire or may not have received it in time to respond by the specified deadline.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. This procedure will be applied to this and all future NME investigations. *See Artist Canvas from the PRC,* 70 FR at 21999, *Sawblades from the PRC and Korea*, 70 FR at 35629, and *Initiation of Antidumping Duty Investigation: Certain Activated Carbon from the People's Republic of China,* 71 FR 16757, 16760 (Apr. 4, 2006). Appendix I of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters no later than December 27, 2006. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the IA Web site: *http://ia.ita.doc.gov/ia-highlights-and-news.html*. The Department will send the quantity and value questionnaire to those companies identified in Exhibit I–5 of Volume I of the PRC petition and the NME government.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The *Separate Rates and Combination Rates Bulletin,* states:

> [W]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

Separate Rates and Combination Rates Bulletin, at page 6.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, copies of the public versions of the petitions have been provided to the representatives of the Governments of Indonesia, Korea, and the PRC. We will attempt to provide a copy of the public version of the petitions to the foreign producers/exporters named in the petitions.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the International Trade Commission

The ITC will preliminarily determine, no later than December 15, 2006, whether there is a reasonable indication that imports of CFS from Indonesia, Korea, and the PRC are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination with respect to any of the investigations will result in those investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 20, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX I

Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930 (as amended) permits us to investigate 1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or 2) exporters and producers accounting for the largest volume and value of the subject merchandise that can reasonably be examined. In the chart below, please provide the total quantity and total value of all your sales of merchandise covered by the scope of this investigation (see scope section of this notice), produced in the PRC, and exported/shipped to the United States during the period April 1, 2006, through September 30, 2006.

Market United States	Total Quantity	Terms of Sale	Total Value
1. Export Price Sales			
2.			
a. Exporter name			
b. Address			
c. Contact			
d. Phone No			
e. Fax No			
3. Constructed Export Price Sales			
4. Further Manufactured			

Market	Total Quantity	Terms of Sale	Total Value
United States			
Total Sales			

Total Quantity:

• Please report quantity on a metric ton basis. If any conversions were used, please provide the conversion formula and source.

Terms of Sales:

• Please report all sales on the same terms (*e.g.*, free on board).

Total Value:

• All sales values should be reported in U.S. dollars. Please indicate any exchange rates used and their respective dates and sources.

Export Price Sales:

• Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before importation into the United States.
• Please include any sales exported by your company directly to the United States;
• Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
• If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
• Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Constructed Export Price Sales:

• Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.
• Please include any sales exported by your company directly to the United States;
• Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
• If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
• Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Further Manufactured:

• Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–809]

Steel Concrete Reinforcing Bars From Ukraine; Preliminary Results of the Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2006, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on steel concrete reinforcing bars from Ukraine. On the basis of the notice of intent to participate, and complete substantive responses filed on behalf of the domestic and respondent interested parties, the Department is conducting a full sunset review of the antidumping duty order pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.218(e)(2)(i). As a result of this sunset review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the level listed below in the section entitled ''Preliminary Results of Review.''

EFFECTIVE DATE: November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Audrey R. Twyman, Damian Felton, or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–3534, 202–482–0133, and 202–482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2006, the Department published its notice of initiation of the sunset review of the antidumping duty order on steel concrete reinforcing bars from Ukraine, in accordance with section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Reviews*, 71 FR 43443 (August 1, 2006) (''*Notice of Initiation*'').

The Department received a notice of intent to participate from the following domestic parties: The Rebar Trade Action Coalition and its individual producer members, Nucor Corporation, CMC Steel Group, and Gerdau Ameristeel, as well as domestic producers TAMCO Steel and Schnitzer Steel Industries, Inc. (''Schnitzer'') (''domestic interested parties''), within the deadline specified in 19 CFR 351.218(d)(1)(i). These companies claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic-like product in the United States.

The Department received a complete substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). In this response, Cascade Steel Rolling Mills, Inc. (''Cascade'') was substituted for Schnitzer as a domestic interested party. Cascade is a wholly owned subsidiary of Schnitzer. Also, Steel Dynamics, Inc. (''SDI'') was added as a domestic producer. Because SDI did not file a notice of intent to participate in this review, it is not eligible to file a substantive response. *See* 19 CFR 351.218(d)(iii)(A). Therefore, the domestic interested parties are now the Rebar Trade Action Coalition and its individual producer members Nucor Corporation, CMC Steel Group, and Gerdau Ameristeel, as well as TAMCO Steel, and Cascade. The Department received a complete substantive response from respondent interested party, Open Joint Stock Company ''Mittal Steel Kryviy Rih'' [1] (''Mittal Steel'' or the ''respondent interested party''), within the deadline specified in 19 CFR 351.218(d)(3)(i). On September 5, 2006, the Department received a rebuttal to Mittal Steel's substantive response from the domestic interested parties.

19 CFR 351.218(e)(1)(ii)(A) provides that the Secretary normally will conclude that respondent interested

[1] Mittal Steel notified the Department in its substantive response that as of November 2005, its name was changed due to an ownership change. Mittal Steel stated that its former name was ''Krivorozhstal'' Steel Works. The Department has neither conducted a changed circumstances review for this company, nor made a successor-in-interest determination.

parties have provided an adequate response to a notice of initiation where the Department receives complete substantive responses from respondent interested parties accounting, on average, for more than 50 percent, by volume, or value, if appropriate, of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation. On September 20, 2006, the Department found that Mittal Steel accounted for more than 50 percent of exports by volume of the subject merchandise from Ukraine to the United States, dependent upon it demonstrating that it exported to the United States during the period. *See* Memorandum to Susan H. Kuhbach, Director, from Damian Felton entitled, ''Adequacy Determination in Antidumping Duty Sunset Review of Steel Concrete Reinforcing Bars from Ukraine,'' (September 20, 2006).

In its substantive response, Mittal Steel also notified the Department of a name change that occurred in November 2005. Prior to this date, the company was named ''Krivorozhstal'' Steel Works. In November 2005, with Mittal Steel's purchase of the company, the name became Mittal Steel Kryviy Rih.

On September 28, 2006, the Department sent a letter to Mittal Steel requesting proof of order date, invoice date, quantity, value, shipment date, and payment date for its reported shipments. The Department also requested that Mittal Steel confirm that the merchandise was included in the scope of the order. On October 20, 2006, Mittal Steel submitted the requested documentation.

Because the Department has no evidence contradicting Mittal Steel's claim that it is the successor to ''Krivorozhstal'' Steel Works, which made the 2001 shipments, we are equating Mittal and ''Krivorozhstal'' Steel Works solely for the purpose of determining whether the respondent interested party submitted an adequate response to our notice of initiation. Based on its response to our request for supporting documentation, the Department determines that Mittal Steel has demonstrated that it represents more than 50 percent of the total exports of subject merchandise from Ukraine to the United States during this five-year sunset review period (2001–2005). Therefore, in accordance with 19 CFR 351.218(e)(2)(i), the Department is conducting a full sunset review of this antidumping duty order.

The final results in the full sunset review of this antidumping duty order are due on or before March 29, 2007.

Scope of the Order

The product covered by this order is all steel concrete reinforcing bars sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7214.20.00, 7228.30.8050, 7222.11.0050, 7222.30.0000, 7228.60.6000, 7228.20.1000, or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the ''Issues and Decision Memorandum for the Sunset Review of the Antidumping Duty Order on Steel Concrete Reinforcing Bars from Ukraine; Preliminary Results,'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration (November 20, 2006) (''Decision Memo''), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the antidumping duty order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memo, which is on file in room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

The Department preliminarily determines that revocation of the antidumping duty order on steel concrete reinforcing bars from Ukraine is likely to lead to continuation or recurrence of dumping at the following weighted-average margin:

Manufacturers/producers/exporters	Weighted-average margin (percent)
All Others Rate, including Mittal Steel Kryviy Rih and ''Krivorozhstal'' Steel Works [2]	41.69

[2] As of February 1, 2006, Ukraine graduated to market economy status. *See Final Results of Inquiry Into Ukraine's Status as a Non-Market Economy Country*, 71 FR 9520 (February 24, 2006). As a result, the Ukraine wide rate is now the All Others rate. Mittal Steel is considered part of the all others rate because a successor-in-interest determination has not been made. *See, e.g., Cut-to-Length Carbon Steel Plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom and Carbon Steel Plate from Taiwan; Second Five-Year (Sunset) Reviews of Antidumping Duty Orders and Antidumping Finding; Final Results*, 71 FR 11577, 11579 (March 8, 2006) (explaining that Duferco is subject to the all others rate because the Department had not yet conducted a changed circumstances review to determine the successor-in-interest to Forges de Clabecq, S.A.).

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Interested parties may submit case briefs no later than 50 days after the date of publication of this notice, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 5 days after the case briefs, in accordance with 19 CFR 351.309(d)(1). Any hearing, if requested, will be held two days after rebuttal briefs are due, in accordance with 19 CFR 351.310(d)(1). The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such briefs, no later than March 29, 2007.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Date: November 20, 2006.

David M. Spooner,

Assistant Secretary for Import Administration

[FR Doc. E6–20011 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–449–804]

Steel Concrete Reinforcing Bars From Latvia; Preliminary Results of the Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2006, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on steel concrete reinforcing bars from Latvia. On the basis of the notice of intent to participate by a domestic interested party and adequate responses filed on behalf of the domestic and respondent interested parties, the Department is conducting a full sunset review of the antidumping duty order pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.218(e)(2)(i). As a result of this sunset review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Preliminary Results of Review.''

Effective Date: November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Audrey R. Twyman, Damian Felton, or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC, 20230; telephone: 202–482–3534, 202–482–0133, and 202–482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2006, the Department published its notice of initiation of the sunset review of the antidumping duty order on steel concrete reinforcing bars from Latvia, in accordance with section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Reviews,* 71 FR 43443 (August 1, 2006) (*''Notice of Initiation''*).

The Department received a notice of intent to participate from the following domestic parties: the Rebar Trade Action Coalition and its individual producer members, Nucor Corporation, CMC Steel Group, and Gerdau Ameristeel, as well as domestic producers TAMCO Steel and Schnitzer Steel Industries, Inc. (''Schnitzer'') (collectively ''domestic interested parties''), within the deadline specified in 19 CFR 351.218(d)(1)(i). The companies claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic-like product in the United States.

The Department received a complete substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). In this response, Cascade Steel Rolling Mills, Inc. (''Cascade'') was substituted for Schnitzer as a domestic interested party. Cascade is a wholly owned subsidiary of Schnitzer. Also, Steel Dynamics, Inc. (''SDI'') was added as a domestic producer. Because SDI did not file a notice of intent to participate in this review, it is not eligible to file a substantive response. *See* 19 CFR 351.218(d)(iii)(A). Therefore, the domestic interested parties are now the Rebar Trade Action Coalition and its individual producer members Nucor Corporation, CMC Steel Group, and Gerdau Ameristeel, as well as TAMCO Steel, and Cascade.

The Department received a complete substantive response from respondent interested party, Joint Stock Company Liepajas Metalurgs (''LM'' or the ''respondent interested party''), within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On September 5, 2006, the Department received a rebuttal to Liepajas Metalurgs' substantive response from the domestic interested parties.

19 CFR 351.218(e)(1)(ii)(A) provides that the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where the Department receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, by volume, or value, if appropriate, of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation. On September 20, 2006, the Department found that LM accounted for more than 50 percent of exports by volume of the subject merchandise from Latvia to the United States. *See* Memorandum to Susan H. Kuhbach, Director, from Damian Felton entitled, ''Adequacy Determination in Antidumping Duty Sunset Review of Steel Concrete Reinforcing Bars from Latvia,'' (September 20, 2006). In accordance with 19 CFR 351.218(e)(2)(i), the Department determined to conduct a full sunset review of this antidumping duty order.

The final results in the full sunset review of this antidumping duty order are due on or before March 29, 2007.

Scope of the Order

The product covered by this order is all steel concrete reinforcing bars sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7214.20.00, 7228.30.8050, 7222.11.0050, 7222.30.0000, 7228.60.6000, 7228.20.1000, or any other tariff item number. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the ''Issues and Decision Memorandum for the Sunset Review of the Antidumping Duty Order on Steel Concrete Reinforcing Bars from Latvia; Preliminary Results,'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated November 20, 2006 (''Decision Memo''), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the antidumping duty order were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memo, which is on file in room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

The Department preliminarily determines that revocation of the antidumping duty order on steel concrete reinforcing bars from Latvia is likely to lead to continuation or recurrence of dumping at the following weighted-average margins:

Manufacturers/Producers/Exporters	Weighted-average margin (percent)
Joint Stock Company Liepajas Metalurgs	17.21
All Others	17.21

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Interested parties may submit case briefs no later than 50 days after the date of publication of this notice, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 5 days after the case briefs, in accordance with 19 CFR 351.309(d)(1). Any hearing, if requested, will be held two days after rebuttal briefs are due, in accordance with 19 CFR 351.310(d)(1). The

Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such briefs, no later than March 29, 2007.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 20, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–20012 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–907, C–560–821, C–580–857]

Notice of Initiation of Countervailing Duty Investigations: Coated Free Sheet Paper From the People's Republic of China, Indonesia, and the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* November 27, 2006.

FOR FURTHER INFORMATION CONTACT: David Layton or David Neubacher (the PRC), Dana Mermelstein or Sean Carey (Indonesia), and Eric Greynolds or Darla Brown (Korea), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0371 and (202) 482–5823, (202) 482–1391 and (202) 482–3964, and (202) 482–6071 and (202) 482–2849, respectively.

Initiation of Investigations:

SUPPLEMENTARY INFORMATION:

The Petitions

On October 31, 2006, the Department of Commerce (the Department) received petitions filed in proper form by NewPage Corporation (petitioner). The Department received from petitioner information supplementing the petitions throughout the 20-day initiation period.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (''the Act''), petitioner alleges that manufacturers, producers, or exporters of coated free sheet paper (CFS) in the People's Republic of China (the PRC), Indonesia, and the Republic of Korea (Korea) received countervailable subsidies within the meaning of section 701 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in sections 771(9)(C) of the Act and petitioner has demonstrated sufficient industry support with respect to each of the countervailing duty investigations that it is requesting the Department to initiate (*see* ''Determination of Industry Support for the Petitions'' section below).

Scope of Investigations

The merchandise covered by each of these investigations includes coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not-more-than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating. Coated free sheet paper may be surface-colored, surface-decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double-side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms ''wood free'' or ''art'' paper may also be used to describe the imported product.

Excluded from the scope are: (1) Coated free sheet paper that is imported printed with final content printed text or graphics; (2) base paper to be sensitized for use in photography; and (3) paper containing by weight 25 percent or more cotton fiber.

Coated free sheet paper is classifiable under subheadings 4810.13.1900, 4810.13.2010, 4810.13.2090, 4810.13.5000, 4810.13.7040, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.7040, 4810.19.1900, 4810.19.2010, and 4810.19.2090 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Comments on Scope of Investigations

During our review of the petitions, we discussed the scope with petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the relevant foreign governments for consultations with respect to the countervailing duty petitions. The Department held consultations with representatives of the government of the PRC on November 9 and November 20, 2006. *See* the November 9 and November 20, 2006, memoranda to the file regarding the consultations with officials from the PRC (public documents on file in the CRU of the Department of Commerce, Room B–099). The Department held consultations with representatives of the governments of Indonesia and Korea on November 16, 2006. *See* the November 16, 2006, memoranda to the file regarding the consultations with officials from Indonesia and Korea (public documents on file in the CRU). On November 20, 2006, the Government of Indonesia (GOI) filed a letter reiterating their concerns regarding one of the issues the GOI raised at consultations.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for (1) At least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for

more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC) is responsible for determining whether ''the domestic industry'' has been injured and must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product, they do so for different purposes and pursuant to separate and distinct authority. *See* Section 771(10) of the Act. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to domestic like product, petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information presented by petitioner, we have determined that there is a single domestic like product, coated free sheet paper, which is defined in the ''Scope of Investigations'' section above, and we have analyzed industry support in terms of the domestic like product.

On November 15 and 16, 2006, we received submissions on behalf of Chinese and Indonesian producers of CFS questioning the industry support calculation. *See* ''Office of AD/CVD Operations Initiation Checklist for the Countervailing Duty Petition on Coated Free Sheet Paper from Indonesia,'' at Attachment II (Nov. 20, 2006) (*Indonesia CVD Initiation Checklist*), ''Office of AD/CVD Operations Initiation Checklist for the Countervailing Duty Petition on Coated Free Sheet Paper from the Republic of Korea,'' at Attachment II (Nov. 20, 2006) (*Korea CVD Initiation Checklist*), and ''Office of AD/CVD Operations Initiation Checklist for the Countervailing Duty Petition on Coated Free Sheet Paper from the People's Republic of the PRC,'' at Attachment II (Nov. 20, 2006) (*PRC CVD Initiation Checklist*), on file in the CRU. Our review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicate that petitioner has established industry support representing at least 25 percent of the total production of the domestic like product; and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition, requiring no further action by the Department pursuant to section 702(c)(4)(D) of the Act. Therefore, the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Thus, the requirements of section 702(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See Indonesia CVD Initiation Checklist* at Attachment II, *Korea CVD Initiation Checklist* at Attachment II, and *PRC CVD Initiation Checklist* at Attachment II.

Injury Test

Because the PRC, Indonesia and Korea are each a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC, Indonesia and Korea materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated allegedly subsidized imports of the subject merchandise from Indonesia, the PRC, and Korea. With regard to the PRC and Korea, the allegedly subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act. With respect to Indonesia, while the allegedly subsidized imports from Indonesia do not meet the statutory requirement of four percent over the most recent 12-month period for which import data are available, in its analysis for threat (*see* section 771(24)(B) of the Act), petitioner alleges and provides supporting evidence that these imports will imminently account for more than four percent of all CFS imports of the subject merchandise and, therefore, are not negligible. *See* section 771(24)(A)(iv) of the Act.

Petitioner contends that the industry's injury is evidenced by reduced market share, increased inventories, reduced shipments, lost sales, reduced production, lower capacity and capacity utilization rates, decline in prices, lost revenue, reduced employment, and a decline in financial performance. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation and have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See PRC CVD Initiation Checklist, Indonesia CVD Initiation Checklist,* and *Korea CVD Initiation Checklist.*

Initiation of Countervailing Duty Investigations

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to petitioner supporting the allegations. The Department has examined the countervailing duty petitions on CFS from the PRC, Indonesia, and Korea and found that they comply with the requirements of section 702(b) of the

[1] *See USEC, Inc.* v. *United States*, 25 CIT 49, 55–56, 132 F. Supp. 2d 1, 7–8 (Jan. 24, 2001) (*citing Algoma Steel Corp.* v. *United States*, 12 CIT 518, 523, 688 F. Supp. 639, 642–44 (June 8, 1988)).

Act. Therefore, in accordance with section 702(b) of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of CFS in the PRC, Indonesia, and Korea receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see PRC CVD Initiation Checklist, Indonesia CVD Initiation Checklist,* and *Korea CVD Initiation Checklist.*

We are including in our investigations the following programs alleged in the petitions to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC, Indonesia, and Korea:

I. The PRC
- A. *Grant Programs*
- B. *Policy Loans*
- *Uncreditworthiness*—Petitioner has provided a reasonable basis to believe or suspect that, in accordance with 351.505(a)(6) of the Department's regulations, that Shandong Chenming Paper Holdings Ltd. was uncreditworthy in 2004 and 2005 and Ningxia Meili Paper Industry Co., Ltd. was uncreditworthy from 2003 through 2005. See Memorandum from Susan Kuhbach, Director, to Stephen J. Claeys, Deputy Assistant Secretary regarding Initiation of Countervailing Duty Investigation: Coated Free Sheet Paper from the People's Republic of China; Shandong Chenming and Ningxia Meili Uncreditworthiness Allegation (November 20, 2006).
- C. *Preferential Tax Programs for Encouraged Industries Including the Paper Industry*
- 1. *Tax Incentives for Foreign Investment Enterprises (FIEs)*
- 2. *Tax & Tariff Incentives for Select Industries*
- D. *The ''Two Free, Three Half'' Program*
- E. *Income Tax Exemptions Program for FIEs Located in Certain Geographic Locations*
- F. *Local income tax exemption and reduction program for ''productive'' FIEs*
- G. *Income tax exemption program for export-oriented FIEs*
- H. *Corporate Income Tax Refund Program for Reinvestment of Fie Profits in Export-oriented Enterprises*
- I. *Debt-to-equity Infusion for APP China*
- *Equity Infusion/Debt-for-Equity Swap-* Petitioner has provided a reasonable basis to believe or suspect that, in accordance with section 351.507(a)(7) of the Department's regulations, Asia Pulp and Paper's (APP's) subsidiary, APP China, was equityworthiness from March 2001 through the year of the debt-to-equity swap. *See PRC CVD Initiation Checklist.*
- J. *Subsidies to Input Suppliers*
- 1. *Preferential Tax Policies for FIEs Engaged in Forestry and Established in Remote Underdeveloped Areas*
- 2. *Preferential Tax Policies for Enterprises Engaged in Forestry*
- 3. *Special Fund for Projects for the Protection of Natural Forestry*
- 4. *Compensation Fund for Forestry Ecological Benefits*

II. Indonesia
- A. *Provision of Standing Timber For Less Than Adequate Remuneration*
- B. *Government Ban on Log Exports*
- C. *Subsidized Funding for Reforestation (Hutan Tanaman Industria or HTI Program)*
- 1. *''Zero-Interest'' Rate Loans*
- 2. *''Commercial Rate'' Loans*—Petitioner has provided a reasonable basis to believe or suspect that, in accordance with 351.505(a)(6) of the Department's regulations, that Asia Pulp & Paper (APP), a member of the Sinar Mas Group (SMG) and a cross-owned supplier of logs to PT. Pabrik Kertas Tjiwi Kimia Tbk. (TK) has been uncreditworthy since 2001. *See Indonesia CVD Initiation Checklist.*

III. Korea

Industry-Wide Programs
- A. *Preferential Lending by the KDB and Other GOK Authorities*
- B. *Export Industry Facility Loans (''EIFLs'')*
- C. *Reduction in Taxes for Operating in Regional and National Industrial Complexes*
- D. *Funding for Technology Development and Recycling Program*
- E. *Export and Import Credit Financing from the Export-Import Bank of Korea*
- F. *Sale of Pulp for less than Adequate Remuneration*
- G. *Sale of Pulp from Raw Material Reserve for less than Adequate Remuneration*
- H. *Duty Drawback on Non-physically Incorporated Items and Excess Loss Rates*
- I. *Direction of Credit*
- J. *Tax Programs under Restriction of Special Taxation Act (RSTA)*
- 1. *RSTA Article 71*
- 2. *RSTA Article 60*
- 3. *RSTA Article 63–2*

Company-Specific Programs
- A. *Shinho Paper (Shinho)-GOK-Led Bailouts in 1998, 2000, and 2002*
- 1. *Equity Infusion*—Petitioner has provided a reasonable basis to believe or suspect that, in accordance with 351.507(a)(7) of the Department's regulations, that Shinho was unequityworthy in 1998, 2000, and 2002, the years in which the government-provided equity infusions were provided. *See Korea CVD Initiation Checklist.*
- 2. *Extension of Debt Maturities and Reduction or Elimination of Interest Obligations*
- 3. *Debt Forgiveness*
- 4. *New Loans*—Petitioner has provided a reasonable basis to believe or suspect that, in accordance with 351.505(a)(6) of the Department's regulations, that Shinho was uncreditworthy from 1998 through 2005. *See Korea CVD Initiation Checklist.*
- B. *Kye Sung Paper (Kye Sung)-GOK-Led Bailout of Subsidiary in 2004*
- *Equity Infusion/Debt-for-Equity Swap*— Petitioner has provided a reasonable basis to believe or suspect that, in accordance with sections 351.505(a)(6) and 351.507(a)(7) of the Department's regulations, Poongman Paper, Kye Sung's CFS producing affiliate, was uncreditworthy and unequityworthy in 2004, the year in which the debt-for-equity swapped occurred. *See Korea CVD Initiation Checklist.*

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC, Indonesia, and Korea:

I. The PRC

Currency Manipulation

Petitioner alleges that the GOC-maintained exchange rate effectively prevents the appreciation of the Chinese currency (RMB) against the U.S. dollar. Therefore, when producers in the PRC sell their dollars at official foreign exchange banks, as required by law, the producers receive more RMB than they otherwise would if the value of the RMB were set by market mechanisms.

Petitioner has not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Therefore, we do not plan to investigate the currency manipulation program.

II. Indonesia

Accelerated Depreciation Program

We are not including in our investigation the Accelerated Depreciation program alleged to benefit producers and exporters of the subject merchandise in Indonesia. Petitioner alleges that this program allows a few select industries with high fixed capital costs to significantly accelerate the depreciation of their capital assets, creating a tax advantage for capital intensive industries, such as the paper production industry. The Department, however, has recently determined that the Accelerated Depreciation program is not countervailable because it is non-specific, in accordance with section 771(5A) of the Act. *See Final Affirmative Countervailing Duty Determination: Certain Lined Paper Products from Indonesia*, 71 FR 47174 (August 16, 2006), and accompanying Issues and Decision Memorandum at 10. Although petitioner argues that the Department should reconsider its determination of non-countervailability, no new information or evidence of changed circumstances was provided to warrant reconsideration of our finding of non-specificity.

III. Korea

Infrastructure Expansions and Improvements for Operating in Regional and National Industrial Complexes

Petitioner alleges that the GOK developed plans to establish an exclusive plant complex for the paper industry in the military equipment industrial complex in Gunjang, North Cholla province by 2001. Petitioner alleges that the complex, known as the Gunjang National Industrial Complex and established by the Ministry of Trade, Industry, and Economy, is undergoing large-scale infrastructure expansions and improvements, including upgrading access roads, railroad connections and expanding harbor facilities.

Petitioner provided insufficient information regarding the existence of a benefit or specificity. In particular, we find that petitioner did not provide sufficient evidence that any CFS producers are operating in the Gunjang National Industrial Complex.

Application of the Countervailing Duty Law to the PRC

Petitioner contends that there is no statutory bar to applying countervailing duties to imports from the PRC or any other non-market economy country. Citing *Georgetown Steel*, petitioner asserts that the court deferred to the Department's conclusion that it did not have the authority to conduct a CVD investigation, but did not affirm the notion that the statute prohibits the Department from applying countervailing duties to NME countries. *See* Petition, Part I, at 8 (*citing Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986) (*Georgetown Steel*)). Petitioner further argues *Georgetown Steel* is not applicable as the countervailing duty law (section 303 of the Tariff Act of 1930) involved in the court's decision has since been repealed and the statute has been amended to provide an explicit definition of a subsidy. *See* section 777(5) of the Act. In addition, petitioner argues that the Chinese economy is entirely different from the economies investigated in *Georgetown Steel* and the Department should not have any special difficulties in the identification and valuation of subsidies involving a non-market economy, such as the PRC, that would not arise in a market economy countervailing proceeding.

Finally, petitioner contends that the PRC's accession to the World Trade Organization (WTO) allows the Department to investigate countervailing duties in that country. Petitioner notes that the WTO Subsidies and Countervailing Measures Agreement (SCM Agreement), similar to U.S. law, permits the imposition of countervailing duties on subsidized imports on member countries and nowhere exempts non-market economy imports from being subject to the provisions of the SCM Agreement. As the PRC agreed to the SCM Agreement and other WTO provisions on the use of subsidies, petitioner argues the PRC should be subject to the same disciplines as all other WTO members.

Petitioner has provided sufficient argument and subsidy allegations (*see* ''Initiation of Countervailing Duty Investigations'') to meet the statutory criteria for initiating a countervailing duty investigation of CFS paper from the PRC. Given the complex legal and policy issues involved, and on the basis of the Department's discretion as affirmed in *Georgetown Steel*, the Department intends during the course of this investigation to determine whether the countervailing duty law should now be applied to imports from the PRC. The Department will invite comments from parties on this issue.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petitions has been provided to the Governments of the PRC, Indonesia, and Korea. We will attempt to provide a copy of the public version of the petitions to each exporter named in the petitions, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of these initiations, whether there is a reasonable indication that imports of subsidized CFS from the PRC, Indonesia, and Korea are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 20, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–20025 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–810]

Corrosion-Resistant Carbon Steel Flat Products From France: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 7, 2006, the Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of administrative review of the countervailing duty (''CVD'') order on corrosion-resistant carbon steel flat products (''CORE'') from France for the period January 1, 2004, through December 31, 2004 (*see Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 52770 (September 7, 2006) (*''CORE Preliminary Results''*)). The Department preliminarily found that Duferco Coating S.A. and Sorral S.A. (collectively, ''Duferco Sorral''), the producer/exporter of subject merchandise covered by this review did not receive countervailable subsidies during the period of review (''POR''). We did not receive any comments on our preliminary results and have made no revisions to those results.

DATES: *Effective Date:* November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** the CVD order on CORE from France. *See Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 43759 (August 17, 1993). On September 7, 2006, the Department

published in the **Federal Register** the preliminary results for this review (*see CORE Preliminary Results*).

In accordance with 19 CFR 351.213(b), this review covers Duferco Sorral, the only producer/exporter of the subject merchandise for which a review was specifically requested. In the *CORE Preliminary Results*, we invited interested parties to submit case briefs commenting on the preliminary results or request a hearing. We did not conduct a hearing in this review, as one was not requested, and did not receive case briefs.

Scope of the Order

This order covers cold-rolled (''cold-reduced'') carbon steel flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090.

Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Final Results of Review

As noted above, the Department received no comments concerning the preliminary results. Therefore, consistent with the *CORE Preliminary Results*, we continue to find that Duferco Sorral did not receive countervailable subsidies during the POR. In accordance with section 705(c)(1)(B)(i) of the Tariff Act of 1930, as amended, we calculated a total net subsidy rate of 0.00 percent *ad valorem* for Duferco Sorral.

As there have been no changes to or comments on the preliminary results, we are not attaching a decision memorandum to this **Federal Register** notice. For further details of the programs included in this proceeding, see the *CORE Preliminary Results.*

Assessment Rates/Cash Deposits

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') 15 days after the date of publication of these final results of this review, to liquidate shipments of subject merchandise by Duferco Sorral entered, or withdrawn from warehouse, for consumption on or after January 1, 2004, through December 31, 2004, without regard to countervailing duties. We will also instruct CBP not to collect cash deposits of estimated countervailing duties on shipments of the subject merchandise by Duferco Sorral entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

For all non-reviewed companies, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding. *See Certain Steel Products from France: Notice of Final Court Decision and Amended Final Determination of Countervailing Duty Investigation*, 64 FR 67561 (December 2, 1999). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Return of Destruction of Proprietary Information

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 written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 17, 2006.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. 06–9409 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Preliminary Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the countervailing duty (''CVD'') order on certain welded carbon steel standard pipe from Turkey for the period January 1, 2005, through December 31, 2005. We preliminarily find that the net subsidy rate for the company under review is *de minimis. See* the ''Preliminary Results of Review'' section of this notice, *infra.* Interested parties are invited to comment on these preliminary results. (*See* the ''Public Comment'' section, *infra.*)

EFFECTIVE DATE: November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department published in the **Federal Register** the CVD order on certain welded carbon steel pipe and tube products from Turkey. *See Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 7984 (March 7, 1986). On March 2, 2006, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 10642 (March 2, 2006). On March 23, 2006, we received a timely request for review from the Borusan Group (''Borusan''), a Turkish producer and exporter of the subject merchandise. On April 28, 2006, the Department initiated an administrative review of the CVD order on certain welded carbon steel standard pipe from Turkey, covering the period January 1, 2005, through December 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 25145 (April 28, 2006).

On May 2, 2006, the Department issued a questionnaire to Borusan and the Government of the Republic of Turkey (''the GOT''); we received the GOT's questionnaire response on July 14, 2006, and Borusan's response on July 17, 2006. On September 20, 2006, we issued supplemental questionnaires to Borusan and the GOT. We received the supplemental questionnaire response from Borusan and the GOT on October 4, 2006. On October 25, 2006, we issued a second supplemental questionnaire to Borusan and received the company's response on October 31, 2006.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. The only company subject to this review is Borusan. During the period of review (''the POR''), Borusan was comprised of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (''BMB'') and Borusan Istikbal Ticaret T.A.S. (''Istikbal''). This review covers 11 programs.

Scope of the Order

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (''HTSUS'') as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Period of Review

The period for which we are measuring subsidies is January 1, 2005, through December 31, 2005.

Company History

As noted above, Borusan is composed of BMB and Istikbal. BMB was previously known as Borusan Birlesik Boru Fabrikalari A.S. (''BBBF''). On December 13, 2004, BBBF changed its name to BMB subsequent to its merger with Mannesmann Boru Endustrisi T.A.S. (''MB'') on November 30, 2004.[1] *See Final Results of Countervailing Duty Administrative Review Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 43111 (July 31, 2006) (''*2004 Pipe Final*''), and accompanying Issues and Decision Memorandum, at ''Calculation of *Ad Valorem* Rate'' under ''Subsidies Valuation Information'' (''*2004 Pipe Memorandum*'').

During the POR, BMB produced the subject merchandise, which was first sold to Istikbal, an affiliated export sales company, and then resold to unaffiliated customers in the United States. BMB's shares are held by Borusan Mannesmann Boru Yatirim Holding A.S., a holding company owned by Borusan Holding A.S.[2] and Mannesmannrohren-Werke, A.G., a publicly traded company in Germany. Istikbal is majority-owned by Borusan Holding A.S.

Subsidies Valuation Information

Benchmark Interest Rates

To determine whether government-provided loans under review conferred a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial loans. *See* 19 CFR 351.505(a). Borusan provided the interest rates it paid on short-term U.S. dollar (''US$'')-denominated commercial loans. We preliminarily find that the company-specific US$-denominated short-term loans are comparable to the export credit US$-denominated loans, provided by the Export Credit Bank of Turkey (''Export Bank''), against which Borusan paid interest during the POR. During the POR, Borusan, however, did not pay interest against short-term Turkish Lira (''YTL'')-denominated commercial loans, which are comparable to the maturity of the export financing loans provided by the Export Bank.

Where no company-specific benchmark interest rates are available, the Department's regulations direct us to use a national average interest rate as the benchmark. *See* 19 CFR 351.505(a)(3)(ii). According to the GOT, however, there is no official national average short-term interest rate available.[3] Therefore, we have calculated the benchmark interest rate for short-term YTL-denominated loans based on short-term interest rate data for 2005, as reported by *The Economist.*[4]

To calculate the benchmark, we sourced short-term interest rates to represent quarterly rates for Turkey in 2005. Specifically, we sourced the interest rate reported in the last weekly publication of *The Economist* for each quarter of 2005, *i.e.*, the March 26, 2005, June 25, 2005, September 24, 2005, and December 24, 2005 editions. We then simple averaged those rates to calculate an annual short-term interest rate for Turkey.[5] We then compared the nominal average interest rate with the interest rates that the company paid against the YTL-denominated Foreign Trade Companies Short-Term Export Credits and Pre-Export Credits. *See* Memorandum to the File concerning the Calculations for the Preliminary Results of the 2005 Review of the Countervailing Duty Order on Certain Welded Carbon Steel Standard Pipe from Turkey, at 2 (November 17, 2006).

[1] As of November 30, 2004, MB ceased to exist as a separate company. However, during the POR, MB filed its 2004 income tax return for the period January 1, 2004, through November 30, 2004. With regard to its 2004 income taxes, MB utilized the ''Deduction from Taxable Income for Export Revenue'' program. For more information, *see* ''Deduction from Taxable Income for Export Revenue'' under ''Programs Preliminarily Determined To Be Countervailable,'' *infra.*

[2] Borusan Holding A.S. is owned by the family of Asim Kocabiyik, the company's founder.

[3] *See* GOT's Questionnaire Response, at 20 (July 14, 2006).

[4] In each issue, *The Economist* reports short-term interest data on a percentage per annum basis for select countries.

[5] The short-term TL interest rates sourced from *The Economist* do not include commissions or fees paid to commercial banks, *i.e.*, they are nominal rates. *See Carbon and Certain Alloy Steel Wire Rod from Turkey; Final Negative Countervailing Duty Determination*, 67 FR 55815 (August 30, 2002) (''*Wire Rod*''), and accompanying Issues and Decision Memorandum, at ''Benchmark Interest Rates'' (''*Wire Rod Memorandum*'').

This methodology is consistent with the Department's practice. *See 2004 Pipe Memorandum*, at ''Benchmark Interest Rates'' under ''Subsidies Valuation Information'' and ''Comment 1: Benchmark Interest Rate for Turkish Lira Loans.''

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Deduction From Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law allows companies that operate internationally to claim, directly on their corporate income tax returns, a tax deduction equal to 0.5 percent of the foreign exchange revenue earned from exports and other international activities.[6] The income tax deduction for export earnings may either be taken as a lump sum or be used to cover certain undocumented expenses, which were incurred through international activities, that would otherwise be non-deductible for tax purposes (*e.g.*, expenses paid in cash, such as for lodging, gasoline, and food).

Consistent with the *2004 Pipe Final*, we preliminarily find that this tax deduction is a countervailable subsidy. *See 2004 Pipe Memorandum*, at ''Deduction from Taxable Income for Export Revenue'' under ''Programs Determined To Be Countervailable.'' The deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Tariff Act of 1930, as amended (''the Act''), because it represents revenue forgone by the GOT. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. It is specific under section 771(5A)(B) of the Act because its receipt is contingent upon export performance. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior findings.

During the review period, BMB, MB,[7] and Istikbal filed separate corporate income tax returns for tax year 2004. Each company utilized the deduction for export earnings with respect to its 2004 income taxes.

The Department typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate for this program, we calculated the tax savings realized by BMB, MB, and Istikbal in 2005, as a result of the deduction for export earnings. We then divided that benefit by Borusan's total export sales for 2005. On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.21 percent *ad valorem.*

B. Foreign Trade Companies Short-Term Export Credits

The Foreign Trade Company (''FTC'') loan program was implemented to assist large export trading companies with their export financing needs. This program is specifically designed to benefit Foreign Trade Corporate Companies (''FTCC'') and Sectoral Foreign Trade Companies (''SFTC'').[8] An FTCC is a company whose export performance was at least US$75 million in the previous year. For eligible companies, the Export Bank will provide short-term export credits based on their past export performance. Under this credit program, the Export Bank extends short-term export credits directly to exporters in Turkish Lira and foreign currency (''FX''), up to 100 percent of the FOB export commitment. The program's interest rates are set by the Export Bank and the maturity of the loans is usually 180 days for YTL-denominated loans and 360 days for FX-denominated loans. To qualify for a FTC loan, in addition to submitting the necessary application documents, a company must provide a bank letter of guarantee, equivalent to the loan's principal and interest amount.

Istikbal, whose FTCC status was renewed in March 2005, was the only Borusan company to receive FTC credits during the POR. Istikbal paid interest against FTC loans denominated in Turkish Lira.

Consistent with previous determinations, we preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. *See, e.g., 2004 Pipe Memorandum* at ''Foreign Trade Companies Short-Term Export Credits'' under ''Programs Determined To Be Countervailable.'' The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments of interest that Istikbal made on its loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance. Further, the FTC loans are not tied to a particular export destination. Therefore, we have treated this program as an untied export loan program which renders it countervailable regardless of whether the loans were used for exports to the United States. *See id.*

Pursuant to 19 CFR 351.505(a)(1), we have calculated the benefit as the difference between the payments of interest that Istikbal made on its FTC loans during the POR and the payments the company would have made on comparable commercial loans.[9] In accordance with section 771(6)(A) of the Act, we subtracted from the benefit amount the fees which Istikbal paid to commercial banks for the required letters of guarantee. We then divided the resulting benefit by Borusan's total export value for 2005. On this basis, we preliminarily find that the net countervailable subsidy for this program is 0.01 percent *ad valorem.*

C. Pre-Export Credits

This program is similar to the FTC credit program described above; however, companies classified as either FTC or SFTC are not eligible for pre-export loans. Under the pre-export credit program, a company's past export performance is considered in evaluating a company's eligibility and establishing the company's credit limit. Like FTC loans, the Export Bank directly extends to companies pre-export loans, which are denominated in either Turkish Lira or foreign currency and have a maximum maturity of 360 and 540 days, respectively.[10] To quality for a pre-export loan, in addition to submitting the necessary application documents, a company must provide a bank letter of guarantee, equivalent to the loan's principal and interest amount. During the POR, BMB paid interest against pre-export loans that were denominated in both Turkish Lira and U.S. dollars.

Consistent with previous determinations, we preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. *See, e.g., 2004 Pipe Memorandum* at ''Pre-Export Credits'' under ''Programs Determined To Be Countervailable.'' The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A

[6] These actions include construction, repair, installation, and transportation activities that occur abroad.

[7] *See* ''Company History'' section, *supra*, for MB's company information.

[8] An SFTC is a grouping of small- and medium-sized companies that operate together in a similar sector.

[9] *See* ''Benchmark Interest Rates,'' *supra*, (discussing the benchmark rates used in these preliminary results).

[10] The Export Bank also sets the interest rates for this export loan program.

benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments of interest that BMB made on its loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

Further, like the FTC loans, these loans are not tied to a particular export destination. Therefore, we have treated this program as an untied export loan program rendering it countervailable regardless of whether the loans were used for exports to the United States.

Pursuant to 19 CFR 351.505(a)(1), we have calculated the benefit as the difference between the payments of interest that BMB made on its pre-export loans during the POR and the payments the company would have made on comparable commercial loans.[11] In accordance with section 771(6)(A) of the Act, we subtracted from the benefit amount the fees which BMB paid to commercial banks for the required letters of guarantee. We then divided the resulting benefit by Borusan's total export value for 2005. On this basis, we preliminarily find that the net countervailable subsidy for this program is 0.01 percent *ad valorem.*

II. Program Preliminary Determined To Not Confer Countervailable Benefits

A. Inward Processing Certificate Exemption Under the Inward Processing Certificate (''IPC'')[12] program, companies are exempt from paying customs duties and value added taxes (''VAT'') on raw material imports to be used in the production of exported goods. Companies may choose whether to be exempted from the applicable duties and taxes or have them refunded upon export. Under the exemption system, companies provide a letter of guarantee that is returned to the companies upon fulfillment of the committed export.

To participate in this program, a company must hold an IPC, which lists the amount of raw materials to be imported and the amount of product to be exported. There are two types of IPCs: A D–1 certificate and D–3 certificate. During the POR, Borusan utilized D–1 certificates associated with imports of raw materials for use in the production of carbon steel pipe and tube. Borusan did not utilize any D–3 certificates during the POR.[13]

An IPC specifies the maximum quantity of inputs that can be imported under the program. Under the IPC program, the value of imported inputs may not exceed the value of the exported products. Input/output usage rates listed on an IPC are set by the GOT working in conjunction with Turkey's Exporter Associations, which are quasi-governmental organizations, whose leadership are subject to GOT approval. The input/output usage rates vary by product and industry and are determined using data from capacity reports submitted by companies that apply for IPCs. The input/output usage rates are subject to periodic review and verification by the GOT. The GOT uses the input/output usage rates to ensure that a company's expected export quantities are sufficient to cover the quantity of inputs imported duty-free under the program.[14]

Pursuant to 19 CFR 351.519(a)(1)(ii), a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than imported charges that are imposed on the input. In regard to the VAT exemption granted under this program, pursuant to 19 CFR 351.517(a), in the case of the exemption upon export of indirect taxes, a benefit exists to the extent that the Department determines that the amount exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

In the *2004 Pipe Final,* the Department found that, in accordance with 19 CFR 351.519(a)(4)(i), the GOT has a system in place to confirm which inputs are consumed in the production of the exported product and in what amounts, and that the system is reasonable for the purposes intended. *See 2004 Pipe Memorandum,* at ''Inward Processing Certificate Exemption'' under ''Programs Determined To Not Confer Countervailable Benefits.'' During the POR, under D–1 certificates, Borusan received duty and VAT exemptions on certain imported inputs used in the production of steel pipes and tubes and not duty or VAT refunds. There is no evidence on the record of this review that indicates the amount of exempted inputs imported under the program were excessive or that Borusan used the imported inputs for any other product besides those exported.

Therefore, consistent with the *2004 Pipe Final,* we preliminarily determine that the tax and duty exemptions, which Borusan received on imported inputs under D–1 certificates of the IPC program, did not confer countervailable benefits as Borusan consumed the imported inputs in the production of the exported product, making normal allowance for waste. We further preliminarily find that the VAT exemption did not confer countervailable benefits on Borusan because the exemption does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Further, because Borusan did not import any goods under a D–3 certificate during the POR, we preliminarily determine that this aspect of the IPC program was not used.

III. Programs Preliminarily Determined To Not Be Used

We examined the following programs and preliminarily determine that Borusan did not apply for or receive benefits under these programs during the POR:

A. VAT Support Program (Incentive Premium on Domestically Obtained Goods)[15].

B. Pre-Shipment Export Credits.

C. Post-Shipment Export Loans.

D. Pre-Shipment Rediscount Loans.

E. Subsidized Turkish Lira Credit Facilities.

F. Subsidized Credit for Proportion of Fixed Expenditures.

G. Regional Subsidies.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we have calculated a subsidy rate for Borusan for the period January 1, 2005, through December 31, 2005. We preliminarily determine that the total net countervailable subsidy rate is 0.23 percent *ad valorem,* which

[11] *See* ''Benchmark Interest Rates,'' *supra* (discussing the benchmark rates used in these preliminary results).

[12] The IPC program is governed by the following Turkish provisions: Customs Code No. 4458 (Articles 80, 108, 111, 115, and 121), IPC Council of Ministers' Decree No. 2005/8391, and Communique of IPR No. Export 2005/1.

[13] For more information on D–3 certificates, *see 2004 Pipe Memorandum,* at ''Inward Processing Certificate Exemption'' under ''Programs Determined To Not Confer Countervailable Benefits,'' and GOT's Questionnaire Response, at 45–48 (July 14, 2006).

[14] For more information on how waste/usage rates are set by the GOT, *see 2004 Pipe Memorandum,* at ''Inward Processing Certificate Exemption'' under ''Programs Determined To Not Confer Countervailable Benefits'' and GOT's Questionnaire Response, at Exhibit 5, pages 10–11 (July 14, 2006).

[15] Although we found this program to be terminated in *Wire Rod,* residual payments for purchases made prior to the program's termination were permitted. *See Wire Rod Memorandum,* at ''VAT Support Program'' under ''Programs Determined To Be Countervailable.''

is *de minimis*, pursuant to 19 CFR 351.106(c).

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') 15 days after the date of publication of the final results of this review. If the final results remain the same as these preliminary results, the Department will instruct CBP to liquidate without regard to countervailing duties all shipments of subject merchandise produced by Borusan entered, or withdrawn from warehouse, for consumption from January 1, 2005, through December 31, 2005. The Department will also instruct CBP not to collect cash deposits of estimated countervailing duties on all shipments of the subject merchandise produced by Borusan, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

We will also instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, 37 days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. *See* 19 CFR 351.305(b)(3). The Department will publish the final results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

This administrative review is issued and published in accordance with section 751(a)(1), 777(i)(1) of the Act.

Dated: November 17, 2006.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–20008 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Construction Safety Team (NCST) Advisory Committee (Committee), National Institute of Standards and Technology (NIST), will meet via teleconference Thursday, December 14, 2006, from 9 a.m. to 11 a.m. The meeting will be audio Webcast so that the public may listen to the meeting as it takes place. The primary purpose of this meeting is for the NCST Advisory Committee to discuss its annual report to the Congress and to discuss the status of the investigation of World Trade Center 7. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *www.nist.gov/ncst.*

DATES: The meeting will convene on December 14, at 9 a.m. and will adjourn at 11 a.m. The meeting will be conducted via teleconference. The live audio Webcast will be available to the public via a link on the NIST WTC Web site, *http://wtc.nist.gov.*

ADDRESS: The meeting will be held via teleconference. A live audio Webcast of the meeting will be available via a link on the NIST WTC Web site, *http://wtc.nist.gov.* Please refer to the **SUPPLEMENTARY INFORMATION** section of this notice for additional information.

FOR FURTHER INFORMATION CONTACT: Stephen Cauffman, National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, MS 8611, Gaithersburg, MD 20899–8611. Mr. Cauffman's e-mail address is *stephen.cauffman@nist.gov* and his phone number is (301) 975–6051.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to Section 11 of the National Construction Safety Team Act (15 U.S.C. 7310 et seq.). The Committee is composed of seven members appointed by the Director of NIST who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting teams established under the NCST Act. The Committee will advise the Director of NIST on carrying out investigations of building failures conducted under the authorities of the NCST Act that became law in October 2002 and will review the procedures developed to implement the NCST Act and reports issued under section 8 of the NCST Act. Background information on the NCST Act and information on the NCST Advisory Committee is available at *www.nist.gov/ncst.*

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Construction Safety Team (NCST) Advisory Committee (Committee), National Institute of Standards and Technology (NIST), will meet Thursday, December 14, at 9 a.m. and will adjourn at 11 a.m. The meeting will be conducted by teleconference with a live audio Webcast available to the public.

The primary purpose of this meeting is for the NCST Advisory Committee to discuss its annual report to the Congress and to discuss the status of the investigation of World Trade Center 7. The meeting will be conducted via teleconference with a live audio Webcast. The final agenda will be posted on the NIST Web site at *www.nist.gov/ncst.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs, or the WTC Investigation are invited to request a place on the agenda. Approximately one-half hour will be reserved for public comments, and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be 5 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, MS 8611, Gaithersburg, MD 20899–8611, via fax at (301) 975–6122, or electronically by e-mail to *ncstac@nist.gov.*

Since the meeting will be held by teleconference, all those wishing to speak must submit their request by e-mail to the attention of Mr. Stephen Cauffman, *cauffman@nist.gov* by 5 p.m. EST on December 12, 2006. Instructions on how and when to call in for the public comment period will be provided to registered speakers by e-mail on December 13, 2006.

Dated: November 16, 2006.

James E. Hill,

Deputy Director.

[FR Doc. E6–20010 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Voluntary Laboratory Accreditation Program Workshop for Laboratories Interested in the Personal Body Armor Testing Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Public Workshop.

SUMMARY: The National Voluntary Laboratory Accreditation Program (NVLAP) will hold a public workshop on December 8, 2006, at the National Institute of Standards and Technology (NIST) headquarters in Gaithersburg, MD. The purpose of the workshop is the exchange of information among NVLAP, the NIST Office of Law Enforcement Standards (OLES), the National Institute of Justice's (NIJ) National Law Enforcement and Corrections Technology Center (NLECTC), laboratories interested in seeking accreditation for the testing of personal body armor, and other interested parties. The results of the workshop discussions will be used in the development of the NVLAP Personal Body Armor Program.

There is no charge for the workshop; however, because of security regulations, advance registration is mandatory. There will be no on-site, same-day registration. The registration deadline is Wednesday, December 6, 2006. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The workshop will be held on Friday, December 8, 2006, from 9 a.m. to 4:30 p.m.

ADDRESSES: The workshop will be held in the Administration Building (Building 101), Lecture Room B, National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD, 20899.

FOR FURTHER INFORMATION CONTACT: Hazel M. Richmond, (301) 975–3024, e-mail: *hazel.richmond@nist.gov.* The mailing address is 100 Bureau Drive, Mail Stop 2140, Gaithersburg, MD, 20899–2140. Information regarding NVLAP and the accreditation process can be viewed at *http://www.nist.gov/nvlap.*

SUPPLEMENTARY INFORMATION: In response to a request from the U.S. Department of Justice (DOJ), National Institute of Justice (NIJ) and Office of Science and Technology, the NIST National Voluntary Laboratory Accreditation Program (NVLAP) is considering establishing an accreditation program for laboratories that test ballistic- and stab-resistant body armor models.

NVLAP accreditation criteria are established in accordance with the Code of Federal Regulations (CFR, title 15, Part 285), NVLAP Procedures and General Requirements. To be accredited by NVLAP, laboratories conducting testing of personal body armor will be required to meet ISO/IEC International Standard 17025, general requirements for the competence of testing and calibration laboratories. In addition, for each new laboratory accreditation program (LAP), NVLAP works with the affected testing community to develop program-specific technical requirements. These requirements tailor the general accreditation criteria referenced in Sections 4 and 5 of the NIST Handbook 150 to the test and services in the new LAP. Program-specific requirements include the details of the scope of accreditation, test and measurement equipment, personnel requirements, validation of test methods, and reporting of test results.

NVLAP accreditation does not imply any guarantee (certification) of laboratory performance or test/calibration data. NVLAP accreditation is a finding of laboratory competence. All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by close of business Wednesday, December 6, 2006, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Hazel M. Richmond and she will provide you with instructions for admittance.

Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Ms. Richmond's e-mail address is *hazel.richmond@nist.gov* and her phone number is (301) 975–3024.

Dated: November 16, 2006.

James E. Hill,

Acting Deputy Director.

[FR Doc. E6–19958 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 110206F]

Notice of Availability of Final Environmental Impact Statement for the Final Green Diamond Resource Company Aquatic Habitat Conservation Plan/Candidate Conservation Agreement with Assurances, Del Norte and Humboldt Counties, CA

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS) (together, the Services) advise the public of the availability of the Final EIS on the applications by Simpson Resource Company, now Green Diamond Resource Company

(Green Diamond), for a Section 10 incidental take permit and an enhancement of survival permit (together, the Permits), and a Final multi-species Aquatic Habitat Conservation Plan/ Candidate Conservation Agreement with Assurances (AHCP/CCAA, or Plan) pursuant to the Endangered Species Act of 1973, as amended (ESA). The Services and Green Diamond also have developed an Implementation Agreement. The applicant seeks the Permits to authorize incidental take of specified covered species, including some that may become listed during the term of the Permits. The Permits are sought to authorize incidental take of the covered species during forest management and timber harvest in Del Norte and Humboldt Counties, CA, where Green Diamond owns lands or harvesting rights, during the term of the proposed 50 year Permits and Plan.

This notice is provided pursuant to applicable NEPA regulations (40 CFR 1506.6) to inform the public of the proposed action, and to make available for 30 days' review the Final EIS, Plan, and Implementation Agreement. The Environmental Protection Agency (EPA) also is publishing a similar notice.

DATES: Written comments must be received on or before December 27, 2006.

ADDRESSES: Comments may be sent by any of the following methods:

- Mail: Please sed comments to Mr. John Clancy, National Marine Fisheries Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521.
- E-mail: Comments can be submitted by e-mail to *GDR.FEIS@noaa.gov*.
- Fax: You may fax comments to (707) 822–8411.

FOR FURTHER INFORMATION CONTACT: Ms. Amedee Brickey, Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521, (707) 822–7201; or Mr. John P. Clancy, National Marine Fisheries Service, 1655 Heindon Road, Arcata, CA 95521, (707) 825–5175.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Copies of the Final EIS, Plan, Applications for Permits and Implementation Agreement are available for public inspection during regular business hours at the Arcata National Marine Fisheries Office and Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

The documents can also be downloaded from the World Wide Web at *http://swr.nmfs.noaa.gov*. Copies are also available for viewing in each of the following libraries:

1. Eureka Main Library, 1313 3rd Street, Eureka, CA; Telephone: (707) 269–1900
2. Fortuna Branch, Humboldt County Library, 775 14th Street, Fortuna, CA; Telephone: (707) 725–3460
3. Arcata Branch, Humboldt County Library, 500 7th Street, Arcata, CA; Telephone: (707) 822–5924
4. Crescent City Library, 190 Price Mall, Crescent City, CA; Telephone: (707) 464–9793

Background Information

Section 9 of the ESA and Federal regulation prohibit the taking of an animal species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. ''Harm'' has been defined by FWS to include ''significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering.'' Consistent with FWS, NMFS has defined ''harm'' as an act which actually kills or injures fish or wildlife, and emphasizes that such acts may include ''significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering.''

The Services may issue two types of permits under section 10(a) of the ESA to non-federal landowners to take listed species, under certain terms and conditions. FWS' regulations governing permits for threatened and endangered species are promulgated at 50 CFR 17.32 and 50 CFR 17.22; NMFS' regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307. Green Diamond has prepared their Plan to satisfy the application requirements for a section 10(a)(1)(B) incidental take permit under the ESA for, listed and non-listed, covered species under the jurisdiction of NMFS. Green Diamond's Plan was also prepared to satisfy the application requirements for a section 10(a)(1)(A) enhancement of survival permit under the ESA for non-listed covered species under the jurisdiction of the FWS.

Though the names of these two permitting tools are different, the goals are similar, and the strategies for achieving those goals can overlap. Green Diamond's conservation strategy was designed to fulfill section 10(a)(1)(A) and section 10(a)(1)(B) permit requirements in a single Plan. If the Plan is approved and the Permits issued, take authorization of covered listed species would be effective at the time of permit issuance. Take of the currently non-listed species would be authorized concurrent with species' listing under the ESA, should they be listed during the duration of the Permits.

Green Diamond owns and manages approximately 439,000 acres of commercial timberland in Del Norte and Humboldt Counties, CA. Approximately 417,000 acres of this property occurs in watersheds with habitat important to the conservation of salmonid species in the North Coast region of California, including, but not limited to, the Winchuck River, Smith River, Klamath River and its tributaries, Redwood Creek, Little River, Mad River, tributaries to Humboldt Bay, Eel River, the Van Duzen River and others. Some forest management and timber harvest activities have the potential to impact species subject to protection under the ESA.

Green Diamond has developed a Plan, with technical assistance from the Services, to obtain Permits for take incidental to specified covered activities on approximately 417,000 acres of its commercial timberlands. Activities proposed for Permit coverage include the following: timber-product harvest; forest product transportation; road and landing construction, use, maintenance and decommissioning; site preparation; tree planting; silvicultural thinning; controlled burns; rock quarries and borrow pit operations; aquatic habitat restoration; and the management, harvest, and sale of minor forest products. The Plan also covers certain monitoring activities and related scientific experiments in the Plan area. The proposed duration of the Plan is 50 years.

Green Diamond seeks a section 10(a)(1)(B) incidental take permit from NMFS that would authorize the take of fish in two Evolutionarily Significant Units (ESUs) and one Distinct Population Segment (DPS), which are listed as threatened, incidental to otherwise lawful management activities: California Coastal Chinook salmon (*Oncorhynchus tshawytscha*) ESU, Southern Oregon/Northern California Coast coho salmon (*O. kisutch*) ESU, and Northern California steelhead (*O. mykiss*) DPS. Green Diamond also is seeking coverage of fish in three unlisted ESUs (Klamath Mountains Province steelhead ESU, Upper Klamath/Trinity Rivers Chinook salmon ESU, and Southern Oregon and Northern California Coastal Chinook

salmon ESU) under specific provisions of the incidental take permit, should these species be listed in the future.

Green Diamond also has requested a section 10(a)(1)(A) enhancement of survival permit from FWS that would authorize the take of the non-listed coastal cutthroat trout (*O. clarki clarki*), rainbow trout (*O. mykiss*), southern torrent salamander (*Rhyacotriton variegatus*), and tailed frog (Ascaphus truei) under specific provisions of the enhancement of survival permit, should these species be listed in the future.

On July 11, 2000, the Services formally initiated an environmental review of the project through a Notice of Intent to prepare an EIS in the **Federal Register** (65 FR 42674). The project proponent was Simpson Timber Company. In December of 2001, Simpson Timber Company transferred all of its timberlands to Simpson Resource Company, and Simpson Resource Company became the project proponent. The Notice of Intent also announced a 30–day public scoping period, during which other agencies, tribes, and the public were invited to provide comments and suggestions regarding issues and alternatives to be included in the EIS. Four public scoping meetings were held over a two-day period on July 11 and July 12, 2000, in Eureka and Crescent City, California, and a series of six informational meetings with cooperating agencies and local tribal groups also were held in August and September 2000.

On August 16, 2002, the Services published a Notice of Availability of the Draft Simpson Resource Company Aquatic Habitat Conservation Plan/ Candidate Conservation Agreement with Assurances and Draft Environmental Impact Statement, Del Norte and Humboldt Counties, California in the **Federal Register** (67 FR 53567). The public review period was scheduled for 90 days from August 16, 2002, to November 14, 2002. Two public meetings were held on September 4, 2002, in Eureka, California. A total of 20 oral questions and comments were received from two public meetings, and 25 comment letters were received, comprising 1,267 separate comments. A response to each of these comments is included in the Final EIS.

Effective May 1, 2004, Simpson Resource Company, the project proponent, changed its name to Green Diamond Resource Company, and the Final EIS reflects that change.

The Final EIS is intended to accomplish the following: Inform the public of the proposed action and alternatives; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

Alternatives

The Final EIS analyzes Green Diamond's proposal and four alternatives. Under the Proposed Action, the Services would issue the Permits and Green Diamond would implement their proposed Plan on approximately 417,000 acres of Green Diamond 's California timberlands. Under the No Action Alternative, Permits would not be issued and Green Diamond would remain subject to the prohibition on unauthorized taking of listed species. Under a Listed Species Only Alternative (Alternative A), the Services would issue Permits only for currently listed species. The Simplified Prescriptions Alternative (Alternative B) would provide coverage for the same species as the Proposed Action, with modified management obligations. The Expanded Species/Geographic Area Alternative (Alternative C) would expand the area of coverage and the number of species covered under the Permits.

National Environmental Policy Act

Proposed permit issuance triggers the need for compliance with the National Environmental Policy Act (NEPA) and accordingly the Services have prepared a joint NEPA document. The Services are Co-Leads responsible for compliance under NEPA. As NEPA Co-Lead agencies, the Services are providing notice of the availability of the Final EIS and are making available for public review the responses to comments on the Draft EIS.

Public Review

The Services invite the public to review the Final EIS, Plan, and Implementing Agreement during a 30–day waiting period [see DATES]. Any comments received, including names and addresses, will become part of the administrative records and may be made available to the public.

Our practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and /or homes addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organization or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

The Services will evaluate the application, associated documents, and comments submitted to them in preparation of the two Records of Decision. Permit decisions will be made no sooner than 30 days after the publication of the Final EIS and completion of the Records of Decision.

This notice is provided pursuant to section 10(a) of the Federal ESA and the applicable regulations for implementing NEPA, as amended (40 CFR 1506.6). We provide this notice in order to allow the public, agencies, or other organizations the opportunity to review these documents.

Dated: November 16, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: November 7, 2006.

Ken McDermond,

Deputy Operations Manager, California/ Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 06–9408 Filed 11–24–06; 8:45 am]

BILLING CODES 3510–22–S, 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101206B]

Magnuson-Stevens Act Provisions; Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display Permits, and Chartering Permits

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

ACTION: Notice of intent; request for comments.

SUMMARY: NMFS announces its intent to issue Exempted Fishing Permits (EFPs), Scientific Research Permits (SRPs), Display Permits, Letters of Acknowledgment (LOAs) and Chartering Permits for the collection of

Atlantic highly migratory species (HMS) in 2007. In general, EFPs, SRPs, Display Permits, and Chartering Permits would authorize collections of a limited number of Atlantic tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean and Gulf of Mexico for the purposes of scientific data collection and public display. The issuance of EFPs to Atlantic billfishes tournaments for the use of J-hooks to fish for blue marlin is also discussed in this notice. Typically, EFPs, SRPs, LOAs, Display Permits, and Chartering Permits would be valid from the date of issuance through December 31, 2007.

DATES: Written comments on these collection, research, and fishing activities will be considered by NMFS when issuing EFPs, SRPs, Display Permits, and/or Chartering Permits if received on or before December 27, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

- Email: *SF1.101206B@noaa.gov*. Include in the subject line the following identifier: ''I.D. 101206B''.
- Mail: Margo Schulze-Haugen, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- Fax: (301) 713–1917.

FOR FURTHER INFORMATION CONTACT: Jackie Wilson, by phone: (404) 806–7622; or by fax: (404) 806–9188; or Chris Rilling or Karyl Brewster-Geisz, by phone: (301) 713–2347; or by fax: (301) 713–1917.

SUPPLEMENTARY INFORMATION: EFPs, SRPs, Display Permits, and Chartering Permits are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 635.32 govern scientific research activity, exempted fishing, chartering arrangements, and exempted educational activity with respect to Atlantic HMS. Scientific research is exempted from regulation under the Magnuson-Stevens Act, so NMFS does not issue EFPs for bonafide research activities (i.e., research conducted from a research vessel and not a commercial or recreational fishing vessel) involving species solely regulated under the Magnuson-Stevens Act. However, NMFS requests copies of scientific research plans, and NMFS indicates concurrence by issuing an LOA to researchers to indicate that the proposed activity meets the definition of research and is therefore exempt from regulation. Scientific research is not exempt under ATCA. Therefore, NMFS issues SRPs involving ATCA regulated species to researchers operating from bonafide research vessels, and EFPs to researchers operating from commercial or recreational fishing vessels.

Issuance of EFPs, SRPs, and Display Permits may be necessary for the collection of scientific data and for public display because the possession of certain species or size of HMS are prohibited, possession of billfishes on board commercial fishing vessels is prohibited, and/or because the commercial fisheries for bluefin tuna and large coastal sharks may be closed for extended periods, during which time the collection of live animals and/or biological samples would be otherwise prohibited. NMFS regulations at 50 CFR 635.32 regarding the implantation or attachment of archival tags in Atlantic HMS require prior authorization and a report on collection and implantation activities.

NMFS seeks public comment on its intent to issue EFPs for the purpose of collecting biological samples under at-sea fisheries observer programs. NMFS intends to issue EFPs to the Northeast and Southeast Observer programs to allow any NMFS employee or NMFS-approved contractor/observer to bring onboard and possess (for scientific research purposes, biological sampling, measurement, etc.) any Atlantic tuna, swordfish, shark, or billfish provided the fish is a tagged and recaptured fish, dead prior to being brought onboard, or specifically authorized for sampling by the Director of NMFS' Office of Sustainable Fisheries at the request of the Southeast Fisheries Science Center or the Northeast Fisheries Science Center. On average, several hundred swordfish and sharks are collected by at-sea observers under such EFPs in any given year. Collection of bluefin tuna for age and growth, genetic, and spawning information by at-sea-observers began in 2005.

NMFS received public comments on the final Environmental Impact Statement for the final Consolidated HMS Fishery Management Plan regarding the new requirement for billfish tournaments to use only circle hooks when fishing natural baits and natural bait/artificial lure combinations (October 2, 2006; 71 FR 58058). The commenters claimed that circle hooks are not necessary to reduce post-release injury and mortality of blue marlin when fishermen use either natural bait/artificial lure combinations or with heavy tackle (line test > 80 lb) trolling at fast speeds. In response to comments, NMFS stated that it would issue EFPs for billfish tournaments to collect additional scientific data on the impacts of J-hooks when fishing for blue marlin. NMFS has received comments during the HMS Advisory Panel meeting (October 3–4, 2006) as well as from billfish tournament directors that tournaments are not appropriate venues to collect scientific data due to the lack of standardized fishing practices and tournament operations. Accordingly, NMFS is continuing to examine more appropriate means of obtaining scientific data on the impacts of J-hooks when fishing for blue marlin. As such, NMFS is still considering the value of issuing EFPs to tournaments for this type of data collection. The Agency's decision on the issuance of these EFPs as well as alternative avenues NMFS might pursue to evaluate the impacts of J-hooks when fishing for blue marlin will be published in a future **Federal Register** notice.

NMFS is also seeking public comment on its intent to issue Display Permits for the collection of restricted species of sharks for public display in 2007. In the final 1999 Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks (1999 FMP), NMFS established a 60 metric ton wet weight quota for the public display and research of sharks (combined). NMFS preliminarily determined that, based on average weight of sharks landed, approximately 3,000 sharks could be taken with this current quota. The actual number of sharks taken depends on the species and size of the sharks collected. NMFS believes that harvesting this amount for public display will have a minimal impact on the stock and that the number of sharks harvested for display and research will remain under the annual 60 metric ton quota. Future rulemaking may re-evaluate this quota in light of the results of recent shark stock assessments. Specifically, landings of sandbar sharks and dusky sharks collected under the auspices of an EFP, SRP, Display Permit, or LOA may be restricted more in 2007 than in previous years given the results of the shark stock assessments. In 2006, eight Display Permits were issued, authorizing the collection of 292 large coastal, 156 small coastal, and 64 prohibited sharks for display purposes. The total number reported as actually taken will not be known until early 2007. In 2005, of the 258 large coastal, 60 small coastal, and 72 prohibited sharks authorized for collection via the issuance of seven Display Permits, only 37 large coastal sharks, 53 small coastal sharks (48 of which were Atlantic sharpnose), and 4 prohibited species

were reported taken from Federal waters. In 2005, 2.22 percent of the shark display and research quota was used for public display collections.

Authorized collections or exemptions may involve activities otherwise prohibited by regulations implementing the final Consolidated HMS FMP (October 2, 2006; 71 FR 58058). Display Permits, SRPs, and EFPs, if issued, may authorize recipients to fish for and possess tunas, billfish, swordfish, and sharks outside the applicable Federal commercial seasons, size limits and/or retention limits; to fish for and possess prohibited species; or to fish for and possess HMS collected for research purposes in closed areas. NMFS may consider exempted fishing applications for bycatch reduction research in closed regions of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea to test gear modifications and fishing techniques aimed to avoid incidental capture of non-target species. Any proposed research activities must be consistent with all applicable laws and regulations. NMFS will seek additional public comment on proposals that may be deemed controversial unless the research is being conducted by NOAA scientific researchers from bonafide NOAA research vessels.

Comments are also requested on the issuance of Chartering Permits to vessels fishing for HMS while operating under chartering arrangements within the EEZ of other nations. Chartering Permits allow a U.S. fishing vessel to fish in a manner consistent with another country's regulations without violating U.S. regulations and ensure that such vessels report to the proper authorities, consistent with International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations. To date, NMFS has only issued one Chartering Permit for a pelagic longline vessel.

Table 1 summarizes the number of exempted permits and authorized collections in 2005 and 2006, as well as the number of specimens collected in 2005. The number of specimens collected in 2006 will be available when all of the 2006 annual reports are submitted to NMFS in early 2007. In 2005, the number of specimens collected were greater than the number of authorized specimens for Billfish EFPs. This was due to more larvae from plankton tows and whole swordfish from commercial pelagic longline vessels being collected than anticipated by scientific researchers. Otherwise, the number of specimens collected was less than the number of authorized specimens. In all cases, mortality associated with an EFP, SRP, Display Permits, or LOA (except for larvae) were counted against the appropriate quota. A total of 32 exempted permits were issued by NMFS in 2005 for the collection of HMS, whereas the number of permits issued in 2006 increased to 37 permits. In both 2005 and 2006, the greatest number of exempted permits issued were Tuna EFPs followed by Shark Display Permits. HMS SRPs had the greatest number of specimens authorized for collection in 2005 and 2006 (mainly for the collection of larvae).

TABLE 1. SUMMARY OF HMS EXEMPTED PERMITS ISSUED IN 2005 AND 2006. "HMS" REFERS TO MULTIPLE SPECIES BEING COLLECTED UNDER A GIVEN PERMIT TYPE.

	2005					2006		
	Number of Permits Issued	Number of Authorized Fish	Number of Authorized Larvae	Number of Fish Taken	Number of Larvae Taken	Number of Permits Issued	Number of Authorized Fish	Number of Authorized Larvae
EFP								
HMS[3]	4	677	200	47	0	4	1,100	0
Shark	5	882	0	457	0	6	605	0
Tuna	7	859	0	378	0	9	590	0
Billfish	2	175	450	190[1]	616[2]	3	179	0
SRP								
HMS[3]	4	611	2,500	26	524	4	485	1,200
Shark	3	850	0	19	0	2	400	0
Billfish	0	0	0	0	0	1	0	500
Display								
HMS[3]	1	98	0	0	0	1	89	0
Shark	6	379	0	94	0	7	505	0
Total	32	4,531	3,150	1,211	1,140	37	3,953	1,700
LOA[4]								
Shark	4	2,484	0	37	0	1	2,853	0

1. Overage was due to an overage in collection of swordfish on commercial pelagic longline vessels.
2. Number of larvae collected are difficult to determine upon collection; larvae samples are collected, preserved and counted at a later date, so applicants cannot determine if they have exceeded their authorized limit at the time of collection.
3. The discrepancies in the number of authorized specimens listed in the 2005 notice (70 FR 71467) and this notice are due to a calculation error in the 2005 notice and the inclusion of additional species in this notice (i.e., the inclusion of "other tunas" comprised of albacore, bigeye, blackfin, skipjack, and yellowfin tuna).
4. Collections made under an LOA are not authorized; rather this estimated harvest for research is acknowledged by NMFS. All sources of mortality are accounted against the appropriate quota.

Final decisions on the issuance of any EFPs, SRPs, Display Permits, and Chartering Permits will depend on the submission of all required information about the proposed activities, NMFS' review of public comments received on this notice, consistency with relevant applicable laws and regulations, and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies.

All requests for EFPs, SRPs, Display Permits, and Chartering Permits of a type or nature not addressed in this **Federal Register** notice will have a separate notice filed and separate public comment period.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: November 21, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–20004 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112006E]

Mid-Atlantic Regional Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Regional Fishery Management Council (Council); its Joint Dogfish Committee; its Ecosystems Committee; and, its Squid, Mackerel, Butterfish Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, December 12, 2006 through Thursday, December 14, 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times and a meeting agenda.

ADDRESSES: This meeting will be held at the Skyline Hotel, 725 10th Ave, New York, New York 10019; telephone: (212) 586–3400.

Council address: Mid-Atlantic Regional Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Regional Fishery Management Council; telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION:

Tuesday, December 12, 2006

8 a.m. until 9:30 a.m. - The Joint Dogfish Committee will meet to review actions taken by the Atlantic States Marine Fisheries Commission (ASMFC) regarding dogfish management and their impacts on federal management of dogfish.

9:30 a.m. until 12 noon - The Council will convene jointly with the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board. They will review and discuss the Monitoring Committee's and the Advisory Panel's recommendations on summer flounder recreational management measures, and develop and approve management measures for the 2007 summer flounder recreational fishery.

1 p.m. until 3 p.m. - The Council and the ASMFC will review and discuss the Monitoring Committee's and the Advisory Panel's recommendations on scup recreational management measures and develop and approve management measures for the 2007 scup recreational fishery.

3 p.m. until 5 p.m. - The Council and the ASMFC will review and discuss the Monitoring Committee's and the Advisory Panel's recommendations on black sea bass recreational management measures and develop and approve management measures for the 2007 black sea bass recreational fishery.

7 p.m. until 9 p.m. - The Council will host a public hearing to be convened by the New England Regional Fishery Management Council regarding its Amendment 16 to the Northeast Multispecies Fishery Management Plan (FMP).

Wednesday, December 13, 2006

8 a.m. until 9:30 a.m. - The Ecosystems Committee will meet to: review an initiative to develop a national system of Marine Protected Areas (MPAs), discuss a proposed NMFS Workshop on reducing post-release mortality in recreational fisheries, discuss the ASMFC's establishment of a Multispecies Technical Committee, discuss the Ecosystem-Based Management Tool Network, and discuss the U.S. Navy's Draft Environmental Impact Statement (DEIS) regarding testing of active sonar in federal waters.

9:30 a.m. until 12 noon - The Council and ASMFC will discuss Summer Flounder, Scup, and Black Sea Bass FMP issues. An update will be received on the status of Amendment 14 to the Summer Flounder, Scup, and Black Sea Bass FMP (scup rebuilding plan), they will review the revised list of remaining potential management measures to be addressed in Amendment 15 to the FMP to determine the need for future action, and they will discuss and address the implications and effects of any potential disconnect between specifications set by the Council under Magnuson-Stevens Act (MSA) authority and those set by the ASMFC under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) authority.

1 p.m. until 1:15 p.m. - There will be an awards presentation to recognize the 2006 Fisheries Achievement Award and Ricks E Savage Award winners.

1:15 p.m. until 2:15 p.m. - Meeting two of Framework 1 to the Surfclam / Ocean Quahog FMP will convene to review, select, and approve an alternative for implementation of a Vessel Monitoring System (VMS).

2:15 p.m. until 3 p.m. - A presentation will be received regarding the New England Council's Omnibus Essential Fish Habitat (EFH) Amendment and its relationship to and effects on Framework 4 to the Joint Monkfish FMP. Following this presentation the Council will approve an appropriate range of Monkfish EFH designations.

3 p.m. until 5:30 p.m. - The Council will meet to review and approve final actions on Framework 4 to the Monkfish FMP, and review and approve the Monkfish incidental catch limits in the scallop closed areas.

7 p.m. until 9 p.m. - The Council will host a public hearing to be convened by the NMFS regarding its Omnibus Amendment for Standardized Bycatch Reporting Methodology (SBRM). Note: This hearing was originally scheduled for December 12, 2006 at the same location and time, but was rescheduled to this date, place, and time.

Thursday, December 14, 2006

8 a.m. until 9:30 a.m. - The Squid, Mackerel, and Butterfish Committee will meet regarding Amendment 10 to the Squid, Mackerel, and Butterfish FMP to review and adopt management alternatives for purposes of rebuilding the butterfish stock.

9:30 a.m. - The Council will convene.

9:30 a.m. until 10 a.m. - The Council will receive a presentation regarding a vessel cost survey on fixed costs that is to be incorporated on a voluntary basis in the 2007 vessel permit renewal cycle.

10 a.m. until 2 p.m. - The Council will conduct its regular business session to approve August and October Council meeting minutes, approve actions from the October meeting, receive various organizational reports, receive Committee reports and address any new or continuing business.

Although non-emergency issues not contained in this agenda may come before the Council and its Committees for discussion, these issues may not be the subject of formal Council or Committee action during this meeting. Council and Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at (302) 674–2331 extension 18 at least 5 days prior to the meeting date.

Dated: November 20, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–19955 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101106F]

Schedule for Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice.

SUMMARY: NMFS will conduct an additional Protected Species Safe Handling, Release, and Identification Workshop in December, 2006 in Madeira Beach, FL. These workshops are mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and have also been issued shark or swordfish limited access permits. Vessel owners and operators whose permits expire in January 2007 must attend a workshop in 2006. Additional workshops will be held throughout 2007; however, vessel owners and operators whose permits expire in the winter or spring of 2007 are welcome to attend workshops in 2006.

DATES: The added workshop will be held from 9 a.m. to 5 p.m. on December 27, 2006. See **SUPPLEMENTARY INFORMATION** for a list of all workshops in December 2006.

ADDRESSES: The added workshop will be held at the City of Madeira Beach Town Hall, 300 Municipal Drive, Madeira Beach, FL 33708. See **SUPPLEMENTARY INFORMATION** for a list of all workshops in December 2006.

The workshop schedule and a list of frequently asked questions regarding these workshops are posted on the internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/*.

FOR FURTHER INFORMATION CONTACT: For further information regarding the workshop requirement, please contact Greg Fairclough by phone:(727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: Effective January 1, 2007, shark limited access and swordfish limited access permit holders that use longline or gillnet gear must submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). As such, vessel owners whose permits expire in January 2007 must attend one of the seven free workshops offered in 2006. Vessel owners and operators whose permits expire after January 2007 may attend a workshop to be scheduled in 2007 or one of the workshops offered in 2006 (see schedule below). Vessel owners and operators must attend a workshop and submit a copy of their certificates at the time of permit renewal. New shark and swordfish limited access permit applicants must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before such permits will be issued.

In addition to certifying permit holders, all longline and gillnet vessel operators fishing with a limited access swordfish or limited access shark permit are required to attend a Protected Species Safe Handling, Release, and Identification Workshop. Vessels that have been issued a limited access swordfish or limited access shark permit and that have longline or gillnet gear onboard may not fish unless both the vessel owner and operator have valid workshop certificates. Vessel operators must possess on board the vessel valid workshop certificates for both the vessel owner and the operator at all times.

To ensure the workshop certificate is linked to the correct permit, you will need to bring the following items with you to the workshop.

Individual vessel owners must bring: proof of identification, a copy of the appropriate permit(s), and a copy of the vessel registration or documentation.

Representatives of a business owned or co-owned vessel must bring: proof that the individual is an agent of the business, a copy of the applicable permit(s), and proof of identification.

Vessel operators must bring: proof of identification.

Participants in the industry-sponsored workshops concerning the safe handling and release of sea turtles that were held in Orlando, FL (April 8, 2005), and New Orleans, LA (June 27, 2005), will be issued a workshop certificate in December 2006 that will be valid for three years. Grandfathered permit holders must include a copy of this certificate when renewing limited access shark and limited access swordfish permits each year. Failure to provide a valid workshop certificate may result in a permit denial.

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. Identification of protected species will also be taught at these workshops in an effort to improve reporting. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal for these workshops is to provide participants the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future. The workshops on December 6, 8, and 14 were previously announced on October 2, 2006 (71 FR 58057).

Workshop Dates, Times, And Locations

1. December 6, 2006, from 9 a.m. - 5 p.m. Seminole Community Library at St. Petersburg College, Seminole Campus, 9200 113th Street N., Seminole, FL 33772.

2. December 8, 2006, from 9 a.m. - 5 p.m. Aquatic Release Conservation, 1870 Mason Ave., Daytona Beach, FL 32117.

3. December 14, 2006, from 9 a.m. - 5 p.m. New Orleans Airport Garden Inn, 4535 Williams Blvd., Kenner, LA 70065.

4. December 27, 2006, from 9 a.m. - 5 p.m. City of Madeira Beach Town Hall, 300 Municipal Drive, Madeira Beach, FL 33708.

Registration

To sign up for a scheduled workshop, please contact Aquatic Release Conservation (877) 411–4272, 1870 Mason Ave., Daytona Beach, FL 32117.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 20, 2006.

James P. Burgess,

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

[FR Doc. E6–20003 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111706A]

Endangered Species; File No. 1543

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Duke Power Company (Gene E. Vaughan, Principal Investigator), 13339 Hagers Ferry Road, Huntersville, North Carolina, 28078 has been issued a permit to conduct scientific research on shortnose sturgeon (*Acipenser brevirostrum*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Brandy Hutnak, (301)713–2289.

SUPPLEMENTARY INFORMATION: On November 10, 2005, notice was published in the **Federal Register** (70 FR 68398) that a request for a scientific research permit to take shortnose sturgeon had been submitted by Duke Power Company. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Duke Power Company proposes to conduct a study of shortnose sturgeon in the Wateree River, South Carolina, as part of the Federal Energy Regulatory Commissions's 2008 relicensing process for the company's Catawba-Wateree Hydropower Project. Up to three adult and/or juvenile shortnose sturgeon are authorized to be captured annually with gill nets to measure, weigh, scan for PIT tags, fin clip and then release.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 20, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–20007 Filed 11–24–06; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

No FEAR Act Notice

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is providing notice to all of its employees, former employees, and applicants for employment about the rights and remedies that are available to them under the Federal antidiscrimination laws and whistleblower protection laws.[1] This notice fulfills CPSC's notification obligations under the Notification and Federal Employees Anti-discrimination Retaliation Act (No FEAR Act), as implemented by Office of Personnel Management (OPM) regulations.

FOR FURTHER INFORMATION CONTACT: Kathleen V. Buttrey, Director, EEO and Minority Enterprise, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–7771 or e-mail: *kbuttrey@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e-16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with the Commission. See, *e.g.*, 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the Commission's administrative or negotiated grievance procedures.[2]

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual which is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public

[1] Commissioner Thomas H. Moore filed a statement which is available from the Office of the Secretary or on the Commission's Web site at *http://www.cpsc.gov.*

[2] Please note that the Commission's negotiated grievance procedures are available only to Headquarter employees.

health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214; however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding No FEAR Act regulations, refer to 5 CFR Part 724, as well as the EEO and Minority Enterprise Office at the CPSC. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: November 20, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–20026 Filed 11–24–06; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0183]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 27, 2006.

Title and OMB Number: DTRA Industry Partner Questionnaire; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 209.

Responses Per Respondent: 1.

Annual Responses: 209.

Average Burden Per Response: .33 hours.

Annual Burden Hours: 70.

Needs and Uses: This information collection instrument will allow DTRA to benchmark our contract relationships and request best practices from our industry partners via an electronic questionnaire. Further, the questionnaire will result in more constructive agendas for subsequent DTRA industry outreach conferences.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title 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://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: October 23, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison officer, Department of Defense.

[FR Doc. 06–9392 Filed 11–24–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0211]

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Deputy Under Secretary of Defense (Installations and Environment).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Deputy Under Secretary of Defense (Environmental) announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 26, 2007.

ADDRESSES: You may submit comments, identified by docket 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, docket number and title 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://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Deputy Under Secretary of Defense (Installations & Environment), Attention: Ms. Patricia Ferrebee, 3400 Defense Pentagon, Washingotn, DC 20301–3400, or call (703) 695–6107.

Title; Associated Form; and OMB Number: Technical Assistance for Public Participation (TAPP) Application, DD Form 2749, OMB Control Number 0704–0392.

Needs and Uses: The collection of information is necessary to identify products or services requested by community members of restoration advisory boards or technical review committees to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements.

Affected Public: Not-for-profit institutions.

Annual Burden Hours: 200.

Number of Respondents: 50.

Responses Per Respondent: 1.

Average Burden Per Response: 4 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are community members of restoration advisory boards or technical review committees requesting technical assistance to interpret scientific and engineering issues regarding the nature of environmental hazards at an installation. This assistance will assist communities in participating in the cleanup process. The information, directed by 10 U.S.C. 2705, will be used to determine the eligibility of the proposed project, begin the procurement process to obtain the requested products or services, and determine the satisfaction of community members of restoration advisory boards and technical review communities receiving the products and services.

Dated: October 23, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9396 Filed 11–24–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2006–OS–0213]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 26, 2007.

ADDRESSES: You may submit comments, identified by docket 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, docket number and title 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://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of Defense Education Activity, 4040 N. Fairfax Drive, Arlington, VA 22203, ATTN: Dr. Sandra Embler, or call at (703) 588–3175.

Title and OMB Control Number: ''Department of Defense Education Activity (DoDEA) High School Program Objective Memorandum (POM) Longitudinal Study,'' OMB CONTROL NUMBER 0704–0428.

Needs and Uses: The Department of Defense Education Activity (DoDEA) operates 208 schools in 17 districts in 12 foreign countries, 7 states, Guam, and Puerto Rico including 52 high schools. To evaluate the Quality High School Initiative developed at the DoDEA High School Symposium in October 2001, contact with all DoDEA high school students and their sponsors who have left DoDEA high schools is necessary. All students in grades 9–12 who leave DoDEA high schools for any reason (i.e., Permanent Change of Station (PCS), graduation, etc.) and their sponsors will be contacted 3 to 5 months after their departure by a telephonic survey. Four telephone surveys will be used: one for students who leave DoDEA high schools for any reason other than graduation and one for their sponsors; one for DoDEA high school graduates and one for their sponsors. The collected data will be used to determine if quality educational programs are provided to all DoDEA high school students regardless of where the DoDEA high school is located. There is no existing data that is sufficiently comprehensive in terms of meeting the need for this information requirement.

Affected Public: Individuals or households.

Annual Burden Hours: 406.5 hours.

Number of Respondents: 1,626.

Responses per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On Occasion, Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The High School Initiative will be evaluated to determine if quality educational programs are provided to all DoDEA high school students regardless of where the high school is located. The study entails the development of data collection methods and procedures, as well as the analysis of data to document the use of resources and the impact on student achievement in grades 9–12. The study will use a telephonic interview technique to determine the success of the initiative in helping students prepare for educational experiences after leaving Department of Defense (DoD) schools either through graduation, permanent change of station of the sponsor, or for any other reason. Four telephone surveys have been developed: one for all DoDEA sponsors and one for students who leave DoDEA for any reason other than graduation; one for DoDEA sponsors of graduates and students who graduate. These four telephone surveys include questions on transition, curriculum, courses, activities, counselors, teachers, administrators, and summary issues. Respondents will respond 3 to 5 months after leaving a DoDEA high school for any reason and then again one year later.

Dated: November 17, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9397 Filed 11–24–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0214]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the extension of a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 26, 2007.

ADDRESSES: You may submit comments, identified by docket 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, docket number and title 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://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Disbursing Management Policy Division, Defense Finance and Accounting Service Kansas City, DFAS–NPD/KC, ATTN: Ms. Andrea Henderson, 1500 E. 95th Street, Kansas City, MO 64197–0030, or call Ms. Andrea Henderson (816) 926–2827.

Title, Associated Form, and OMB Number: Personal Check Cashing Agreement, DD Form 2761; OMB Number 0730–0005.

Needs and Uses: The information collection requirement is necessary to meet the Department of Defense's (DoD) requirement for cashing personal checks overseas and afloat by DoD disbursing activities, as provided in 31 U.S.C. 3342. The DoD Financial Management Regulation, Volume 5, provides guidance to DoD disbursing officers in the performance of this information collection. This allows the DoD disbursing officer or authorized agent the authority to offset the pay without prior notification in cases where this form has been signed subject to conditions specified within the approved procedures.

Affected Public: Individuals or households.

Annual Burden Hours: 11,538 hours.

Number of Respondents: 46,153.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Personal Check Cashing Agreement Form is designed exclusively to help the DoD disbursing offices expedite the collection process of dishonored checks. The front of the form will be completed and signed by the authorized individual requesting check cashing privileges. By signing the form, the individual is freely and voluntarily consenting to the immediate collection from their current pay, without prior notice, for the face value of any check cashed, plus any charges assessed against the government by a financial institution, in the event the check is dishonored. In the event the check is dishonored, the disbursing office will complete and certify the reverse side of the form and forward the form to the applicable payroll office for collection from the individual's current pay.

Dated: November 17, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9398 Filed 11–24–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0215]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness). DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 26, 2007.

ADDRESSES: You may submit comments, identified by docket 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, docket number and title 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://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Program Integration) (Legal Policy), ATTN: LTC Mark J. Gingras, 4000 Defense Pentagon, Washington, DC 20301–4000, or call at (703) 697–3387; facsimile (703) 693–6708.

Title, Associated Form, and OMB Control Number: Involuntary Allotment Application; DD Form 2653, OMB Control Number 0704–0367.

Needs and Uses: This information collection requirement is necessary to initiate an involuntary allotment from the pay of a member of the Uniformed Services for indebtedness owed a third party under 5 U.S.C. 5520a. 5 U.S.C. 5520a authorizes involuntary allotments if there is a final court judgment acknowledging the debt and it is determined by competent military or executive authority to be in compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act. In order to satisfy these statutory requirements, the DD Form 2653, requires the respondent to provide identifying information on the member of the Uniformed Services; provide a certified copy of the judgment, and certify, if applicable, that the judgment complies with the Soldiers' and Sailors' Civil Relief Act.

Affected Public: Individuals or households; businesses or other for profit.

Annual Burden Hours: 3,766.

Number of Respondents: 7,531.

Responses Per Respondent: 1.

Average Burden Per Response: 30 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information is used by the Department of Defense to initiate an involuntary allotment from the pay of a member of the Uniformed Services for indebtedness owed a third party as determined by the final judgment of a court.

This requirement was created by ''The Hatch Act Reform amendments of 1993,'' Public Law 103–94. The DD Form 2653, ''Involuntary Allotment Application,'' requires the creditor to provide identifying information on the member of the Uniformed Services,' provide a certified copy of the judgment, and certify that the members' rights under the soldiers' and Sailors' Civil Relief Act were protected.

Dated: November 17, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9399 Filed 11–24–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Department of Defense, Assistant Secretary of Defense (Health Affairs).

ACTION: Notice of Meeting.

SUMMARY: This notice announces a meeting of the Uniform Formulary Beneficiary Advisory Panel. The panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics Committee regarding the Uniform Formulary. The meeting will be open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: Wednesday, December 20, 2006, from 8 a.m. to 4 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Major Travis Watson, TRICARE Management Activity, Pharmaceutical Operations Directorate, Beneficiary Advisory Panel, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041, telephone 703–681–2890, fax 703–681–1940 or e-mail at *baprequests@tma.osd.mil*.

SUPPLEMENTARY INFORMATION: The Uniform Formulary Beneficiary Advisory Panel will only review and comment on the development of the Uniform Formulary as reflected in the recommendations of the DOD Pharmacy and Therapeutics (P&T) Committee coming out of that body's meeting in November 2006. The P&T Committee information and subject matter concerning drug classes reviewed for that meeting are available at *http://pec.ha.osd.mil*. Any private citizen is permitted to file a written statement with the advisory panel. Statements must be submitted electronically to *baprequests@tma.osd.mil* no later than December 13, 2006. Any private citizen is permitted to speak at the Beneficiary Advisory Panel meeting, time permitting. One hour will be reserved for public comments, and speaking times will be assigned only to the first twelve citizens to sign up at the meeting, on a first-come, first-served basis. The amount of time allocated to a speaker will not exceed five minutes.

Dated: November 20, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–9391 Filed 11–24–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USAF–2006–0010]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 27, 2006.

Title and OMB Number: AFRL/AFOSR Summer Faculty Fellowship

Program (SFFP) and USAF/NRC Resident Research Associateships Program; OMB Number 0701–TBD.

Type of Request: New.

Number of Respondents: 280.

Responses Per Respondent: 1.

Annual Responses: 280.

Average Burden Per Response: 16 hours.

Annual Burden Hours: 4,480.

Needs and Uses: The Air Force Office of Scientific Research (AFOSR) manages the entire basic research investment for the US Air Force. As part of the Air Force Research Laboratory (AFRL), AFOSR's technical experts support and fund research programs within the AFRL and other Air Force research activities. Applications for fellowships and associateships at AFRL research sites and the research activities at the US Air Force Academy and the Air Force Institute of Technology (AFIT), and the associated award forms, provide information used to identify some of the Nation's most talented scientific personnel for award of fellowships and associateships at Air Force research activities. Summer fellowships provide research opportunities for 8–14 weeks at an Air Force research site. Research Associates generally spend 1 to 3 years at an Air Force research site.

SFFP and NRC/RRA provide postdoctoral and senior scientists and engineers of unusual promise and ability opportunities for conducting research on problems that are defense requirements. Application information will be used for evaluation and selection of scientists and engineers to be awarded fellowships and associateships.

Failure to respond renders the applicant ineligible for a fellowship.

Affected Public: Individuals or households.

Frequency: Annually (SFFP) and quarterly (NRC/RRA).

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title 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://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated October 23, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9393 Filed 11–24–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USAF–2006–0006]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 27, 2006.

Title and OMB Number: DoD National Defense Science and Engineering Graduate (NDSEG) Fellowships Program; OMB number 0701–TBD.

Type of Request: New.

Number of Respondents: 2,800.

Responses Per Respondent: 1.

Annual Responses: 2,800.

Average Burden Per Response: 12 hours.

Annual Burden Hours: 33,600.

Needs and Uses: The on-line, electronic application provides information necessary for evaluation and selection of fellowships. The NDSEG fellowships allow recipients to pursue their graduate studies at whichever United States institution they choose to attend. Respondents are students enrolled in doctoral programs in science and engineering desiring to complete their education. Failure to respond renders the student ineligible for a fellowship.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title 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://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: October 23, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9394 Filed 11–24–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

[No. USA–2006–0038]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–RPA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility: (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 26, 2007.

ADDRESSES: You may submit comments, identified by docket 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, docket number and title 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://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs)/G–1, ATTN: SAMR–FMMR, (John Anderson), 111 Army Pentagon, Washington, DC 20310–0111, or call the Department of the Army Reports Clearance Officer at (703) 428–6440.

Title and OMB Number: The Contractor Manpower Reporting Study; OMB Control Number 0702–0120.

Needs and Uses: Section 345 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–194) requires that the Secretary of the Army submit to Congress a report describing the use, during the previous fiscal year, of non-Federal entities providing services to the Department of the Army. The program will greatly enhance the ability of the Army to identify and track its contractor workforce.

Modern systems do not have contractor manpower data that is collected by the Contractor Manpower Reporting System, i.e., estimated direct labor hours, estimated direct labor dollars, and organization supported.

Affected Public: Business or other for profit.

Annual Burden Hours: 344.

Number of Respondents: 4,149.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION: Existing financial and procurement systems have obligation amounts of an unknown mix, and the Department of Army is not able to trace the funding of the organization supported. The study will use a streamlined, user-friendly and secure Web site to obtain contractor workforce information.

Dated: October 23, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9395 Filed 11–24–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of Navy

[No. USN–2006–0063]

Proposed Collection; Comment Request

AGENCY: Marine Corps Recruiting Command, Marine Corps Base Quantico, DoD.

ACTION: Notice.

The U.S. Marine Corps announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 26, 2006.

ADDRESSES: You may submit comments, identified by docket 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, docket number and title 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://www.regulations. gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, write to Marine Corps Recruiting Command (Code G3 OR), 3280 Russell Road, Quantico, VA 22134–5103, or contact Ms. Carla V. Offer at (703) 784–9450.

Title and OMB number: Personal Information Questionnaire; OMB Number 0703–0012.

Needs and Uses: The information collection requirement is used to provide Headquarters, U.S. Marine Corps with a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for a service as a commissioned officer.

Affected Public: Individuals or households.

Annual Burden Hours: 4,175.

Number of Respondents: 16,700.

Responses Per Respondent: 1.

Average Burden Per Response: 15 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Collection

The Personal Information Questionnaire is used to provide Headquarters, U.S. Marine Corps with a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for a service as a commissioned officer.

Dated: November 17, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 06–9400 Filed 11–24–06; 8:45am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

[No. USN–2006–0064]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Navy Recruiting Command announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 26, 2007.

ADDRESSES: You may submit comments, identified by docket 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, docket number and title 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://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, write to Commander, Navy Recruiting Command (N35B), 5722 Integrity Drive, Millington, TN 38054–5057, or contact Mr. Ken Saxion at (901) 874–9045.

Title and OMB Number: Application for Commission in the U.S. Navy/U.S. Navy Reserve; OMB Control Number 0703–0029.

Needs and Uses: All persons interested in entering the U.S. Navy or U.S. Navy Reserve, in a commissioned status must provide various personal data in order for a Selection Board to determine their qualifications for naval service and for specific fields of endeavor which the applicant intends to pursue. This information is used to recruit and select applicants who are qualified for commission in the U.S. Navy or U.S. Navy Reserve.

Affected Public: Individuals or households.

Annual Burden Hours: 23,400.

Number of Respondents: 11,700.

Responses per Respondent: 1.

Average Burden per Response: 2 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Collection

All persons interested in entering the U.S. Navy or U.S. Navy Reserve, in a commissioned status must provide various personal data in order for a Selection Board to determine their qualifications for naval service and for specific fields of endeavor which the applicant intends to pursue. This information is used to recruit and select applicants who are qualified for commission in the U.S. Navy or U.S. Navy Reserve.

Dated: November 17, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 06–9401 Filed 11–24–06; 8:45 am]

BILLING CODE 5001–06–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Tuesday, December 12, 2006. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission's office building, located at 25 State Police Drive in West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 10:15 a.m. Topics of discussion include a report on progress to date of the Flood Mitigation Task Force, the planned release of task force recommendations, and the process by which public comment will be solicited on these recommendations; a report on the status of development of a long-term multi-objective management plan for the New York City Delaware Basin reservoirs; a presentation on the draft State of the Basin Report; a status report on the process for establishing a Total Maximum Daily Load (TMDL) for PCBs for the Delaware Bay; and a discussion of the Federal Coordination Summit held in July 2006 and subsequent inter-agency coordination efforts.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed below:

1. *Matamoras Municipal Authority D–81–76 CP–6.* An application to expand the existing service area to include property within Westfall Township north and south of Mountain Avenue. The applicant requests to retain the existing allocation of 11.7 million gallons per thirty days (mg/30 days) from existing Wells Nos. 3, 5, 7, 8 and 8A. The project is located in Matamoras Borough and Westfall Township, Pike County, Pennsylvania within the drainage area to a section of the non-tidal Delaware River known as the Middle Delaware, which is classified as Special Protection Waters.

2. *Joseph Jackewicz, Sr. D–91–53–2.* An application for the renewal of a ground and surface water withdrawal project to continue withdrawal of 219.8 mg/30 days to supply the applicant's agricultural irrigation system from replacement Well No. Townsend 3, eight existing wells and one existing surface water intake. The project is located in the Tidbury Creek, Cypress Branch and Double Run watersheds in the Town of Magnolia, Kent County, Delaware.

3. *Magnesium Elektron, Inc. D–94–73–2.* An application for approval of a ground water withdrawal project to supply up to 9.8 mg/30 days of water to the applicant's industrial facility and ground water remediation project from new Well No. 9 and to retain the existing withdrawal from all wells of 9.8 mg/30 days. The project is located in the Lockatong Formation in the Wickechoeke Creek Watershed in Kingwood Township, Hunterdon County, New Jersey and within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.

4. *Horsehead Corporation D–67–196–2.* An application for a change of ownership and a docket modification for the discharge of non-contact cooling water, boiler blow-down, and effluent from metal recovery zones (MRZs) for the Palmerton East Plant. The discharges consists of approximately 0.15 million gallons per day (mgd) of non-contact cooling water from Outfall 004, 0.31 mgd of non-contact cooling water and boiler blow-down from Outfall 005, a 0.128 mgd MRZ discharge from Outfall 015, a 0.036 mgd MRZ discharge from Outfall 019 and a 0.040 mgd MRZ related discharge from Outfall

022. The discharges from Outfall Nos. 004, 005, 015, 019 and 022 are to the Aquashicola Creek, which is a tributary to the Lehigh River. The discharges are located in the drainage area of the Lower Delaware Special Protection Water Area. The facility is located in Palmerton Borough, Carbon County, Pennsylvania.

5. *Cabot Corporation D–70–72–3.* An application for approval to modify planned improvements to the applicant's industrial wastewater treatment plant (IWTP) upgrade project, approved by the Commission on October 24, 2004, and to implement manufacturing operation improvements necessary to meet water quality objectives in Swamp Creek. The applicant produces inorganic chemicals and primary nonferrous metals and alloys at its Boyertown Facility, which is located off Swamp Creek Road and straddles the borders of Douglass Township, Montgomery County and Colebrookdale Township, Berks County, both in Pennsylvania. Based upon revised production rate projections, the applicant has determined that modification of the existing IWTP would be more cost effective than constructing new facilities. In addition, the average design flow is proposed to be reduced to 0.15 mgd from the previously approved 0.222 mgd. The plant effluent, along with storm water, cooling water and water supply treatment wastewater, will continue to be discharged via the existing outfall to Swamp Creek in the Schuylkill River Watershed. The project is located within the Southeastern Pennsylvania Ground Water Protected Area, within the drainage area of a portion of the Schuylkill River that is conditionally designated as ''Modified Recreational'' in DRBC's Comprehensive Plan.

6. *Village of Deposit D–74–57 CP–2.* An application for approval of a wastewater treatment plant (WWTP) expansion project to provide secondary treatment to up to 0.7 mgd, a proposed increase of 0.1 mgd from the existing capacity. The WWTP discharges effluent to the West Branch Delaware River in DRBC Water Quality Zone W1. The project is located in the Upper Delaware Special Protection Waters drainage area in the Village of Deposit, Broome and Delaware Counties, New York. The WWTP will continue to serve the Village of Deposit and may serve the Town of Deposit, Delaware County, New York in the future.

7. *Glenn Springs Holdings, Inc. D–76–17–2.* An application to discharge treated storm and ground water into the Schuylkill River in an area that is conditionally designated as ''Modified Recreational'' in the Comprehensive Plan. The project is located south of State Route 422 at the former Occidental Chemical Corporation facility in Lower Pottsgrove Township, Montgomery County, Pennsylvania. Occidental Chemical Corporation remains the owner of the property, but its affiliate, Glenn Springs Holdings, Inc. is the operator of the ground and storm water treatment facility. Currently, up to 0.5 mgd of flow containing volatile organic chemicals is treated by carbon absorption and air stripping before it is discharged to the Pottstown City Sewage Treatment Plant. Approval is requested to discharge the treated effluent directly to the Schuylkill River through storm water Outfall 005, as a cost-savings measure. No increase in capacity is proposed, nor are any new production or recovery wells necessary. The industrial waste treatment plant and surface water supply intake described in DRBC Docket No. D–76–17 will remain inactive. The production (water supply) wells that were referenced in that docket will remain in use as recovery wells. The combined allocation for Recovery Wells Nos. 1, 1R, 4, 5, 6, 8, 8A, 9, 9A, 10A, A, B and C will be a total of 15 mg/30 days. The wells are located in the Brunswick Formation within the Southeastern Pennsylvania Ground Water Protected Area.

8. *Borough of Alburtis D–91–42 CP–3.* An application to replace the withdrawal of water from Well No. 3 in the applicant's water supply system with a withdrawal from Well No. 3A, because Well No. 3 has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 3A be limited to 7.5 mg/30 days of water, and that the total withdrawal from all wells be increased to 11.487 mg/30 days from the previous allocation of 6.5 mg/30 days in order to meet projected increases in service area demand. The project is located in the Leithsville and Hornblende Gneiss formations in the Swabia Creek Watershed in Alburtis Borough, Lehigh County, Pennsylvania.

9. *New Hanover Township Authority D–99–40 CP–2.* An application for approval of the expansion of the New Hanover Township Authority's WWTP from 0.825 mgd to 1.925 mgd. The WWTP will continue to discharge to Swamp Creek, a tributary of the Perkiomen Creek, which is tributary to the Schuylkill River. The facility is located in New Hanover Township, Montgomery County, Pennsylvania.

10. *The Upper Hanover Authority D–2002–10 CP–2.* An application for the renewal of a ground water withdrawal project to increase the total system withdrawal from 32.12 mg/30 days to 43.113 mg/30 days to supply the applicant's public water supply distribution system from existing Wells Nos. RH–1, RH–2, RH–3, TUHA–1, TUHA–2, TUHA–3, TUHA–4 and Kemmerer Spring in the Brunswick and Leithsville Formations. The increased allocation is requested in order to meet projected increases in service area demand. The project is located in the Perkiomen and Macoby Creek Watersheds in Upper Hanover Township, Montgomery County, Pennsylvania and within the Southeastern Pennsylvania Ground Water Protected Area.

11. *Middle Smithfield Township Municipal Authority D–73–209 CP–1.* An application for the expansion and reconstruction of the existing Winona Lakes WWTP from 0.022 mgd to 0.050 mgd. The project includes the construction of a new 50,000 gallons per day (gpd) phased isolation ditch wastewater treatment facility to replace the existing 22,000 gpd extended aeration wastewater treatment facility. The expansion of the plant is to accommodate expected wastewater flows from Sections 12, 13 and 14 of the Winona Lakes community. The WWTP will discharge to the Bushkill Creek, a tributary to the Middle Delaware River Special Protection Waters. The facility is located in Middle Smithfield Township, Monroe County, Pennsylvania.

12. *Artesian Water Company D–2003–22 CP–3.* An application for approval of a ground water withdrawal project to supply up to 8.7 mg/30 days of water to the applicant's public water supply distribution system from new Well Thomas Cove 2 and to retain the existing withdrawal from all wells in 9 wellfields in the applicant's Southern Distribution System of 150 mg/30 days. The project is located in the Mt. Laurel Formation in the Appoquinimink River Watershed in New Castle County, Delaware.

13. *Bear Creek Management Company, LLC D–2005–16–1.* An application for approval to construct a new WWTP to serve the applicant's Bear Creek Ski Area and to operate an on-site iron abatement system. The 0.045 mgd treatment plant will discharge to sixteen holding tanks used for post treatment equalization prior to being pumped to a drip field at a maximum daily rate not to exceed 0.035 mgd. The facility is located in the Swabia Creek Watershed, a tributary to the Little Lehigh River in Long Swamp Township, Berks County, Pennsylvania. The on-site iron abatement system will include water quality monitoring,

sediment sampling, removal of iron from the water column and removal of iron precipitate from the wetland substrate. The project is located in the drainage area to a section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.

14. *Delaware River Joint Toll Bridge Commission D–2006–7 CP–1.* An application for approval of a bridge modification project, located in a recreational area which is included in the DRBC Comprehensive Plan. The U.S. Route 1 Toll Bridge connects the Borough of Morrisville, Bucks County, Pennsylvania with the City of Trenton, Mercer County, New Jersey and is located at the base of DRBC Water Quality Zone 1E. The bridge will be widened at a point where it passes over the Delaware Canal, formerly known as Roosevelt State Park.

15. *Ingersoll-Rand Company D–2006–14–1.* An application for the approval of an existing groundwater remediation discharge project located at the Ingersoll-Rand facility in Phillipsburg, New Jersey. The existing remediation system discharges approximately 0.090 mgd via Outfall 002 to Lopatcong Creek, which converges with the Delaware River at River Mile 182, within a reach classified as ''Significant Resource Waters.'' The facility is located in the Town of Phillipsburg and Lopatcong Township, Warren County, New Jersey.

16. *Spring Ford Country Club D–2006–16–1.* An application for approval of a ground and surface water withdrawal project to supply up to 11.2 mg/30 days of water to the applicant's golf course irrigation system from existing Well No. 1 and up to 21.6 mg/30 days from a pond on an unnamed tributary to Mingo Creek and to limit the existing withdrawal from all sources to 21.6 mg/30 days. The project is located in the Brunswick Formation in the Mingo Creek Watershed in Limerick Township, Montgomery County, Pennsylvania and is located in the Southeastern Pennsylvania Ground Water Protected Area.

17. *Pocono Township D–2006–17 CP–1.* An application for the construction of a new 2.0 mgd WWTP to accommodate flows from existing WWTPs and anticipated regional growth. The project includes the construction of a collection system for the Route 611 Corridor. The WWTP will discharge via an approximately 6-mile forcemain to the Brodhead Creek, a tributary to the Middle Delaware River Special Protection Waters. The facility will be located in Pocono Township, Monroe County, Pennsylvania.

In addition to the public hearing on the dockets listed above, the Commission's 1:30 p.m. business meeting will include: A public hearing and consideration of a resolution to re-authorize the Commission's Monitoring Advisory Committee and a resolution to adopt the 2007–2012 Water Resources Program.

The meeting will also include: adoption of the Minutes of the Commission's September 27, 2006 business meeting; announcements of upcoming advisory committee meetings and other events; a report by the Executive Director; a report by the Commission's General Counsel; and an opportunity for public dialogue.

Draft dockets scheduled for public hearing on December 12, 2006 will be posted on the Commission's Web site, *http://www.drbc.net*, where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact William Muszynski at 609–883–9500, extension 221, with any docket-related questions.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the commission secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission can accommodate your needs.

Dated: November 20, 2006.

Pamela M. Bush,

Commission Secretary.

[FR Doc. E6–19997 Filed 11–24–06; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information

State Personnel Development Grants Program

Notice inviting applications for new awards for fiscal year (FY) 2006 (to be awarded in FY 2007)

Catalog of Federal Domestic Assistance (CFDA) Number: 84.323A.

Dates: Applications Available: November 27, 2006.

Deadline for Transmittal of Applications: May 29, 2007.

Deadline for Intergovernmental Review: May 29, 2007.

Eligible Applicants: A State educational agency (SEA) of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). Current State Program Improvement Grant grantees with multi-year awards who wish to apply for a grant under the State Personnel Development Grants Program may do so, subject to section 651(e) of the Individuals with Disabilities Education Act (IDEA), which prohibits a State requesting a continuation award under the State Improvement Grant Program, as in effect prior to December 3, 2004, from receiving any other award under this program authority for that fiscal year.

Estimated Available Funds: $28,600,000.

Estimated Range of Awards: In the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, award amounts will be not less than $500,000, nor more than $4,000,000. In the case of an outlying area, awards will be not less than $80,000.

Note: Consistent with 34 CFR § 75.104(b) of the Education Department General Administrative Regulations (EDGAR), we will reject, without consideration or evaluation, any application that proposes a project funding level for any fiscal year that exceeds the stated maximum award amount of $4,000,000 for that fiscal year.

We will set the amount of each grant after considering—

(1) The amount of funds available for making grants;

(2) The relative population of the State or outlying area;

(3) The types of activities proposed by the State or outlying area;

(4) The alignment of proposed activities with section 612(a)(14) of IDEA;

(5) The alignment of proposed activities with State plans and applications submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965, as amended (ESEA); and

(6) The use, as appropriate, of scientifically-based research and instruction.

Estimated Average Size of Awards: $1,020,000, excluding outlying areas.

Estimated Number of Awards: 28.

Note: The Department is not bound by any estimates in this notice.

Project Period: Not less than one year and not more than five years.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to assist SEAs in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

Priorities: In accordance with 34 CFR 75.105(b)(2)(v) this priority is from the notice of final priority for this program published in the **Federal Register** on June 9, 2006 (71 FR 33578).

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR § 75.105(c)(3), we consider only applications that meet this priority.

Priority: The Assistant Secretary establishes a priority to assist SEAs in reforming and improving their personnel preparation and professional development systems for teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel. The intent of this priority is to improve educational results for children with disabilities through the delivery of high quality instruction and the recruitment, hiring, and retention of highly qualified special education teachers.

In order to meet this priority an applicant must demonstrate that the project for which it seeks funding—

(1) Provides professional development activities that improve the knowledge and skills of personnel as defined in section 651(b) of IDEA in delivering scientifically-based instruction to meet the needs of, and improve the performance and achievement of infants, toddlers, preschoolers, and children with disabilities; (2) Implements practices to sustain the knowledge and skills of personnel who have received training in scientifically-based instruction; and (3) Implements strategies that are effective in promoting the recruitment, hiring, and retention of highly qualified special education teachers in accordance with section 602(10) and section 612(a)(14) of IDEA.

Projects funded under this priority must also:

(a) Budget for a three-day Project Directors' meeting in Washington, DC during each year of the project;

(b) Budget $4,000 annually for support of the State Personnel Development Grants Program Web site currently administered by the University of Oregon (*http://www.signetwork.org*); and

(c) If a project receiving assistance under this program authority maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

Statutory Requirements

State Personnel Development Plan

Applicants must submit a State Personnel Development Plan that identifies and addresses the State and local needs for personnel preparation and professional development of personnel, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

(a) Is designed to enable the State to meet the requirements of section 612(a)(14) and section 635(a) (8) and (9) of IDEA;

(b) Is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel who serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

(i) Current and anticipated personnel vacancies and shortages; and

(ii) The number of preservice and inservice programs; and

(c) Is integrated and aligned, to the maximum extent possible, with State plans and activities under the ESEA, the Rehabilitation Act of 1973, as amended, and the Higher Education Act of 1965, as amended (HEA);

(d) Describes a partnership agreement that is in effect for the period of the grant, which agreement shall specify—

(i) The nature and extent of the partnership described in accordance with section 652(b) of IDEA and the respective roles of each member of the partnership, including, if applicable, an individual, entity, or agency other than the SEA that has the responsibility under State law for teacher preparation and certification; and

(ii) How the SEA will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

(e) Describes how the strategies and activities the SEA uses to address identified professional development and personnel needs will be coordinated with activities supported with other public resources (including funds provided under Part B and Part C of IDEA and retained for use at the State level for personnel and professional development purposes) and private resources;

(f) Describes how the SEA will align its personnel development plan with the plan and application submitted under sections 1111 and 2112, respectively, of the ESEA;

(g) Describes those strategies the SEA will use to address the identified professional development and personnel needs and how such strategies will be implemented, including—

(i) A description of the programs and activities that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

(ii) How such strategies will be integrated, to the maximum extent possible, with other activities supported by grants funded under section 662 of IDEA;

(h) Provides an assurance that the SEA will provide technical assistance to local educational agencies (LEAs) to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

(i) Provides an assurance that the SEA will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving those children;

(j) Describes how the SEA will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

(k) Describes the steps the SEA will take to ensure that economically disadvantaged and minority children are not taught at higher rates by teachers who are not highly qualified; and

(l) Describes how the SEA will assess, on a regular basis, the extent to which the strategies implemented have been effective in meeting the performance goals described in section 612(a)(15) of IDEA.

Partnerships

Required Partners

Applicants shall establish a partnership with LEAs and other State agencies involved in, or concerned with, the education of children with disabilities, including—

(a) Not less than one institution of higher education; and

(b) The State agencies responsible for administering Part C of IDEA, early education, child care, and vocational rehabilitation programs.

Other Partners

An SEA shall work in partnership with other persons and organizations

involved in, and concerned with, the education of children with disabilities, which may include—

(a) The Governor;

(b) Parents of children with disabilities ages birth through 26;

(c) Parents of nondisabled children ages birth through 26;

(d) Individuals with disabilities;

(e) Parent training and information centers or community parent resource centers funded under sections 671 and 672 of IDEA, respectively;

(f) Community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(g) Personnel as defined in section 651(b) of IDEA;

(h) The State advisory panel established under Part B of IDEA;

(i) The State interagency coordinating council established under Part C of IDEA;

(j) Individuals knowledgeable about vocational education;

(k) The State agency for higher education;

(l) Noneducational public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

(m) Other providers of professional development who work with infants, toddlers, preschoolers, and children with disabilities;

(n) Other individuals; and

(o) In cases where the SEA is not responsible for teacher certification, an individual, entity, or agency responsible for teacher certification as defined in section 652(b)(3) of IDEA.

Use of funds

(a) *Professional Development Activities*—Consistent with this priority, each SEA that receives a State Personnel Development Grant under this program shall use the grant funds to support activities in accordance with the State's Personnel Development Plan, including one or more of the following:

(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—

(i) Provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development;

(ii) Use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development, as defined in section 9101 of the ESEA; and

(iii) Encourage collaborative and consultative models of providing early intervention, special education, and related services.

(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—

(i) Into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decision-making, school improvement efforts, and accountability;

(ii) To enhance learning by children with disabilities; and

(iii) To effectively communicate with parents.

(3) Providing professional development activities that—

(i) Improve the knowledge of special education and regular education teachers concerning—

(A) The academic and developmental or functional needs of students with disabilities; or

(B) Effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

(ii) Improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices, that—

(A) Provide training in how to teach and address the needs of children with different learning styles and children who are limited English proficient;

(B) Involve collaborative groups of teachers, administrators, and, in appropriate cases, related services personnel;

(C) Provide training in methods of—

(I) Positive behavioral interventions and supports to improve student behavior in the classroom;

(II) Scientifically-based reading instruction, including early literacy instruction;

(III) Early and appropriate interventions to identify and help children with disabilities;

(IV) Effective instruction for children with low incidence disabilities;

(V) Successful transitioning to postsecondary opportunities; and

(VI) Classroom-based techniques to assist children prior to referral for special education;

(D) Provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

(E) Provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate individualized education programs (IEPs); and

(F) Provide training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving those students;

(iii) Train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and

(iv) Train early intervention, preschool, and related services providers, and other relevant school personnel, in conducting effective individualized family service plan (IFSP) meetings.

(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruiting and retaining highly qualified teachers, including programs that provide—

(i) Teacher mentoring from exemplary special education teachers, principals, or superintendents;

(ii) Induction and support for special education teachers during their first three years of employment as teachers; or

(iii) Incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

(i) Innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development in section 9101 of the ESEA; and

(ii) The development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as—

(i) Professional development programs to improve the delivery of early intervention services;

(ii) Initiatives to promote the recruitment and retention of early intervention personnel; and

(iii) Interagency activities to ensure that early intervention personnel are adequately prepared and trained.

(b) *Other Activities*—Consistent with this priority, each SEA that receives a State Personnel Development Grant under this program shall use the grant funds to support activities in accordance with the State's Personnel Development Plan, including one or more of the following:

(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—

(i) Special education and regular education teachers have—

(A) The training and information necessary to address the full range of needs of children with disabilities across disability categories; and

(B) The necessary subject matter knowledge and teaching skills in the academic subjects that the teachers teach;

(ii) Special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

(iii) Special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

(4) Developing and implementing mechanisms to assist LEAs and schools in effectively recruiting and retaining highly qualified special education teachers.

(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with Title II of the HEA.

(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this priority may lead to the weakening of any State teacher certification or licensing requirement.

(7) Assisting LEAs to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

(8) Developing, or assisting LEAs in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.

(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic achievement and functional standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

(10) When applicable, coordinating with, and expanding centers established under, section 2113(c)(18) of the ESEA to benefit special education teachers.

(c) *Contracts and Subgrants*—An SEA that receives a grant under this program—

(1) Shall award contracts or subgrants to LEAs, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out the State plan; and

(2) May award contracts and subgrants to other public and private entities, including the lead agency under Part C of IDEA, to carry out the State plan.

(d) *Use of Funds for Professional Development*—An SEA that receives a grant under this program shall use—

(1) Not less than 90 percent of the funds the SEA receives under the grant for any fiscal year for the Professional Development Activities described in paragraph (a); and

(2) Not more than 10 percent of the funds the SEA receives under the grant for any fiscal year for the Other Activities described in paragraph (b).

(e) *Grants to Outlying Areas*—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this program authority.

Program Authority: 20 U.S.C. 1451 through 1455.

Applicable Regulations: (a) EDGAR in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final priority for this program published in the **Federal Register** on June 9, 2006 (71 FR 33578).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $28,600,000.

Estimated Range of Awards: In the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, award amounts will be not less than $500,000, nor more than $4,000,000. In the case of an outlying area awards will be not less than $80,000.

Note: Consistent with 34 CFR § 75.104(b) of EDGAR, we will reject, without consideration or evaluation, any application that proposes a project funding level for any fiscal year that exceeds the stated maximum award amount of $4,000,000 for that fiscal year.

We will set the amount of each grant after considering—

(1) The amount of funds available for making the grants;

(2) The relative population of the State or outlying area;

(3) The types of activities proposed by the State or outlying area;

(4) The alignment of proposed activities with section 612(a)(14) of IDEA;

(5) The alignment of proposed activities with State plans and applications submitted under sections 1111 and 2112, respectively, of the ESEA; and

(6) The use, as appropriate, of scientifically-based research and instruction.

Estimated Average Size of Awards: $1,020,000, excluding outlying areas.

Estimated Number of Awards: 28.

Note: The Department is not bound by any estimates in this notice.

Project Period: Not less than one year and not more than five years.

III. Eligibility Information

1. *Eligible Applicants:* An SEA of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United

States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). Current State Program Improvement Grant grantees with multi-year awards who wish to apply for a grant under the State Personnel Development Grants Program may do so, subject to section 651(e) of IDEA, which prohibits a State requesting a continuation award under the State Improvement Grant Program, as in effect prior to December 3, 2004, from receiving any other award under this program authority for that fiscal year.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. *FAX:* (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: www.ed.gov/pubs/edpubs.html or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.323A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: November 27, 2006. Deadline for Transmittal of Applications: March 27, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: May 29, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new governmentwide Grants.gov Apply site in FY 2007. The State Personnel Development Grants Program—CFDA Number 84.323A is one of the competitions included in this project. We request your participation in *Grants.gov*.

If you choose to submit your application electronically, you must use the *Grants.gov* Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the State Personnel Development Grants Program—CFDA Number 84.323A at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in *Grants.gov* is voluntary.
- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the *Grants.gov* system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date/time stamped by the *Grants.gov* system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition

to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via *Grants.gov*, you must complete all of the steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via *Grants.gov*.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance). If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a *Grants.gov* tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date. Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the *Grants.gov* Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.323A), 400 Maryland Avenue, SW., Washington, DC 20202–4260. or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.323A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.323A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of SF 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Treating A Priority As Two Separate Competitions:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence and fairness of the review process and permit panel members to review applications under discretionary competitions for which they have also submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The goal of the State Personnel Development Grants (SPDG) Program is to reform and improve State systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities. Under the Government Performance and Results Act (GPRA), the Department has developed performance measures to assess the success of the program in meeting these goals. These measures are: (1) The percent of personnel receiving professional development through the SPDG program based on scientific- or evidence-based instructional practices; (2) the percentage of SPDG projects that have implemented personnel development/training activities that are aligned with improvement strategies identified in their State Performance Plan (SPP); (3) the percentage of professional development/training activities provided through the SPDG program based on scientific- or evidence-based instructional/behavioral practices; (4) the percentage of professional development/training activities based on scientific- or evidence-based instructional/behavioral practices, provided through the SPDG program, that are sustained through ongoing and comprehensive practices (e.g., mentoring, coaching, structured guidance, modeling, continuous inquiry, etc.); and (5) in States with SPDG projects that have special education teacher retention as a goal, the Statewide percentage of highly qualified special education teachers in State-identified professional disciplines (e.g., teachers of children with emotional disturbance, deafness, etc.) consistent with sections 602(a)(10) and 612(a)(14) of IDEA, who remain teaching after the first three years of employment.

Each grantee must annually report its performance on these measures in the project's annual performance report to the Department in accordance with section 653(d) of IDEA and 34 CFR 75.590.

VII. Agency Contact

For Further Information Contact: Larry Wexler, U.S. Department of Education, 400 Maryland Avenue, SW., room 4019, Potomac Center Plaza, Washington, DC 20202–2550. *Telephone:* (202) 245–7571.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*.

Dated: November 20, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–20022 Filed 11–24–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Personnel Development to Improve Services and Results for Children with Disabilities—National Outreach and Technical Assistance Center on Discretionary Awards for Minority Institutions; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325R.

Dates: Applications Available: November 27, 2006.

Deadline for Transmittal of Applications: January 11, 2007.

Deadline for Intergovernmental Review: March 12, 2007.

Eligible Applicants: Institutions of higher education (IHEs).

Estimated Available Funds: The Administration has requested $90,626,000 for the Personnel Development to Improve Services and

Results for Children with Disabilities program for FY 2007, of which we intend to use an estimated $1,668,121 for the National Outreach and Technical Assistance Center on Discretionary Awards for Minority Institutions competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $1,668,121 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) Help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with infants or toddlers with disabilities, or children with disabilities; and (2) ensure that those personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 662(d) and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

National Outreach and Technical Assistance Center on Discretionary Awards for Minority Institutions

Background

Section 681(c)(2) of IDEA requires the Secretary to set aside funds to support one or both of the following activities: (1) The provision of outreach and technical assistance to Historically Black Colleges and Universities (HBCUs) and to IHEs with minority enrollments of not less than 25 percent to promote their participation in certain activities under IDEA; or (2) the provision of support to enable such institutions to assist other institutions and agencies in improving educational and transitional results for children with disabilities. Consistent with this requirement, this priority is aimed at: (1) Promoting the participation of HBCUs and IHEs with minority enrollments of not less than 25 percent in discretionary grant competitions conducted by the Department pursuant to section 662 of IDEA (the Personnel Development to Improve Services and Results for Children with Disabilities program); and (2) building the capacity of such institutions to prepare personnel to work effectively with children with disabilities from diverse backgrounds.

The current Technical Assistance Center funded by the Office of Special Education Programs (OSEP) under section 681(c)(2) provides technical assistance to IHEs in grant writing and disseminates specific information to aid HBCUs and other minority IHEs in developing applications for grants, cooperative agreements, and contracts. This priority will shift the focus of the center that will be funded from that of grant-writing technical assistance to assistance that will help HBCUs and minority IHEs build their capacity to prepare personnel to work effectively with children with disabilities from linguistically and culturally diverse backgrounds.

Priority: The purpose of the National Outreach and Technical Assistance Center on Discretionary Awards for Minority Institutions (Center) is to increase: (a) The participation of HBCUs and other institutions with a minority student enrollment of at least 25 percent in the Personnel Development to Improve Services and Results for Children with Disabilities program competitions authorized under section 662 of IDEA; and (b) the capacity of these institutions to prepare personnel to work with children with disabilities from diverse backgrounds.

To meet this priority, the Center must demonstrate that it will—

(a) Maintain contacts with HBCUs and other minority institutions;

(b) Prepare and disseminate grant-writing technical assistance materials that will enable HBCUs and other minority IHEs to become competitive applicants in competitions authorized under Subpart 2, section 662 of IDEA;

(c) Prepare and disseminate program development materials, such as: modules on a variety of research-based pedagogy and practices that are effective in preparing personnel to provide quality service to children with disabilities; and, a State by State directory of resources that will provide special education needs by State, disability type, personnel supply and demand, etc. Other materials could include information on identifying competencies that are needed to work effectively with linguistically and culturally diverse populations and how to infuse those competencies into personnel preparation programs;

(d) Analyze the results of each applicable discretionary grant competition conducted by the Department under IDEA to determine which HBCUs and minority IHEs applied and whether they were successful, and submit this analysis to the Department;

(e) Provide support and guidance to faculty at HBCUs and other minority IHEs to enhance the capacity of these institutions to design and implement professional education programs that graduate highly qualified special educators; and

(f) Ensure that all program development and professional education program enhancements that the Center recommends to HBCUs and minority IHEs include research-based practices, and appropriate cultural competencies to improve outcomes for infants, toddlers, and children with disabilities.

Additionally, the Center must meet the following additional requirements:

(a) Develop a plan in the first three months that outlines a comprehensive technical assistance approach based on effective strategies;

(b) Establish, maintain, and meet with an Advisory Board at least once a year that includes individuals with disabilities, members from underrepresented groups, technical assistance providers and university personnel;

(c) Include a third party evaluator, approved by the Office of Special Education Programs (OSEP), that will conduct a rigorous evaluation of core Center activities, and determine the overall impact of its work;

(d) Budget for a three-day Project Directors' meeting in Washington, DC, the Technical Assistance and Dissemination Project Directors' meeting and at least 2 one-day planning meetings with the OSEP Project Officer and other appropriate staff in Washington, DC; and

(e) Budget five percent of the grant amount annually to support emerging needs, as identified jointly through consultation with the OSEP project officer.

Fourth and Fifth Years of Project: Finally, in deciding whether to continue funding the Center for the fourth and

fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), in addition to the following items:

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted in Washington, DC during the last half of the project's second year. Projects must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center;

(c) Evidence of changes in capacity at HBCUs or other relevant institutions; and

(d) Evidence of increased participation of HBCUs and IHEs with minority enrollments of not less than 25 percent in competitions conducted under section 662 of IDEA.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on a proposed priority. However, section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462, 1481(c)(2), and 1481(d).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Administration has requested $90,626,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2007, of which we intend to use an estimated $1,668,121 for the National Outreach and Technical Assistance Center on Discretionary Awards for Minority Institutions competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $1,668,121 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.325R.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: November 27, 2006.

Deadline for Transmittal of Applications: January 11, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: March 12, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are

continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2007. The National Outreach and Technical Assistance Center on Discretionary Awards for Minority Institutions competition—CFDA number 84.325R is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the National Outreach and Technical Assistance Center on Discretionary Awards for Minority Institutions competition—CFDA number 84.325R at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance). If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325R), 400 Maryland

Avenue, SW., Washington, DC 20202–4260; or *By mail through a commercial carrier:* U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.325R), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325R), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of SF 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Treating A Priority As Two Separate Competitions:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence and fairness of the review process and permit panel members to review applications under discretionary competitions for which they have also submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed measures that will yield information on various aspects of the technical assistance and dissemination activities currently being supported under Part D of IDEA. These measures will be used for the National Outreach and Technical Assistance Center on Discretionary Awards for Minority Institutions competition, and they focus on: the extent to which projects provide high quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

We will notify grantees if they will be required to provide any information related to these measures.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Vicki Mims, U.S. Department of Education, 400 Maryland Avenue, SW., room 4094, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7451.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal**

Register. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 20, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–20024 Filed 11–24–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information Training and Information for Parents of Children With Disabilities—Community Parent Resource Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.328C.

Dates: Applications Available: November 27, 2006.

Deadline for Transmittal of Applications: January 11, 2007.

Deadline for Intergovernmental Review: March 12, 2007.

Eligible Applicants: Local parent organizations, as defined in section III. Eligibility Information in this notice.

Estimated Available Funds: The Administration has requested $25,704,000 for the Training and Information for Parents of Children with Disabilities program for FY 2007, of which we intend to use an estimated $1,000,000 for the Community Parent Resource Centers competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program. This priority may be used for competitions held in FY 2008 and later years.

Estimated Average Size of Awards: $100,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Priorities: This competition contains an absolute priority and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv) and (v), these priorities are from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 672 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is: *Community Parent Resource Centers. Background:* This priority supports community parent training and information centers in targeted communities that will provide underserved parents of children with disabilities, including low-income parents, parents of limited English proficient children, and parents with disabilities in that community, with the training and information they need to enable them to participate effectively in helping their children with disabilities to—

(a) Meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(b) Be prepared to lead productive, independent adult lives, to the maximum extent possible.

In addition, a purpose of this priority is to ensure that children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under IDEA in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services.

Text of Priority: Each community parent resource center assisted under this priority shall—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities within the proposed targeted community to be served by the center, particularly underserved parents and parents of children who may be inappropriately identified as having disabilities when they do not have them;

Note: For purposes of this priority, ''community to be served'' refers to a community whose members experience significant isolation from available sources of information and support as a result of cultural, economic, linguistic, or other circumstances deemed appropriate by the Secretary.

(b) Carry out the following activities required of parent training and information centers:

(1) Serve the parents of infants, toddlers, and children, from ages birth through 26, with the full range of disabilities described in section 602(3) of IDEA.

(2) Ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children.

(3) Assist parents to—

(A) Better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

(B) Communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

(C) Participate in decision making processes, including those regarding participation in State and local assessments, and the development of individualized education programs under Part B of IDEA and individualized family service plans under Part C of IDEA;

(D) Obtain appropriate information about the range, type, and quality of—

(1) Options, programs, services, technologies, practices, and interventions that are based on scientifically based research, to the extent practicable; and

(2) Resources available to assist children with disabilities and their families in school and at home, including information available through the Office of Special Education Programs' (OSEP) technical assistance network and Communities of Practice;

(E) Understand the provisions of IDEA for the education of, and the provision of early intervention services to, children with disabilities;

(F) Participate in activities at the school level that benefit their children; and

(G) Participate in school reform activities.

(4) In States where the State elects to contract with the parent training and information center, contract with the State educational agencies to provide, consistent with paragraphs (B) and (D) of section 615(e)(2) of IDEA, individuals to meet with parents in order to explain the mediation process.

(5) Assist parents in resolving disputes in the most expeditious and

effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e) of IDEA.

(6) Assist parents and students with disabilities to understand their rights and responsibilities under IDEA, including those under section 615(m) of IDEA upon the student's reaching the age of majority (as appropriate under State law).

(7) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA, including the resolution session described in section 615(e) of IDEA.

(8) Assist parents in understanding, preparing for, and participating in, the resolution session as described in section 615(f)(1)(B) of IDEA;

(c) Establish cooperative partnerships with any parent training and information centers and any other community parent resource centers funded in the State under sections 671 and 672 of IDEA;

(d) Be designed to meet the specific needs of families who experience significant isolation from available sources of information and support;

(e) Familiarize themselves with the provision of special education, related services, and early intervention services in the areas they serve to help ensure that children with disabilities are receiving appropriate services;

(f) Annually report to the Department on—

(1) The number and demographics of parents to whom it provided information and training in the most recently concluded fiscal year, including additional information regarding their unique needs and levels of service provided to them; and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities, by providing evidence of how those parents were served effectively;

(g) Respond to requests from the National Technical Assistance Center (NTAC) and Regional Parent Technical Assistance Centers (PTACs) and use the technical assistance services of the NTAC and PTACs in order to serve the families of infants, toddlers, and children with disabilities as efficiently as possible. PTACs are charged with assisting parent centers with administrative and programmatic issues;

(h) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project. In addition, a project's budget must include funds for the center's project director to attend a Regional Project Directors meeting to be held each year of the project;

(i) If the community parent resource center maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility;

(j) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to the document review board of OSEP's Dissemination Center; and

(k) In collaboration with OSEP and the NTAC, participate in an annual collection of program data for the community parent resource centers and the parent training and information centers.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address the following priorities. Under 34 CFR 75.105(c)(2)(i), we will award up to ten additional points to an application that meets these priorities.

Empowerment Zones, Enterprise Communities or Renewal Communities

This priority is:

We will award five points to an application that proposes to provide services to one or more Empowerment Zones, Enterprise Communities, or Renewal Communities that are designated within the areas served by the center. (A list of areas that have been selected as Empowerment Zones, Enterprise Communities, or Renewal Communities can be found at *http://egis.hud.gov/egis/cpd/rcezec/ezec_open.htm*).

To meet this priority, an applicant must indicate that it will—

(a)(1) Design a program that includes special activities focused on the unique needs of one or more Empowerment Zones, Enterprise Communities, or Renewal Communities; or

(2) Devote a substantial portion of program resources to providing services within, or meeting the needs of residents of, these zones and communities;

(b) As appropriate, contribute to the strategic plan of the Empowerment Zones, Enterprise Communities, or Renewal Communities and become an integral component of the Empowerment Zone, Enterprise Community, or Renewal Community activities.

Novice Applicants

This priority is:

To meet this priority, the applicant must be a ''novice applicant.'' This priority is from 34 CFR 75.225. We will award an additional five points to an application that meets this priority.

The term ''novice applicant'' means any applicant for a grant from the U.S. Department of Education that—

(1) Has never received a grant or subgrant under the program from which it seeks funding;

(2) Has never been a member of a group application, submitted in accordance with 34 CFR 75.127 through 75.129, that received a grant under the program from which it seeks funding; and

(3) Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under this program (Training and Information for Parents of Children with Disabilities—Community Parent Resource Centers). For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127 through 75.129, all group members must meet the requirements described in this priority to qualify as a novice applicant.

Therefore, for purposes of these competitive preference priorities, applicants can be awarded up to a total of 10 points in addition to those awarded under the selection criteria for this competition (see *Selection Criteria* in section V of this notice). That is, an applicant meeting the competitive preference priorities could earn a maximum total of 110 points.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of IDEA makes the public comment requirements under the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1472.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $25,704,000 for the Training and Information for Parents of Children with Disabilities program for FY 2007, of which we intend to use an estimated $1,000,000 for the Community Parent Resource Centers competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program. This priority may be used for competitions held in FY 2008 and later years.

Estimated Average Size of Awards: $100,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 award for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Local parent organizations. Under section 672(a)(2) of IDEA, a ''local parent organization'' is a parent organization (as that term is defined in section 671(a)(2) of IDEA) that must meet the following criteria:

(a) Has a board of directors, the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served.

(b) Has as its mission serving parents of children with disabilities from that community who (1) are ages birth through 26, and (2) have the full ranges of disabilities as defined in section 602(3) of IDEA.

Section 671(a)(2) of IDEA defines a ''parent organization'' as a private nonprofit organization (other than an institution of higher education) that—

(a) Has a board of directors—

(1) The majority of whom are parents of children with disabilities ages birth through 26;

(2) That includes—

(i) Individuals working in the fields of special education, related services, and early intervention; and

(ii) Individuals with disabilities; and

(iii) The parent and professional members of which are broadly representative of the population to be served including low-income parents and parents of limited English proficient children; and

(b) Has as its mission serving families of children with disabilities who are ages birth through 26, and have the full range of disabilities described in section 602(3) of IDEA.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.328C.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: November 27, 2006.

Deadline for Transmittal of Applications: January 11, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: March 12, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system

since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2007. The Community Parent Resource Centers-CFDA Number 84.328C is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Community Parent Resource Centers-CFDA Number 84.328C competition at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance). If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text) or .PDF (portable document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328C), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.328C), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

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4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed measures that will yield information on various aspects of the Training and Information for Parents of Children with Disabilities program. The measures focus on: the extent to which projects provide high-quality materials, the relevance of project products and services to educational and early intervention policy and practice, and the usefulness of products and services to improve educational and early intervention policy and practice.

Grantees will be required to provide information related to these measures.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Lisa Gorove, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4056, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7357.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 20, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–20028 Filed 11–24–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–012]

RIN 1904–AB12

Energy Conservation Program for Consumer Products: Publication of the Extension of Interim Waiver of Mitsubishi Electric & Electronics USA, Inc., from the U.S. Department of Energy Residential and Commercial Air Conditioner and Heat Pump Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of extension of interim waiver.

SUMMARY: On March 24, 2006, the U.S. Department of Energy (DOE) published in the **Federal Register** a Petition for Waiver and notice granting an Application for Interim Waiver to Mitsubishi Electric and Electronics USA, Inc., (MEUS) from energy efficiency test procedure requirements that are applicable to residential and commercial air conditioners and heat pumps. (71 FR 14858) The date of issuance of the Interim Waiver was March 15, 2006, and it terminated 180 days after issuance on September 11, 2006. In today's action, DOE is extending the Interim Waiver for 180 days, or until March 10, 2007.

FOR FURTHER INFORMATION CONTACT: Michael Raymond at (202) 586–9611, e-mail; *michael.raymond@ee.doe.gov*, or Francine Pinto, Esq., (202) 586–9507, e-mail: *francine.pinto@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On March 15, 2006, DOE granted to MEUS an Interim Waiver from the energy efficiency test procedure requirements in appendix M to subpart B of Title 10, Code of Federal Regulations Parts 430 and 431 (10 CFR Parts 430 and 431) respectively, that are applicable to MEUS's CITY MULTI® Variable Refrigerant Flow Zoning (VRFZ) package air conditioners and heat pump units that operate using R410A refrigerant, and requested comments. (71 FR 14858) Pursuant to 10 CFR 430.27(h), ''an interim waiver will terminate 180 days after issuance or upon the determination on the Petition for Waiver, whichever occurs first. An interim waiver may be extended by DOE for 180 days. Notice of such extension and/or any modification of the terms or duration of the interim waiver shall be published in the **Federal Register**, and shall be based on relevant information contained in the record and any comments received subsequent to issuance of the interim waiver.''

The 180-day period for MEUS's Interim Waiver ended on September 11, 2006. All but one of the comments received were favorable to MEUS's Petition for Waiver. As such, DOE intends to publish a decision and order concerning the energy efficiency test procedure requirements for residential and commercial air conditioners and heat pumps in 10 CFR Parts 430 and 431, which are applicable to MEUS's CITY MULTI® VRFZ package air conditioners and heat pumps that operate using R410A refrigerant. Moreover, in view of the comments received and to provide sufficient time to further examine MEUS's Petition for Waiver, DOE has determined that it is appropriate to grant an extension of the Interim Waiver for an additional 180 days, until March 10, 2007, or until the determination on the Petition for Waiver, whichever occurs first.

Issued in Washington, DC, on November 16, 2006.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E6–19985 Filed 11–24–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–66–000]

Algonquin Gas Transmission, LLC; Notice of Proposed Changes Gas Tariff in FERC

November 16, 2006.

Take notice that on November 13, 2006, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing to be effective December 14, 2006.

Algonquin states that the purpose of this filing is to modify the General Terms and Conditions (GT&C) of the Algonquin Tariff to (i) Reorganize the definitions contained in GT&C Section 1 into alphabetical order, (ii) clarify certain aspects of the Imbalance Resolution Procedures set forth in GT&C Section 25, (iii) clarify certain aspects of the Determination of Receipts and Determination of Deliveries provisions contained in GT&C Sections 27 and 28, and (iv) make non-substantive housekeeping changes to various sections of the GT&C.

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E6–19935 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–71–004]

Carolina Gas Transmission Corporation; Notice of Application

November 17, 2006

Take notice that on November 1, 2006, Carolina Gas Transmission Corporation (Carolina Gas) tendered for filing Rate Schedule FT Service Agreement between Patriots Energy Group (PEG) and Carolina Gas (PEG Agreement) in substitution for the unexecuted version of the agreement that the Commission accepted in its Order Issuing Certificates, Granting Abandonment Authority and Approving Offer of Settlement in Docket Nos. CP06–71–000, CP07–72–000, and CP06–73–000.

Carolina Gas states that the filing has been served to all parties to the service list.

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 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 email 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. E6–19941 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–23–000]

Columbia Gas Transmission Corporation; Notice of Application

November 17, 2006.

Take notice that on November 13, 2006, Columbia Gas Transmission Corporation (Columbia) and Algonquin Gas Transmission, LLC, (Algonquin) tendered for filing a joint application under Section 7(b) of the Natural Gas Act to abandon a certain exchange service provided under Columbia's Rate Schedule X–27 and Algonquin's Rate Schedule X–5.

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 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 5, 2006.

Magalie R. Salas.

Secretary.

[FR Doc. E6–19942 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–114–000, CP04–115–000]

Compass Pass Pipeline L.L.C.; Notice of Effectiveness of Withdrawal and Termination of Proceeding

November 17, 2006.

On April 16, 2004, Compass Pass Pipeline LLC (Compass Pass) filed an application, in Docket No. CP04–114–000, pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity to construct, own, and operate a 36-inch diameter natural gas pipeline facilities extending approximately 5 miles from the high water mark at the shoreline of the Gulf of Mexico to interconnections with interstate gas pipelines located near Coden, Mobile County, Alabama. Compass Pass also requested, in Docket No. CP04–115–000, a blanket construction certificate under Part 157, Subpart F of the Commission's regulations.

On October 31, 2006, Compass Pass filed a notice of withdrawal of the applications. No motion in opposition to the notice of withdrawal has been filed with the Commission and the Commission did not disallow the withdrawal. Pursuant to 18 CFR 385.216(b), this withdrawal was effective November 16, 2006, 15 days from the date of filing of the notice of withdrawal.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19953 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–022]

Dauphin Island Gathering Partners; Notice of Negotiated Rate

November 17, 2006.

Take notice that on November 14, 2006, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-Eighth Revised Tariff Sheet No. 9 to become effective December 15, 2006.

Dauphin Island states that copies of the filing are being served contemporaneously on its customers and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19951 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–62–000]

East Tennessee Natural Gas, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 16, 2006.

Take notice that on November 13, 2006, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing to be effective December 14, 2006.

East Tennessee states that the purpose of this filing is to modify the East Tennessee Tariff to (i) Reorganize the definitions contained in GT&C Section 1 of the General Terms and Conditions (GT&C) into alphabetical order, and (ii) make non-substantive housekeeping changes to the imbalance resolution procedures set forth in Section 8 of Rate Schedule LMS–MA and Sections 6, 7 and 8 of Rate Schedule LMS–PA.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E6–19931 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–63–000]

Egan Hub Storage, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 16, 2006.

Take notice that on November 13, 2006, Egan Hub Storage, LLC (Egan Hub) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing to be effective December 14, 2006.

Egan Hub states that the purpose of this filing is to modify the Egan Hub Tariff to (i) Update the process for resolving balances remaining in storage upon termination of a customer's contract, (ii) reorganize the definitions contained in Section 2 of the General Terms and Conditions (GT&C) into alphabetical order, and (iii) streamline the process set forth in GT&C Section 20 for title transfer transactions.

Egan Hub states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*.

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19932 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–40–001]

El Paso Natural Gas Company; Notice of Tariff Filing

November 16, 2006.

Take notice that on November 7, 2006, El Paso Natural Gas Company (El Paso) resubmitted a complete set of three firm transportation agreements (TSAs) with Southwest Gas Corporation to correct for inadvertent errors contained in the copies originally submitted in Docket No. RP07–40–000 on October 31, 2006. El Paso states that it has also revised paragraph 6.1 in the marked version of all three TSAs to properly reflect additions and deletions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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.

Protest Date: 5 p.m. Eastern Time on November 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19929 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–8–000]

GGBB Energy, Inc.; Notice of Issuance of Order

November 17, 2006.

GGBB Energy, Inc. (GGBB) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based tariff provides for the sale of energy and capacity at market-based rates. GGBB also requested waivers of various Commission regulations. In particular, GGBB requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by GGBB.

On November 15, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by GGBB should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is December 15, 2006.

Absent a request to be heard in opposition by the deadline above, GGBB is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of GGBB, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of GGBB's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19944 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–024]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

November 16, 2006.

Take notice that on November 9, 2006, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 10, to be effective on December 10, 2006:

Iroquois states that the filing is being made in compliance with the Commission's order issued on October 25, 2006, in Docket No. RP98–18–021.

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. E6–19919 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–65–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Change in FERC Gas Tariff

November 16, 2006.

Take notice that on November 13, 2006, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following revised sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on December 14, 2006:

First Revised Sheet No. 10C
Seventh Revised Sheet No. 11B
Eighth Revised Sheet No. 27
Ninth Revised Sheet No. 51
Second Revised Sheet No. 52A
Fourth Revised Sheet No. 88
Third Revised Sheet No. 116
First Revised Sheet No. 143A
Fourth Revised Sheet No. 144
Sixth Revised Sheet No. 145
Third Revised Sheet No. 151
Sixth Revised Sheet No. 153
Third Revised Sheet No. 156
Sixth Revised Sheet No. 164
Fourth Revised Sheet No. 175
First Revised Sheet No. 178A
First Revised Sheet No. 178B
Ninth Revised Sheet No. 181
Eighth Revised Sheet No. 185
Sixth Revised Sheet No. 190
Third Revised Sheet No. 191
Fifth Revised Sheet No. 192
Third Revised Sheet No. 193

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies.

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. E6–19934 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–025]

Iroquois Gas Transmission System, L.P.; Notice of Negotiated Rates

November 17, 2006.

Take notice that on November 13, 2006, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Original Sheet No. 6I and Original Sheet No. 6J, to be effective on November 10, 2006.

Iroquois states that these sheets reflect a negotiated rate agreement between Iroquois and Virginia Power Energy Marketing, Inc., with those negotiated rates to be effective November 10, 2006 through April 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19938 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–64–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Tariff Filing

November 16, 2006.

Take notice that on November 13, 2006, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of December 14, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19933 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Public Utility District No. 1 of Snohomish County, WA; Notice Granting Late Intervention

November 16, 2006.

On June 22, 2006, the Commission issued a notice of the application for preliminary permit filed by Public Utility District No. 1 of Snohomish County, Washington, for the Rich Passage Tidal Energy Project No. 12688, to be located in Rich Passage in Puget Sound, Kitsap County, Washington. The notice established August 21, 2006, as the deadline for filing motions to intervene.

On October 20, 2006, Kitsap County, Washington, filed a late motion to intervene in the proceeding. Granting the motion to intervene will not unduly delay or disrupt the proceeding, or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the motion to intervene filed by Kitsap County, Washington, is granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19922 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.214 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project Nos. 12688–000, 12689–000, 12690–000, 12691–000, 12692–000, and 12698–000

Public Utility District No. 1 of Snohomish County, WA; Notice Granting Late Intervention

November 16, 2006.

On June 22, 2006, in Project Nos. 12688, 12689, 12690, and 12692, and on July 3, 2006, in Project Nos. 12691 and 12698, the Commission issued notice of preliminary permit applications filed by Public Utility District No. 1 of Snohomish County, Washington.[1] The notices in Project Nos. 12688, 12689, 12690, and 12692 established August 21, 2006, as the deadline for filing motions to intervene. The notices in Project Nos. 12691 and 12698 established September 1, 2006, as the deadline for filing motions to intervene.

On September 14, 2006, the National Oceanic and Atmospheric Administration filed a late motion to intervene in all of the above-captioned projects. Granting the motion to intervene will not unduly delay or disrupt the proceedings, or prejudice other parties to them. Therefore, pursuant to Rule 214,[2] the motion to intervene filed by the National Oceanic and Atmospheric Administration is granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19923 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

[1] The applications seek preliminary permits for: (1) The Rich Passage Tidal Energy Project No. 12688, to be located in Rich Passage in Puget Sound, Kitsap County, Washington; (2) the Spieden Channel Tidal Energy Project No. 12689, to be located in Spieden Channel in San Juan County, Washington; (3) the Admiralty Inlet Tidal Energy Project No. 12690, to be located in Admiralty Inlet in Jefferson, Kitsap, and Island Counties, Washington; (4) the Agate Passage Tidal Energy Project No. 12691, to be located in Agate Passage in Puget Sound in Kitsap County, Washington; (5) the San Juan Channel Tidal Energy Project No. 12692, to be located in San Juan Channel in San Juan County, Washington; and (6) the Guemes Channel Tidal Energy Project No. 12698, which would be located in Guemes Channel in San Juan County, Washington.

[2] 18 CFR 385.214 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 12688–000, 12689–000, 12690–000, and 12692–000]

Public Utility District No. 1 of Snohomish County, WA; Notice Granting Late Intervention

November 16, 2006.

On June 22, 2006, the Commission issued a notice in each above-captioned proceeding of the preliminary permit application filed by Public Utility District No. 1 of Snohomish County, Washington, in the proceeding.[1] The notices established August 21, 2006, as the deadline for filing motions to intervene.

On August 23 and 28, 2006, respectively, the Tulalip Tribes and the Whidbey Environmental Action Network filed late motions to intervene in the proceedings. Granting the motions to intervene will not unduly delay or disrupt the proceedings, or prejudice other parties to them. Therefore, pursuant to Rule 214,[2] the motions to intervene filed by the Tulalip Tribes and Whidbey Environmental Action Network are granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19924 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

[1] The applications seek separate preliminary permits for: (1) The Rich Passage Tidal Energy Project No. 12688, to be located in Rich Passage in Puget Sound, Kitsap County, Washington; (2) the Spieden Channel Tidal Energy Project No. 12689, to be located in Spieden Channel in San Juan County, Washington; (3) the Admiralty Inlet Tidal Energy Project No. 12690, to be located in Admiralty Inlet in Jefferson, Kitsap, and Island Counties, Washington; and (4) the San Juan Channel Tidal Energy Project No. 12692, to be located in San Juan Channel in San Juan County, Washington.

[2] 18 CFR 385.214 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 12689–000, 12692–000]

Public Utility District No. 1 of Snohomish County, WA; Notice Granting Late Intervention

November 16, 2006.

On June 22, 2006, the Commission issued separate notices of the preliminary permit applications filed by Public Utility District No. 1 of Snohomish County, Washington, for the Spieden Channel Tidal Energy Project No. 12689, to be located in Spieden Channel in San Juan County, Washington, and the San Juan Channel Tidal Energy Project No. 12692, to be located in San Juan Channel in San Juan County, Washington. The notices established August 21, 2006, as the deadline for filing motions to intervene.

On August 24, 2006, Pomona Grange #50 San Juan County, Washington, filed a late motion to intervene in the proceedings.[1] Granting the motion to intervene will not unduly delay or disrupt the proceedings, or prejudice other parties to them. Therefore, pursuant to Rule 214,[2] the motion to intervene filed by the Pomona Grange #50 San Juan County, Washington, is granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19925 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Pomona Grange #50 San Juan County, Washington, filed its motion at 5:54 p.m. on August 23, 2006. Pursuant to 18 CFR 385.2001(a)(2)(2006), any document received after regular business hours is considered filed on the next business day. The Commission's regular business hours end at 5 p.m., U.S. Eastern Time. *See http://www.ferc.gov/contact-us/build-access.asp. See also*, 18 CFR 375.101(c)(the offices of the Commission are open each day, except Saturdays, Sundays, and Holidays, from 8:30 a.m. to 5 p.m.)

[2] 18 CFR 385.214 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12698–000]

Public Utility District No. 1 of Snohomish County, WA; Notice Granting Late Intervention

November 16, 2006.

On July 3, 2006, the Commission issued a notice of the application for preliminary permit filed by Public Utility District No. 1 of Snohomish County, Washington, for the Guemes Channel Tidal Energy Project No. 12698, to be located in Guemes Channel in San Juan County, Washington. The notice established September 1, 2006 as the deadline for filing motions to intervene.

On September 22, 2006, the City of Anacortes, Washington, filed a late motion to intervene in the proceeding. Granting the motion to intervene will not unduly delay or disrupt the proceeding, or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the motion to intervene filed by the City of Anacortes, Washington, is granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19926 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.214 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–30–000; ER07–30–001]

RC Cape May Holdings, LLC; Notice Of Issuance Of Order

November 17, 2006.

RC Cape May Holding, LLC (RC Cape May) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. RC Cape May also requested waivers of various Commission regulations. In particular, RC Cape May requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by RC Cape May.

On November 16, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Cape May should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is December 18, 2006.

Absent a request to be heard in opposition by the deadline above, RC Cape May is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of RC Cape May, compatible

with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of RC Cape May's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19943 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–60–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Filing of Operational Flow Order Penalty Report

November 16, 2006.

Take notice that on November 9, 2006, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing, pursuant to Section 10.3 of the General Terms and Conditions of its FERC Gas Tariff, its report of Operational Flow Order (OFO) penalty revenues and refunds.

Southern Star states that pursuant to the Operational Flow Order mechanism contained in Section 10 of the General Terms and Conditions of Southern Star's tariff, they did not issue any OFOs. Therefore no penalties were assessed or collected and no refunds are required for the twelve-month period ending September 30, 2006.

Southern Star states that copies of the filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed 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 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.

Intervention and Protest Date: 5 p.m. Eastern Time, November 24, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19930 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF07–4011–000]

Southwestern Power Administration; Notice of Filing

November 15, 2006.

Take notice that on October 2, 2006, the Deputy Secretary, U.S. Department of Energy, pursuant to the authority vested in the Deputy Secretary by sections 301(b), 302(a), 402(e), 641, 642, 643, and 644, of the Department of Energy Organization Act (Pub. L. 95–91) and by Delegation Order Nos. 00–037.000, effective December 21, 2001, and 00.001–00B, effective July 28, 2005, submitted for confirmation and approval on an interim basis, Rate Order No. SWPA–56, along with the following Southwestern Power Administration Integration System Rates: Rate Schedule P–06—Wholesale Rates for Hydro Peaking Power, Rate Schedule NFTS–06—Wholesale Rates for Non-Federal Transmission/Interconnection Facilities Service, and Rate Schedule EE–06—Wholesale Rate for Excess Energy, effective October 1, 2006 through September 30, 2010.

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, 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 comment date. On or before the comment date, it is not necessary to 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 on November 24, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19917 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–158]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Amendments

November 16, 2006.

Take notice that on November 9, 2006, Tennessee Gas Pipeline Company (Tennessee) tendered for filing certain exhibits to two amendments to two Gas Transportation Agreements, dated November 1, 2002, between Tennessee and Calpine Energy Services L.P. pursuant to Tennessee's Rate Schedule FT-A (Negotiated Rate Agreements). Tennessee requests the amendments to the Negotiated Rate Agreements to be effective on December 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E6–19936 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–67–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

November 17, 2006.

Take notice that on November 13, 2006, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing to be effective December 14, 2006.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19952 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 17, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–17–000.

Applicants: Suez Energy North America, Inc.

Description: SUEZ S.A & SUEZ Energy North America, Inc., et al., submits application requesting authorization for a change of control due to a merger with GDF over the jurisdictional facilities owned by SENA on 11/9/06.

Filed Date: 11/14/2006.

Accession Number: 20061115–0352.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 5, 2006.

Docket Numbers: EC07–18–000.

Applicants: Wachovia Investment Holdings, LLC.

Description: Gamesa Energyia SAU, et al., submits an application for Order Authorization Disposition of Jurisdictional Facilities under Section 203 of the FPAS.

Filed Date: 11/08/2006.

Accession Number: 20061114–0035.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 29, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–11–000.

Applicants: Loess Hills Wind Farm, LLC.

Description: Notice of Self-Certification of Loess Hills Wind Farm, LLC demonstrating that it is an Exempt Wholesale Generator under EG07–11.

Filed Date: 11/08/2006.

Accession Number: 20061116–0097.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 29, 2006.

Docket Numbers: EG07–12–000.

Applicants: Locust Ridge Wind Farm, LLC.

Description: Locust Ridge Wind Farm, LLC's Notice of Self-Certification as an Exempt Wholesale Generator under EG07–12.

Filed Date: 11/13/2006.

Accession Number: 20061116–0098.

Comment Date: 5 p.m. Eastern Time on Monday, December 4, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–2801–015.

Applicants: PacifiCorp.

Description: PacifiCorp & PPM Energy, Inc., submits a corrected version of their 3/29/06 compliance filing reflecting certain limited errata recently discoverd, etc., under ER97–2801, *et al.*

Filed Date: 11/6/2006.

Accession Number: 20061109–0069.

Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Numbers: ER01–2217–005.

Applicants: Sunrise Power Company, LLC.

Description: Sunrise Power Co., LLC, submits Sub Original Sheet 5, *et al.,* as part of its FERC Electric Tariff, First Revised Volume 1 in compliance with FERC's 11/3/06 Order under ER01–2217.

Filed Date: 11/13/2006.

Accession Number: 20061116–0041.

Comment Date: 5 p.m. Eastern Time on Monday, December 4, 2006.

Docket Numbers: ER03–821–002.

Applicants: One Nation Energy Solutions, LLC.

Description: One Nation Energy Solutions LLC submits its First Revised Rate Schedule umder ER03–821.

Filed Date: 11/8/2006.

Accession Number: 20061116–0092.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 29, 2006.

Docket Numbers: ER05–1178–006; ER05–1191–006.

Applicants: Gila River Power, L.P.; Union Power Partners, LP.

Description: Gila River Power, LP and Union Power Partners, LP submits Notice of Non-Material Change in Status relating to their upstream ownership structure under ER05–1178, *et al.*

Filed Date: 11/13/2006.

Accession Number: 20061116–0040.

Comment Date: 5 p.m. Eastern Time on Monday, December 4, 2006.

Docket Numbers: ER06–115–001.

Applicants: LSP South Bay, LLC.

Description: Refund Report of LSP South Bay, LLC under ER06–115.

Filed Date: 11/08/2006.

Accession Number: 20061108–5010.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 29, 2006.

Docket Numbers: ER03–1288–002.

Applicants: Rocky Mountain Energy Center, LLC.

Description: Rocky Mountain Energy Center LLC submits a Substitute First Revised Sheet 3 for its FERC Electric Tariff 1, which is to replace the First Revised Sheet 3 that was filed 10/3/06 under ER03–1288.

Filed Date: 11/6/2006.

Accession Number: 20061108–0091.

Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Numbers: ER06–1308–003.

Applicants: Midwest ISO.

Description: Midwest Independent Transmission System Operator, Inc., submits copies of a clean and redlined revisions to Sheet 966A and 966C of FERC Electric Rate Schedule 10–C, etc., under ER06–1308.

Filed Date: 11/14/2006.

Accession Number: 20061116–0087.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 5, 2006.

Docket Numbers: ER06–1362–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc., submits this compliance filing providing revisions to its Open Access Transmission Tariff pursuant to the Commission's Order issued 10/13/06 under ER06–1362.

Filed Dates: 11/13/2006; 11/15/06.

Accession Number: 20061116–0032.

Comment Date: 5 p.m. Eastern Time on Monday, December 4, 2006.

Docket Numbers: ER06–321–005.

Applicants: Midwest ISO; Midwest ISO Transmission Owners; Michigan Electric Transmission Company; International Company; WPS Resourced Corporation; Wisconsin Electric Power Company.

Description: Agreement among the Midwest ISO Transmission Owners and the Midwest Independent Transmission System Operator, Inc., relating to the Role of the Independent Market Monitor under ER06–321.

Filed Date: 11/13/2006.

Accession Number: 20061116–0082.

Comment Date: 5 p.m. Eastern Time on Monday, December 4, 2006.

Docket Numbers: ER07–186–000.

Applicants: California Independent System Operator.

Description: California Independent System Operator Corp., submits an informational filing intended to provide notice re the revised transmission Access Charges effective 9/1/06 under ER07–186.

Filed Date: 11/7/2006.

Accession Number: 20061109–0101.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 28, 2006.

Docket Numbers: ER07–197–000.

Applicants: ISO New England, Inc.

Description: ISO New England Inc., et al., submits revisions to the MEPCO Transmission Operating Agreement b/w ISO and MEPCO to include the Chester Static VAR Compensator as a covered facility etc., under ER07–197.

Filed Date: 11/9/2006.

Accession Number: 20061114–0058.

Comment Date: 5 p.m. Eastern Time on Thursday, November 30, 2006.

Docket Numbers: ER07–199–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with Southeastern Chester County Refuse Authority under ER07–199.

Filed Date: 11/13/2006.

Accession Number: 20061116–0038.

Comment Date: 5 p.m. Eastern Time on Monday, December 4, 2006.

Docket Numbers: ER07–200–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc., submits an executed Interconnection Agreement between itself, Kansas Gas and Electric Co., et al., designated as Service Agreement 1298, to become effective 10/1/06 under ER07–200.

Filed Date: 11/13/2006.

Accession Number: 20061116–0039.

Comment Date: 5 p.m. Eastern Time on Monday, December 4, 2006.

Docket Numbers: ER07–202–000.

Applicants: E. ON U.S. LLC.

Description: E. ON U.S. LLC, Louisville Gas and Electric Co., and Kentucky Utilities Co., submits an executed amended service agreement with Illinois Municipal Electric Agency under ER07–202.

Filed Date: 11/13/2006.

Accession Number: 20061116–0042.

Comment Date: 5 p.m. Eastern Time on Monday, December 4, 2006.

Docket Numbers: ER07–206–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with Great Bear Hydropower, Inc., et al., pusuant to Section 205 of the Federal Power Act etc., under ER07–206.

Filed Date: 11/14/2006.

Accession Number: 20061116–0035.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 5, 2006.

Docket Numbers: ER07–207–000.

Applicants: WPS Resources Corporation.

Description: WPS Resources Operating Companies on behalf of

Wisconsin Public Service Corp., et al., submits a notice of cancellation and a revised service agreement cover sheet to terminate a Service Agreement etc., under ER07–207.

Filed Date: 11/13/2006.

Accession Number: 20061116–0036.

Comment Date: 5 p.m. Eastern Time on Monday, December 4, 2006.

Docket Numbers: ER07–208–000.

Applicants: Entergy Services Inc.

Description: Entergy Services, Inc., on behalf Energy Arkansas, Inc., *et al.,* submits notice of cancellation which proposes to terminate the January 1, 1987 Contract for Purchases of Economic Energy etc., under ER07–208.

Filed Date: 11/13/2006.

Accession Number: 20061116–0034.

Comment Date: 5 p.m. Eastern Time on Monday, December 4, 2006.

Docket Numbers: ER07–209–000.

Applicants: Avista Corporation.

Description: Avista Corporation submits an Amended and Restated Power Transfer Agreement conformed to comply with Rule 614 with Public Utility District 2 of Grant County pursuant to Section 35.12 of FERC's Regulations under ER07–209 *et al.*

Filed Date: 11/13/2006.

Accession Number: 20061116–0033.

Comment Date: 5 p.m. Eastern Time on Monday, December 4, 2006.

Docket Numbers: ER07–210–000.

Applicants: Northeast Utilities.

Description: Northeast Utilities Service Co., on behalf of the Connecticut Light and Power Co., submits a Notice of Termination to cancel First Revised Rate Schedule FERC 554 under ER07–210.

Filed Date: 11/13/2006.

Accession Number: 20061116–0083.

Comment Date: 5 p.m. Eastern Time on Monday, December 4, 2006.

Docket Numbers: ER07–212–000; ER01–1558–004.

Applicants: Wayzata California Power Holdings, LLC; NEO California Power LLC.

Description: Notice of Non-Material Change in Status, Notice of Succession, and request for expedited review of NEO California Power, LLC and Wayzata California Power Holdings, LLC under ER01–1588 *et al.*

Filed Date: 11/13/2006.

Accession Number: 20061116–0088.

Comment Date: 5 p.m. Eastern Time on Monday, December 4, 2006.

Docket Numbers: ER07–213–000; ER07–214–000; ER07–215–000; ER07–216–000; ER07–217–000; ER07–218–000.

Applicants: Nordic Marketing of Massachusetts, L.L.C.; Nordic Marketing of New Jersey, LLC; Nordic Marketing of New York, LLC; Nordic Electric LLC; Nordic Energy Barge 1, L.L.C.; Nordic Energy Barge 2, L.L.C.

Description: Nordic Marketing of Massachusetts, LLC, et al., submits Second Revised Sheet 1, et al., to FERC Rate Schedule 1 etc., under ER07–213 *et al.*

Filed Date: 11/14/2006.

Accession Number: 20061116–0090.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 5, 2006.

Docket Numbers: ER07–219–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc., and New England Power Pool Participants Committee submits Market Rule changes to eliminate the Peaking Unit Safe Harbor mechanism under ER07–219.

Filed Date: 11/14/2006.

Accession Number: 20061116–0091.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 5, 2006.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–8–000.

Applicants: PSEG Nuclear LLC.

Description: Application of PSEG Energy Resources & Trade LLC, *et al.,* for Authorization to Guarantee Securities under ES07–8.

Filed Date: 11/09/2006.

Accession Number: 20061109–5019.

Comment Date: 5 p.m. Eastern Time on Thursday, November 30, 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. E6–19954 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–54–000, Docket No. CP06–055–000]

Broadwater Energy LLC, Broadwater Pipeline LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Broadwater LNG Project

November 17, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) in cooperation with the U.S. Coast Guard (Coast Guard); U.S. Environmental Protection Agency; U.S. Army Corps of Engineers (COE); National Oceanic and Atmospheric Administration, National Marine Fisheries Service; and the New York Department of State has prepared a draft Environmental Impact Statement (EIS) for a liquefied natural gas (LNG) import terminal and natural gas pipeline (referred to as the Broadwater LNG Project) proposed by Broadwater Energy LLC and Broadwater Pipeline LLC (jointly referred to as Broadwater) in the above-referenced dockets. Broadwater Energy LLC is jointly owned by TCPL USA LNG, Inc. (a subsidiary of TransCanada Corporation) and Shell

Broadwater Holdings LLC (a subsidiary of Shell Oil Company). Broadwater Pipeline LLC is owned by Broadwater Energy LLC.

The proposed LNG terminal would be located in New York State waters of Long Island Sound, approximately 9 miles from the nearest shoreline of Long Island, and about 11 miles from the nearest shoreline in Connecticut. The terminal would be a floating storage and regasification unit (FSRU) that would be attached to a yoke mooring system (YMS) that includes a mooring tower embedded in the seafloor. The FSRU would look like a marine vessel and would remain moored in place for the duration of the Project (expected to be 30 years or more). The YMS would allow the FSRU to pivot or ''weathervane'' around the YMS, enabling the FSRU to orient in response to the prevailing wind, tide, and current conditions.

LNG would be delivered to the FSRU by LNG carriers, temporarily stored, vaporized (regasified), and then transported in a new subsea natural gas pipeline that would extend from the seafloor beneath the FSRU approximately 21.7 miles to an offshore connection with the existing Iroquois Gas Transmission System (IGTS) pipeline in Long Island Sound.

Natural gas would be routed from the FSRU to the subsea pipeline and into the IGTS pipeline for delivery at an average flow rate of about 1.0 billion cubic feet per day. LNG would be delivered to the FSRU by 2 to 3 LNG carriers per week to meet the Project's planned send-out volumes of natural gas. LNG carriers would transit from the Atlantic Ocean to either the Point Judith Pilot Station (northeast of Block Island) or the Montauk Pilot Station (southwest of Block Island). From the Point Judith Pilot Station, carriers would transit Block Island Sound north of Block Island, head generally west to enter Long Island Sound at its eastern end (an area known as the Race), and then proceed to the FSRU. From the Montauk Pilot Station, carriers would head generally northwest to approach the Race, then proceed to the FSRU.

The draft EIS addresses the potential environmental effects of the construction and operation of the following LNG and natural gas pipeline facilities:

- A double-hulled FSRU approximately 1,215 feet long and 200 feet wide, with a closed-loop shell-and-tube vaporization system and a total storage capacity of 350,000 cubic meters (approximately 8 billion cubic feet);
- A berthing facility at the FSRU for receiving LNG ships with capacities up to 250,000 cubic meters;
- A YMS embedded in the seafloor to moor the FSRU;
- Approximately 2 to 3 LNG carriers per week that would call at the FSRU;
- LNG carriers that would transit through waters subject to federal jurisdiction as well as waters under the jurisdiction of the state of New York, and in some cases, may transit waters under the jurisdiction of the states of Rhode Island and Connecticut;
- Approximately 21.7 miles of 30-inch-diameter natural gas pipeline, a pig launcher and receiver facility, and a meter station at the interconnect with the IGTS pipeline; and
- Onshore facilities at either Greenport or Port Jefferson, New York, including administrative offices, a warehouse, guardhouse, and an existing commercial pier.

Broadwater proposes to construct the Project in two phases. The first phase would include installation of the subsea pipeline between October 2009 and April 2010. The second phase would include installation of the YMS, hookup of the FSRU, and connection of the project components between September and December 2010. Broadwater anticipates that the Project would be in service by the end of December 2010.

As part of this evaluation, FERC staff has prepared a draft EIS to assess the environmental impacts of the Project. The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA).

The Coast Guard has assessed potential risks to navigation safety and port security associated with the proposed Project. The Coast Guard's safety and security assessment is documented in the Captain of the Port Long Island Sound's Waterways Suitability Report (WSR). The draft EIS includes an analysis of the environmental impacts related to the Coast Guard's Letter of Recommendation (LOR) regarding the suitability of the involved waterways for LNG carrier operations.

The Coast Guard Captain of the Port Long Island Sound will issue an LOR to Broadwater Energy and the appropriate federal, state and local agencies, in accordance with 33 CFR 127.009. The LOR, which will be based on the Coast Guard's WSR, is an official determination regarding the suitability or unsuitability of Long Island Sound to support the proposed FSRU and associated LNG marine traffic. The Coast Guard intends to adopt all or portions of the EIS being prepared by FERC to serve as the NEPA analysis for the LOR. The LOR will not be issued until after the NEPA process has been completed.

The draft EIS also evaluates alternatives to the proposal, including alternative energy sources, system alternatives, alternative sites for the LNG import terminal, alternative designs, pipeline alternatives, and alternatives to the Coast Guard LOR action. Based on the analysis included in the draft EIS, the FERC staff concludes that approval of the proposed Project with appropriate mitigating measures as recommended, would have limited adverse environmental impacts.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments on the draft EIS are received in time and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 3, PJ–11.3;
- Reference Docket No. CP06–54–000 and CP06–55–000;
- Mail your comments so that they will be received in Washington, DC on or before January 23, 2007.

In addition to or in lieu of sending written comments, we invite you to attend the public comment meetings that we will conduct in the Project area in January 2007. The locations and times of these meetings will be provided in a separate notice. These meetings will be posted on the Commission's calendar located at *http:/www.ferc.gov/EventCalendar/EventsList.aspx* along with other relevant information. The Coast Guard will participate in these public meetings. The public meetings will also support the review of Broadwater's permit application that is before the COE. Interested groups and individuals are encouraged to attend the public comment meetings and present oral comments on the draft EIS. A transcript of the meetings will be prepared and submitted to the docket for public review.

After comments on the draft EIS are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by FERC staff. The final EIS will contain the

staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above. You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

CD–ROM copies of the draft EIS have been mailed to Federal, State, and local agencies; public interest groups; and individuals who requested a copy of the draft EIS or provided comments during scoping; libraries and newspapers in the Project area; and parties to this proceeding. Hard copy versions of the draft EIS were mailed to those specifically requesting them. A limited number of hard copies and CD–ROMs are available from the Public Reference Room identified above.

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19940 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–422–000]

Cameron LNG L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Cameron Terminal Expansion Project

November 17, 2006.

The staff of the Federal Energy Regulatory Commission (Commission or FERC) has prepared this Environmental Assessment (EA) for the construction and operation of the expansion of the Cameron liquified natural gas (LNG) import terminal (referred to as the Terminal Expansion Project) as proposed by Cameron LNG L.L.C. (Cameron) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed Terminal Expansion Project, with appropriate mitigating measures as recommended, would not constitute a major federal action significantly affecting the quality of the human environment. The EA evaluates alternatives to the proposal, including the no-action alternative.

The U.S. Army Corps of Engineers (COE) and the U.S. Coast Guard (Coast Guard) are participating as cooperating agencies in the preparation of the EA. The COE would require permits pursuant to Section 404 of the Clean Water Act (33 United States Code (U.S.C.) 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. 403). The COE would adopt the EA per Title 40 Code of Federal Regulations (CFR) § 1506.3 if, after an independent review of the document, it concludes that its comments and suggestions have been satisfied. The Coast Guard is responsible for maintining the safety and security of port areas and navigable waterways.

The EA addresses the potential environmental effects of the construction and operation of the proposed Terminal Expansion Project in Cameron Parish, Louisiana, including the construction of:

- An LNG storage tank and associated systems;
- Vaporizers and associated systems; and
- One construction dock.

These facilities would be additional to the previously certificated Cameron LNG Terminal (Docket No. CP02–378–000). Construction of the proposed facilities for the Terminal Expansion Project would be within Cameron LNG's import, storage, and vaporization terminal site (located about 2.25 miles north of Hackberry, Louisiana).

The purpose of the Terminal Expansion Project is to: Provide the facilities necessary for Cameron to deliver up to 1.15 billion standard cubic feet per day of additional natural gas for domestic consumption; accommodate short term demand fluctuations with the addition of an LNG storage tank; provide a technological alternative for ensuring that sendout gas from different LNG sources can be processed to meet uniform pipeline quality gas specifications; and allow the simultaneous berthing and unloading of two ships, increasing the number of ships that could be handled and the volume of LNG that could be offloaded over any given time.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

In addition, copies of the EA have been mailed to federal, state, and local government agencies; elected officials; Native American tribes; local libraries and newspapers; intervenors in the FERC's proceeding; and affected landowners and individuals.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Gas Branch 1;
- Reference Docket No. CP06–422–000; and
- Mail your comments so that they will be received in Washington, DC on or before December 20, 2006.

The Commission strongly encourages electronic filing of any comments, interventions or protests to this

proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account, which can be created by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision. Anyone may intervene in this proceeding based on this EA. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19939 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2170–029—Alaska]

Chugach Electric Association; Notice of Availability of Environmental Assessment

November 17, 2006.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission or FERC) regulations (18 CFR Part 380), Commission staff has reviewed the application for license for the Cooper Lake Hydroelectric Project (FERC No. 2170–029) and has prepared an environmental assessment (EA). The project is located on Cooper Lake, Cooper Creek and Kenai Lake on the Kenai Peninsula, Alaska. The EA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for pubic inspection. The EA may also be viewed on the Commission's Web site at *http:/ www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnline Support@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Saranac River Project No. 2738'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact David Turner at (202) 502–6091.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19948 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Priest Rapids Hydroelectric Project; Notice of Availability of the Final Environmental Impact Statement for the Priest Rapids Project

November 17, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR Part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) has reviewed the application for a New Major License for the Priest Rapids Project (FERC No. 2114–116), located on the Columbia River in Grant, Yakima, Kittitas, Douglas, Benton, and Chelan Counties, Washington, and has prepared a Final Environmental Impact Statement (final EIS) for the project. The project occupies about 3,104 acres of federal lands managed by the U.S.: Bureau of Land Management, Bureau of Reclamation, Department of Energy, Department of the Army, and Fish and Wildlife Service.

The final EIS contains staff's analysis of the applicant's proposal and the alternatives for relicensing the Priest Rapids Project. The final EIS documents the views of the Commission staff and of government agencies, non-government organizations, affected Indian tribes, the public, and the license applicant.

A copy of the final EIS is available for review in the Commission Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The final EIS may also be viewed on the Commission's website at *http:// www.ferc.gov* under the eLibrary link. Enter docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/ esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects.

For assistance, contact FERC Online Support. For further information, please contact Kim A. Nguyen at (202) 502–6105 or at *kim.nguyen@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–19947 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Docket No. PF06–36–000]

Colorado Interstate Gas Company; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed High Plains Expansion Project; Request for Comments on Environmental Issues, and Notice of Site Visit and Open House Meeting Attendance

November 17, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that discusses the environmental impacts of the High Plains Expansion Project (project) involving construction and operation of by Colorado Interstate Gas Company (CIG) in Weld, Morgan, and Adams Counties, Colorado. These facilities would consist of about 170 miles of 24-inch and 30-inch-diameter pipeline in four separate pipeline segments. The EIS will be used by the Commission in its decision making process to determine if the project is in the public convenience and necessity.

The project is currently in the preliminary stages of design and at this time a formal application has not been filed with the Commission. For this project, the Commission is initiating the National Environmental Policy Act (NEPA) review prior to receiving the formal application. This pre-filing process allows interested stakeholders to become involved early in the project planning and to identify and resolve issues before a formal application is filed with the FERC. A docket number (PF06–36–000) has been established to place information filed by CIG and related documents issued or received by the Commission, into the public record.[1] Once a formal application is filed with the FERC, a new docket number will be established.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the Project. Please note that the scoping period will close on January 6, 2007. Details on how to submit comments are provided in the Public Participation section of this notice.

This notice is being sent to potentially affected landowners along the Project route; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers.

With this notice, we[2] are asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies which would like to request cooperating status should follow the instructions for filing comments described later in this notice. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Some affected landowners may be contacted by a project representative about the acquisition of an easement to construct, operate, and maintain the proposed pipeline. If so, the company should seek to negotiate a mutually acceptable agreement. In the event that the Project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the pipeline. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

CIG is proposing to expand its existing pipeline system along Colorado's Front Range in order to provide additional transportation services to this rapidly growing market. Specifically, CIG is proposing to construct approximately 170 miles of 24-inch and 30-inch-diameter pipeline in four separate pipeline segments in Weld, Morgan, and Adams Counties, Colorado as described below. The general locations of the proposed pipelines are shown in the figure included as Appendix 1[3].

The Project consists of the following facilities:

- Line 250A—64.5 miles of 30-inch-diameter pipe and 20.5 miles of 24-inch-diameter pipe and 2 interconnect meter station facilities;
- Line 251A—58 miles of 24-inch-diameter pipe and 2 interconnect meter station facilities;
- Line 252A—14.9 miles of 30-inch-diameter pipe and 1 interconnect meter station facility;
- Line 253A—6.1 miles of 24-inch-diameter pipe and 2 interconnect meter station facilities;
- Seven new meter stations and eighteen new block valves; and
- Pig launcher/receivers at the beginning and ending of the four new pipeline segments.

The entire project when completed would carry a total capacity of approximately 874,000 decatherms of gas per day. CIG is requesting approval such that the facilities are completed and put into service by August 2008. CIG proposes to begin construction in February 2008.

Land Requirements for Construction

CIG would use a typical 100-foot-wide construction right-of-way for the project. Additional work area would be required at certain feature crossings (*e.g.*, waterbodies, wetlands, roads, and railroad crossings), staging areas, pipe yards, contractor's yards, and widening of certain access roads.

Based on preliminary information, it is estimated that construction of the proposed facilities would disturb about 2,000 acres of land. Of the 2,000 acres, about 1,000 acres would be temporary disturbed and about 1,000 acres would be permanently maintained for operation of the pipeline within a 50-foot-wide permanent right-of-way, and as aboveground facility sites.

Following construction, all temporary workspaces would be restored and allowed to revert to its former use.

The EIS Process

The FERC will be the lead federal agency for the preparation of the EIS.

[1] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies (excluding maps) are available on the Commission's Internet website (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference Room at (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice.

NEPA requires the FERC to take into account the environmental impacts that could result from an action when it considers whether or not an interstate natural gas pipeline should be approved. The Commission will use the EIS to consider the environmental impacts that could result if the project is authorized under section 7 of the Natural Gas Act. NEPA also requires us to identify and address concerns the public may have about proposals to be considered by the Commission. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on important environmental issues and reasonable alternatives. By this Notice of Intent (NOI), the Commission staff requests agency and public comments on the scope on the issues to be addressed in the EIS. All comments received will be considered during the preparation of the EIS.

Although no formal application has been filed, the FERC Staff have already initiated a NEPA review under the FERC's Pre-Filing Process, which was established in Docket No. PF06–36–000. The purpose of the Pre-Filing Process is to seek public and agency input early in the project planning phase and encourage involvement by interested stakeholders in a manner that allows for the early identification and resolution of environmental issues. As part of the Pre-Filing Process review, FERC staff representatives will participate in an interagency scoping meeting in the project area to solicit comments and concerns about the project from other jurisdictional agencies.

With this notice, the Commission requests federal, state, and local government agencies with jurisdiction and/or special expertise with the respect to environmental issues to express their interest in becoming cooperating agencies for the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should send a letter expressing that interest and expected level of involvement to the Secretary of the Commission at the address provided in the public participation section of this notice.

The FERC's independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A comment period will be allotted for review of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing a final EIS.

Currently Identified Environmental Issues

We have already identified a number of issues and alternatives that they think deserve attention based on a preliminary review of the proposed facilities and information provided by CIG. This preliminary list of potential issues and alternatives may be changed based on your comments and our analysis.

Geology and Soils

- Impact on agricultural lands and irrigation and canal systems.
- Impacts on unconsolidated soils with severe erosion potential.
- Assessment of potential geological hazards.
- Evaluation of noxious weed control.
- Construction in steep terrain.

Water Resources

- Potential effects on groundwater resources.
- Impact of open-cut crossings of irrigation canals and the South Platte River.
- Effect of pipeline crossings on wetlands and perennial and intermittent waterbodies.
- Assessment of hydrostatic test water sources and discharge locations.
- Water depletions resulting from hydrostatic test water appropriations.

Fish, Wildlife, and Vegetation

- Effect on fish and wildlife resources and their habitat, including federally and state-listed threatened and endangered species.
- Assessment of construction time window restrictions.
- Assessment of measures to successfully revegetate the right-of-way.

Cultural Resources

- Effect on known and undiscovered cultural resources.
- Native American and tribal concerns.

Land Use, Recreation and Special Interest Areas, and Visual Resources

- Impacts on residences, including proximity of facilities to existing structures.
- Potential land use conflicts with planned and future development.
- Permanent land use alteration associated with pipeline easements.

Socioeconomics

- Benefits to local communities.
- Effects of construction workforce demands on public services and temporary housing.

Air Quality and Noise

- Effects on local air quality and noise environment from construction and operation of the proposed facilities.

Reliability and Safety

- Assessment of hazards associated with natural gas pipelines.
- Assessment of security associated with operation of natural gas facilities.

Alternatives

- The No-Action alternative.
- System alternatives.
- Route alternatives.

Cumulative Impact

- Assessment of the effect of the proposed project when combined with other actions in the same region.

Public Participation

You are encouraged to become involved in this process and provide your specific comments or concerns about CIG's proposal. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. If you wish to mail comments, please mail your comments so that they will be received in Washington, DC on or before January 6, 2007 and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of Gas 2, DG2E; and
- Reference Docket No. PF06–36–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC, on or before January 6, 2007.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments, you will need to open a free account which can be created on-line.

CIG is sponsoring public open house meetings to provide the public with information about the proposed project. The dates, times, and locations of the open house meeting are listed in the table below. FERC staff will be in attendance. For information about the open house meetings and the site visit, please contact this CIG representative: Jeff Voltattorni at 719–351–9682.

Date and time	Location
Tuesday, November 28, 2006, 5:30 p.m. to 8 p.m. (MST)	Ault High School, 208 W. 1st Street, Ault, Colorado 80610, Phone: (970) 834–2816
Wednesday, November 29, 2006, 5:30 p.m. to 8 p.m. (MST)	Country Steak Out, 19592 8th Ave., Fort Morgan, Colorado 80701, Phone: (970) 867–7887
Thursday, November 30, 2006, 5:30 p.m. to 8 p.m. (MST)	Bella Sera Center, 45 Strong Street, Brighton, Colorado 80601, Phone: (720) 937–6337

In addition to the public open house meetings, the FERC will conduct site visits to view the proposed pipeline routes. The public may participate in the site visits. No transportation will be provided. Details regarding the tours are provided below.

Date and start time	Location	Facilities reviewed
November 29, 2006, 8 a.m. (MST)	Cheyenne Compressor Station, 65657 Highway 85, Carr, Colorado 80612.	Line 250A, Line 252A, and northeast portion of Line 251A
November 30, 2006, 8 a.m. (MST)	Watkins Compressor Station, 24650 East Smith Road, Aurora, Colorado 80019.	Southwestern portion of Line 251A and Line 253A

Environmental Mailing List

If you do not want to send comments at this time, but still want to remain on our environmental mailing list, please return the attached Mailing List Retention Form (Appendix 2). If you do not return the form, or you do not file a comment on this project, you will be taken off the environmental mailing list.

To reduce printing and mailing costs, the draft and final EISs will be issued in both CD–ROM and hard copy formats. The FERC strongly encourages the use of CD–ROM format in its publication of large documents. If you wish to receive a paper copy of the draft EIS instead of a CD–ROM, you must indicate that choice on the return Mailing List Retention Form (Appendix 2).

Availability of Additional Information

Additional information about the Project is available from the FERC's Office of External Affairs at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., PF06–36). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the text of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet website.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19949 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–465–000]

Puget Sound Energy, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Jackson Prairie Storage Project Amendment and Request for Comments on Environmental Issues

November 15, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Jackson Prairie Storage Project Amendment, involving construction and operation of facilities by Puget Sound Energy, Inc. (Puget) in Lewis County, Washington. The EA will be used by the Commission in its decision-making process to determine whether or not to authorize the project.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on December 15, 2006.

An effort is being made to send this notice to all individuals, organizations, Native American Tribes, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys

with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need to Know?'' was attached to the project notice provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Puget proposes to modify two existing observation wells, install a new 75-horsepower electric-driven compressor, construct about 575 feet of new 4- to 6-inch-diameter gathering pipelines, and install other appurtenant facilities at its existing Jackson Prairie Storage Facility in Lewis County, Washington. Puget seeks authorization of these facilities in order to recycle gas that has migrated beyond its current certificated storage boundary. This proposal does not include any increase in the amount of cushion or working gas currently authorized at this facility.[1]

In addition, Puget requests an amendment to its existing certificate to revise the total gas level of the storage facility to recognize a permanent loss of 0.9 billion cubic feet of cushion gas that has occurred during the facility's 40 years of operation. Puget further requests amendments to existing certificates, as necessary, to confirm the approved status of all current well operations at the storage field and to confirm the facilities certificated zone boundaries. No environmental disturbance is associated with the revised cushion and total gas level amendment.

The existing Jackson Prairie Storage Field interconnects with Northwest Pipeline Corporation's transmission system which provides natural gas supplies to markets in the Pacific Northwest. The general location of Puget's proposed facilities is shown on the map attached as appendix 1.[2]

Land Requirements for Construction

Two 4-inch-to 6-inch-diameter pipelines would be constructed in accordance with Puget's proposal. One pipeline would be about 500-feet-long, with about 120 feet of its length on an existing well pad, and about 380 feet would be located in a grassy area along an existing road. Construction would disturb an area about 7-feet-wide along the road, totaling less than 0.1 acre. An additional 75-foot-long 4-inch-to 6-inch-diameter pipeline would be installed in a well pad located within the project area of Puget's existing facilities.

Modifications to the two observation wells would occur entirely within the existing well pads. The new compressor would be installed in the existing gas dehydration/compression plant on an existing fenced gravel pad.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA, we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project. We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas. The EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Public safety

Our independent analysis of the issues will be presented in the EA. We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local government agencies; public interest groups; Native American tribes; interested individuals; affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 30-day comment period will be allotted for review if the EA is published. We will consider all comments submitted in any Commission Order that is issued for the project.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. Your comments should focus on the potential environmental effects of the proposal, reasonable alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1;
- Reference Docket No. CP06–465–000;
- Mail your comments so that they will be received in Washington, DC on or before December 15, 2006.

Please note that the Commission encourages electronic filing of comments. See 18 Code of Federal Regulations (CFR) 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide.

[1] Puget's application in Docket No. CP06–465–000 was filed with the Commission under Section 7 of the Natural Gas Act.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (map), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's e-Filing system) or 14 paper copies of its filings to the Secretary of the Commission and must end a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.*, CP06–465–000), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19918 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 16, 2006.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Applicants, Project Numbers, and Dates Filed:*

Mason Dam, LLC filed the application for Project No. 12675–000 on May 11, 2006, at 3:29 PM.

Baker County, Oregon filed the application for Project No. 12686–000 on May 23, 2006, at 1:27 PM.

c. The name of the project is the Mason Dam Hydroelectric Project. The proposed project would be located on the Powder River, in Baker County, Oregon and would utilize the existing Bureau of Reclamation's Mason Dam.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For Mason Dam, LLC: Mr. Brent L. Smith, President, Northwest Power Services, Inc., P. O. Box 535, Rigby, ID 83442, (208) 745–0834. For Baker County, Oregon: Mr. Fred Warner, Jr. Chairman, Baker County Board of Commissioners, 1995 Third Street, Baker City, OR 97814, (541) 523–8200.

f. *FERC Contact:* Tom Papsidero, (202) 502–6002.

g. *Deadline for filing comments, protests, and motions to intervene:* January 23, 2007.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The project proposed by Mason Dam, LLC, using the Bureau of Reclamation's Mason Dam and impoundment, would consist of: (1) A proposed intake structure (2) a proposed 115-foot-long, 54-inch-diameter steel penstock, (4) a proposed powerhouse containing one generating unit having an installed capacity of 2.7 MW, (5) a proposed 1-mile-long, 15–kV transmission line, and (6) appurtenant facilities. The project would have an annual generation of 8 GWh, which would be sold to a local utility.

The project proposed by Baker County, Oregon, using the Bureau of Reclamation's Mason Dam and impoundment, would consist of: (1) A proposed intake structure and penstock, (2) a proposed powerhouse with generating unit(s) having a total installed capacity of 3 megawatts, (3) an existing transmission line and possible additional new transmission line(s), and (4) appurtenant facilities. The project would have an annual generation of 14 GWh, which would be sold to a local utility.

i. *Locations of Applications:* Copies of the applications are available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. These filings may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket numbers excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. Copies are also available for inspection and reproduction at the addresses in item e above.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing

preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

l. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

m. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

n. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

p. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19921 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

November 16, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12709–000.

c. *Date filed:* July 5, 2006.

d. *Applicant:* United Power Corporation.

e. *Name and Location of Project:* The Bryant Mountain Hydroelectric Pumped Storage Project would use flows from the U.S. Bureau of Reclamation's D and J Canals and would be built on federal lands administered by the U.S. Bureau of Land Management in Klamath County, Oregon.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Richard P. Schulze, 9590 Prototype Drive, Suite 400, Reno, Nevada 89521, (925) 634–1550.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* January 23, 2007.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12709–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Existing Facilities and Proposed Project:* The proposed pumped storage project would consist of (1) an upper reservoir, an enlargement of the existing Pope Reservoir, with a surface area of 550 acres and a storage capacity of 60,000 acre-feet at a water surface elevation of 5,500 feet msl, (2) a 4,000-foot-long, 310-foot-high earthen upper dam, (3) a 1,500-foot-long, 30-foot-diameter concrete low pressure tunnel, (4) a 270-foot-deep, 30-foot-diameter concrete surge shaft, (5) an 1,100-foot-long, 30-foot diameter vertical concrete power shaft, (6) a 3,800-foot-long, 24-foot-diameter concrete power tunnel, (7) a powerhouse containing four reversible generating units with a total installed capacity of 1,175 megawatts, (8) a lower reservoir with a surface area of 1,480 acres and a storage capacity of 110,000 acre-feet at a water surface elevation of 4,220 feet msl, (9) a 21,500-foot-long, 135-foot-high earthen lower dam, (10) a 4-mile-long, 500-kilovolt transmission line, and (11) appurtenant facilities.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19927 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

November 16, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12745–000.

c. *Date filed:* October 5, 2006.

d. *Applicant:* Modesto Irrigation District and Turlock Irrigation District.

e. *Name and Location of Project:* The proposed Don Pedro Pumped Storage Project would be located on the Tuolumne River, Don Pedro Reservoir, Tuolumne County, California.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street, NW., Suite 330, Washington, DC 20005, (202) 408–5400.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* January 23, 2007.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12745–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Existing Facilities and Proposed Project:* The proposed project would consist of the following new facilities: Alternative A—(1) an upper reservoir with a maximum storage capacity of 25,000 acre-feet and a

surface area of 1,114 acres at normal water surface elevation of 1,565 feet above mean sea level (msl); (2) a one-half mile-long, 34-foot-diameter tunnel to connect the upper reservoir with the existing Don Pedro Reservoir; (3) a powerhouse with pump/turbines having an installed capacity of approximately 880 megawatts (MW); (4) an intake on the existing Don Pedro Reservoir, which would be used as the lower reservoir; (5) a 47-mile-long, 230-kilovolt transmission line. Alternative A of the proposed project would have an annual generation of 1,541,000 MWh. Alternative B—(1) an upper reservoir with a maximum storage capacity of 13,000 acre-feet and a surface area of 166 acres at normal water surface elevation of 1,560 feet above mean sea level (msl); (2) a 1.1-mile-long, 25-foot-diameter tunnel to connect the upper reservoir with the existing Don Pedro Reservoir; (3) a powerhouse with pump/turbines having an installed capacity of approximately 440 MW; (4) an intake on the existing Don Pedro Reservoir, which would be used as the lower reservoir; (5) a 47-mile-long, 230-kilovolt transmission line. Alternative B of the proposed project would have an annual generation of 770,000 MWh.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19928 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 17, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12735–000.

c. *Date filed:* August 31, 2006.

d. *Applicant:* Midwest Hydraulic, Inc.

e. *Name of Project:* Stebbinsville Hydroelectric Project.

f. *Location:* The project would be located on the Yahara River, Porter Township, Rock County, Wisconsin. The Stebbinsville Dam is owned by Wisconsin Edison Corporation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. William Pickrell, Midwest Hydraulic, Inc., P.O. Box 167, Neshkoro, WI 54960, phone: (920)–293–4628.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. *Deadline for filing comments, protests, and motions to intervene:* January 23, 2007.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) The existing 21.6-foot-high, 291-foot-long, Stebbinsville Dam; (2) an existing reservoir having a surface area of 80 acres, and a storage area of 480 acre-feet; (3) a proposed powerhouse containing a single 375-kW generating unit; (4) a 40-foot-long transmission line, and (5) appurtenant facilities. The project is estimated to have an annual generation of 1,350,000 kWh, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 C.F.R. 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19945 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 17, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation Facilities Report.

b. *Project No:* 2110–017.

c. *Date Filed:* April 5, 2006, and supplemented June 7, 2006.

d. *Applicant:* Consolidated Water Power Company (CWPC).

e. *Name of Project:* Stevens Point.

f. *Location:* The project is located on the Wisconsin River in Portage County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Mike Scheirer, Consolidated Water Power Company, P.O. Box 8050, Wisconsin Rapids, Wisconsin 54495–8050. Phone: 715/422–3927.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Patricia Grant at 312/596–4435, or e-mail address: *patricia.grant@ferc.gov.*

j. *Deadline for filing comments and or motions:* December 18, 2006.

k. *All documents (original and eight copies) should be filed with:* Ms. Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2110–017) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the e-Filing link. The Commission strongly encourages e-filings.

l. *Description of the Application:* The filed report contains information supplementing the project recreation plan, including: (1) CWPC's proposal to provide a barrier-free, bank-fishing site on the east side of the project tailrace instead of the west side, as initially proposed; (2) CWPC's determination that it is premature to arrange for the development of a campground at the Wisconsin River Recreation Area; and (3) proposed measures to control soil erosion during the construction of recreation facilities.

m. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''E-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19946 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–56–000]

Midwest Electric Transmission Company, Midwest Independent Transmission, System Operator, Inc.; Notice of Informal Settlement Conference

November 15, 2006.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 11 a.m. on November 20, 2006, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to (202) 208–2106, with the required accommodations.

For additional information, please contact Renee Terry, *renee.terry@ferc.gov*, (202) 502–6057.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19916 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–354–000, CP06–401–000, CP06–423–000]

Rockies Express Pipeline, LLC, TransColorado Gas Transmission Company, Questar Overthrust Pipeline Company; Notice of Comment Meeting

November 16, 2006.

On December 11–15, 2006, the Federal Energy Regulatory Commission staff will conduct public comment meetings for the purpose of hearing comments on the draft environmental impact statement (draft EIS) for the Rockies Western Phase Project which was issued on November 3, 2006 and which you should have received. The Rockies Western Phase Project would involve the construction and operation of natural gas facilities as proposed and described in the above-referenced dockets in the states of New Mexico, Colorado, Wyoming, Nebraska, Kansas, and Missouri and would include:

- The REX-West Project proposed by Rockies Express Pipeline LLC;
- The Blanco to Meeker Project proposed by TransColorado Gas Transmission Company; and
- The Wamsutter Expansion Project proposed by Questar Overthrust Pipeline Company.

All five draft EIS comment meetings will begin at 7 p.m. (local time), and are scheduled as follows:

Date	Location
Monday, December 11, 2006	Holiday Inn, 664 Chase Blvd., Sidney, NE 69162, (308) 254–2000.
Tuesday, December 12, 2006	Quality Inn Sandhills, 2102 S. Jeffers, North Platte, NE 69101, (308) 532–9090.
Wednesday, December 13, 2006	Holiday Inn Express, 4005 N. 6th St., Beatrice, NE 68310, (402) 228–7000
Thursday, December 14, 2006	Best Western Inn, 1200 Hwy 24 E., Moberly, MO 65270, (660) 263–6540.
Friday, December 15, 2006	Pony Express National Museum, 914 Penn St., St. Joseph, MO 64503, (816) 279–5059.

These meetings will be posted on the Federal Energy Regulatory Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx.* Additional information about the project and the comment meetings is available from the Commission's Office of External Affairs, at 1–866–208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19937 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Northern Indiana Public Service Company, Indiana Norway-Oakdale Project; Notice of Revised Restricted Service List for the Programmatic Agreements for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

November 16, 2006.

On October 12, 2006, the Federal Energy Regulatory Commission (Commission) issued notice of a proposed restricted service list for the preparation of a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Norway-Oakdale Hydroelectric Project No. 12514. Rule 2010(d)(1) of the Commission's Rules of Practice and Procedure, 18 CFR. 2010(d)(1) (2005), provides for the establishment of such a list for a particular phase or issue in a proceeding to eliminate unnecessary expense or improve administrative efficiency. Under Rule 2010(d)(4), persons on the official service list are to be given notice of any proposal to establish a restricted service list and an opportunity to show why they should also be included on the restricted service list.

On October 23, 2006, the Northern Indiana Public Service Company (NIPSCO) filed a request to include Barbara K. Heffernan and Sarah S. Dietrich, both counsel for NIPSCO, on the proposed restricted service list.

Under Rule 2010(d)(2), any restricted service list will contain the names of each person on the official service list, or the person's representative, who, in the judgment of the decisional authority establishing the list, is an active participant with respect to the phase or issue in the proceeding for which the list is established. As the licensee for the project, NIPSCO has an identifiable interest in issues relating to the management of historic properties at the Norway-Oakdale Project. Therefore, NIPSCO's representatives will be added to the restrictive service list.

Accordingly, the restricted service list issued on October 12, 2006, for the Norway-Oakdale Project No. 12514, is revised to add the following persons:

Barbara K. Heffernan, Schiff Hardin LLP, 1101 Connecticut Ave., NW., Suite 600, Washington, DC 20036.

Sarah S. Dietrich, Senior Attorney, NiSource, Inc., 2603 Augusta Drive, Suite 300, Houston, TX 77057.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19920 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

November 17, 2006.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision.

Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

EXEMPT:

Docket number	Date received	Presenter or requester
1. CP06–115–000.	11–9–06	Hon. Rick Santorum.
2. Project No. 2082–000.	11–7–06	Hon. Gordon H. Smith.
3. Project No.11858–002.	11–9–06	Larry Barnett.[1]

[1] One of 26 landowner letters filed November 9, 2006, in the Lake Elsinore Advanced Pumped Storage Project proceeding (Project No. 11858–002).

Magalie R. Salas,

Secretary.

[FR Doc. E6–19950 Filed 11–24–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8248–4]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. The Council is a panel of individuals who represent diverse interests from academia, industry, non-governmental organizations, and local, state, and tribal governments. The purpose of this meeting is to discuss the FY06–07 NACEPT agenda, including sustainable water infrastructure, environmental stewardship, cooperative conservation, energy and the environment, environmental technology, and environmental indicators. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/cal-nacept.htm.*

DATES: NACEPT will hold a two day open meeting on Thursday, December 14, 2006, from 8:30 a.m. to 6 p.m. and Friday, December 15, 2006, from 8 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at The Madison Hotel, 1177 15th Street NW., Washington, DC 20005. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, *altieri.sonia@epa.gov,* (202) 233–0061, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above. The public is welcome to attend all portions of the meeting.

Meeting Access: For information on access or services for individuals with disabilities, please contact Sonia Altieri at 202–233–0061 or *altieri.sonia@epa.gov.* To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 14, 2006.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. E6–19987 Filed 11–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8248–5]

Good Neighbor Environmental Board; Notification of Public Advisory Committee Teleconference Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Committee Teleconference Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board (GNEB) will meet in a public teleconference on December 1, 2006, from 1 p.m. to 2:30 p.m. Eastern Time. The meeting will be hosted out of the main conference room, U.S. EPA, 655 15th Street, NW., Suite 800, Washington, DC 20005. The meeting is open to the public, however, due to limited space, seating will be on a registration-only basis. For further information regarding the teleconference meeting, please contact the individuals listed below.

Background: GNEB is a federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92–463. GNEB provides advice and recommendations to the President and Congress on environmental and infrastructure issues along the U.S. border with Mexico.

Purpose of Meeting: GNEB has prepared its draft Tenth Report with recommendations on the intersection of environmental protection and security activities along the U.S.-Mexico border. The purpose of this teleconference is for the Board to review, discuss, and decide whether to approve its draft report.

Availability of Review Materials: If you wish to receive a copy of the draft report, please contact Designated Federal Officer, Elaine Koerner, at the address below, or Office of Cooperative Environmental Management Associate Director, Mark Joyce, at the address below.

SUPPLEMENTARY INFORMATION: Members of the public wishing to gain access to the conference room on the day of the meeting must contact Elaine Koerner, Designated Federal Officer for GNEB, U.S. Environmental Protection Agency (1601E), Office of Cooperative Environmental Management, 655 15th Street, NW., Suite 800, Washington, DC 20005; telephone/voice mail at (202) 233–0069 or via e-mail at koerner.elaine@epa.gov. If you are unable to directly reach DFO Koerner, please contact Office of Cooperative Environmental Management Associate Director Mark Joyce at the same address or via telephone/voicemail at (202) 233–0068 or via e-mail at joyce.mark@epa.gov. If you wish to make oral comments or to submit written comments to the Board, please contact DFO Koerner and Associate Director Joyce by November 27, 2006.

General Information: Additional information concerning the Good Neighbor Environmental Board (GNEB) can be found on its Web site *www.epa.gov/ocem/gneb.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Elaine Koerner at 202–233–0069 or Mark Joyce at 202–233–0068. To request accommodation of a disability, please contact Elaine Koerner or Mark Joyce, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 15, 2006.

Mark Joyce,

Associate Director.

[FR Doc. E6–19990 Filed 11–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8248–7]

Proposed Agreement and Covenant Not To Sue for the Portland Harbor Superfund Site, Triangle Park Removal Area, and the McCormick & Baxter, Inc. Superfund Site, Portland, Multnomah County, OR

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* (''CERCLA''), notice is hereby given of the proposed Agreement between the U.S. Environmental Protection Agency (''EPA'') and the University of Portland (''University''), subject to the final review and approval of the EPA and the U.S. Department of Justice. The proposed Agreement relates to the University's plan to expand its campus by purchasing two adjacent properties, one currently owned by Triangle Park LLC at 5828 N. Van Houten Place, Portland, and the other currently owned by McCormick & Baxter, Inc. at 6900 Edgewater, Portland (the ''Properties''). The Properties are contiguous with the Willamette River. The University is certifying that it did not cause or contribute to the contamination at either the Portland Harbor or McCormick & Baxter Sites. The Agreement provides for the University to spend $3 million conducting a non-time critical removal action on the Triangle Park property. The University seeks to continue to pursue and expand its educational and service mission by relocating certain athletic facilities, freeing up its existing land for construction of academic buildings. The University's plan includes public access to the Properties, and recreational opportunities, including a planned riverfront trail. In addition to conducting the $3 million removal action, the University will pay EPA's costs of overseeing that removal action. In exchange for this consideration, the proposed Agreement contains the United States' conditional covenant not to sue the University for existing contamination at the Sites. The covenant is subject to certain reservations set forth in the Agreement. In addition, the proposed Agreement provides protection from third-party law suits for contribution. In order for the University to purchase the Triangle Park property by the closing date in the agreement for the purchase of that property (December 31, 2006), EPA is allowing just over fifteen (15) days for public comment on the Agreement.

DATES: Comments must be submitted by December 18, 2006. EPA and the Department of Justice will consider all comments received and may modify or withdraw the Agreement if comments received or any other information indicates that such action is appropriate.

ADDRESSES: The proposed agreement is available for public inspection at the U.S. Environmental Protection Agency, Region 10 Office located at 1200 Sixth Avenue, in Seattle, Washington 98101. A copy of the proposed Agreement may be obtained from Carol Kennedy, Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Code ORC–158 Seattle, Washington 98101; (206) 553–0242. Comments should refer to the Portland Harbor Superfund Site, Triangle Park Removal Area, & McCormick & Baxter Superfund Site, Portland, Oregon, and should be addressed to Jennifer G. MacDonald, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Code ORC–158 Seattle, Washington 98101; fax: (206) 553–0163; e-mail: *MacDonald.Jennifer@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Jennifer G. MacDonald, Assistant Regional Counsel, U.S. Environmental Protection Agency-Region 10, Mail Code ORC–158, 1200 Sixth Avenue, Seattle, Washington 98101; phone: (206) 553–8311.

Dated: November 20, 2006.

Elin D. Miller,

Regional Administrator, U.S. Environmental Protection Agency, Region 10.

[FR Doc. E6–19989 Filed 11–24–06; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of an Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, November 30, 2006 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEM: PEFCO Standard Operating Procedures.

PUBLIC PARTICIPATION: The portion of the meeting, which relates to the above item, will be open to public participation. Attendees who are not employees of the Executive Branch will be required to sign in prior to the meeting.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Telephone No. 202–565–3957).

Howard A. Schweitzer,

General Counsel (Acting).

[FR Doc. 06–9424 Filed 11–22–06; 11:42 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 06–170; Report No. AUC–06–70-B (Auction No. 70); DA 06–2248]

Auction of FM Broadcast Construction Permits Scheduled for March 7, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 70

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of certain FM broadcast construction permits. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Applications to participate in FM Auction No. 70 must be filed before 6 p.m. on December 19, 2006. Bidding for Auction No. 70 is scheduled to begin on March 7, 2007.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions Spectrum and Access Division: For legal questions: Lynne Milne at (202) 418–0660. For general auction questions: Jeff Crooks at (202) 418–0660 or Linda Sanderson at (717) 338–2868. Media Bureau, Audio Division: For service rule questions: Lisa Scanlan or Thomas Nessinger at (202) 418–0660. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 70 Procedures Public Notice* released on November 2, 2006. The complete text of

the *Auction No. 70 Procedures Public Notice,* including attachments, as well as related Commission documents are available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 70 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 06–2248 for the *Auction No. 70 Procedures Public Notice.* The *Auction No. 70 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/70/.*

I. General Information

A. Introduction

1. The Media and Wireless Telecommunications Bureaus (collectively the Bureaus) announce the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits scheduled to begin on March 7, 2007 (Auction No. 70). On September 21, 2006, the Bureaus released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 70. Interested parties submitted seven comments and one reply comment in response to the *Auction No. 70 Comment Public Notice,* 71 FR 56977, September 28, 2006.

i. Construction Permits To Be Auctioned

2. Auction No. 70 will offer 121 construction permits in the FM broadcast service as listed in Attachment A of the *Auction No. 70 Procedures Public Notice.* The construction permits to be auctioned are 121 new FM allotments. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the FM Table of Allotments, pursuant to the Commission's established rulemaking procedures, and are designated for use in the indicated communities.

3. Pursuant to the policies established in the *Broadcast Competitive Bidding First Report and Order,* 63 FR 48615, September 11, 1998, applicants may apply for any vacant FM allotment listed in Attachment A of the *Auction No. 70 Procedures Public Notice.* When two or more short-form applications (FCC Form 175) specifying the same FM allotment are accepted for filing, mutual exclusivity (MX) exists for auction purposes, and thus, that construction permit for the FM allotment will be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant for a particular construction permit submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its status as an applicant in Auction No. 70 and will remain subject to the Commission's anti-collusion rules, but will not be eligible to bid, having purchased no bidding eligibility.

B. Rules and Disclaimers

i. Relevant Authority

4. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's rules relating to the FM broadcast service contained in 47 CFR 73.201–73.333 and 73.1001–73.5009. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings contained in 47 CFR 1.2001–1.2112 and 73.5000–73.5009. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this public notice, the *Auction No. 70 Comment Public Notice,* the *Broadcast Competitive Bidding First Report and Order,* the *Broadcast Competitive Bidding First Reconsideration Order* 64 FR 24523, May 7, 1999, and the *New Entrant Bidding Credit Reconsideration Order,* 64 FR 44856, August 18, 1999, and the *NCE Second Report and Order,* 68 FR 26220, May 15, 2003.

5. The procedures, terms and conditions contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibition of Collusion; Compliance with Antitrust Laws

6. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits applicants competing for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to § 1.2105(a)(2)(viii). Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii), applicants for construction permits in any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.

7. The geographic license area is the market designation of the particular service. For the FM service, the market designation is the particular vacant FM allotment (*e.g.*, New Hope, Alabama, Channel 278A, Market FM502–A). In Auction No. 70, for example, the rule would apply to applicants designating on the short-form application any of the same FM allotments. Therefore, applicants that apply to bid for an FM construction permit for the same allotment would be precluded from engaging in prohibited communications during the period from the short-form application deadline until the down payment deadline following the close of the auction. In addition, even if auction applicants each designate on its application only one common FM allotment, they may not discuss with each other their bids or bidding strategies relating to any FM allotment that either designates on its short-form application.

8. For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

9. Applicants for construction permits for any of the same allotments must not communicate directly or indirectly about bids or bidding strategy. Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants. Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions. Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Bidders should use caution in their dealings with other individuals, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information.

10. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application. If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form filing deadline.

11. By electronically submitting its short-form application, each applicant certifies its compliance with 47 CFR 1.2105(c) and 73.7002. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.

12. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other. Similarly, the Bureaus have long reminded potential applicants and others that even where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws. To the extent the Commission becomes aware of specific allegations that may give rise to violations of the federal antitrust laws, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

13. As required by 47 CFR 1.65, an applicant must maintain the accuracy and completeness of information furnished in its pending application and must notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by § 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under § 1.2105(a)(2)(viii). In addition, § 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by § 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.

14. As required by 47 CFR 1.1207, applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint venture, partnership, or agreement or other arrangement entered into relating to the competitive bidding process.

15. A summary listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment E of the *Auction No. 70 Procedures Public Notice.* These documents are available on the

Commission's auction anti-collusion web page.

iii. Due Diligence

16. Potential applicants are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

17. In particular, potential applicants are strongly encouraged to review all underlying Commission orders, such as the specific report and order amending the FM Table of Allotments and allotting the FM channel(s) on which they plan to bid. Orders adopted in FM allotment rulemaking proceedings often include anomalies, such as, site restrictions or expense reimbursement requirements. Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings that might affect the FM allotment(s) on which they plan to bid in order to make reasoned, appropriate decisions about their participation in Auction No. 70 and their bidding strategy. Additionally, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a given FM allotment, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

18. Potential applicants are also strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 70 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision to participate in the auction. Participants in Auction No. 70 are strongly encouraged to continue such research throughout the auction.

19. Applicants should also be aware that certain pending and future proceedings, including applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review, before the Commission may relate to particular applicants or incumbent permittees, or incumbent licensees, or the construction permits available in Auction No. 70. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent permittees, or incumbent licensees, or the construction permits available in Auction No. 70. Prospective applicants are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on construction permits available in this auction.

20. Applicants should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned and that could have an impact on the availability of spectrum for Auction No. 70. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

21. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 70. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental review obligations.

22. Applicants may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees or previously-authorized to construction permittees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at *http://www.fcc.gov/mb.*

23. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

24. A commenter lists eleven conflicted channels that it contended that certain permits must be removed from the auction. Upon further review, three permits were removed from the auction, specifically FM–619–C3, Crandon, Wisconsin, FM–527–A, Channel 247A, Lake City, Colorado, and FM–299–A, Diamond Lake, Oregon.

iv. Use of Integrated Spectrum Auction System

25. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction No. 70 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

v. Bidder Alerts

26. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 70 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the Commission, as well as the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC).

vi. Environmental Review Requirements

27. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act (NEPA) and other federal environmental statutes. The construction of a broadcast facility is a federal action and the permittee or licensee must comply with the Commission's environmental rules for each such facility. The Commission's

environmental rules require, among other things, that the permittee or licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the relevant State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the permittee or licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The permittee or licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee or licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

28. Bidding in Auction No. 70 will begin on Wednesday, March 7, 2007. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

29. Unless otherwise announced, bidding on construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Auction Title

30. Auction No. 70—FM Broadcast

iii. Bidding Methodology

31. The bidding methodology for Auction No. 70 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iv. Dates and Deadlines

Auction Seminar	December 6, 2006.
Short-Form Application (FCC Form 175) Filing Window Opens	December 6, 2006; 12:00 noon ET.
Short-Form Application (FCC Form 175) Filing Window Deadline	December 19, 2006; before 6:00 p.m. ET.
Upfront Payments (via wire transfer)	February 5, 2006; 6:00 p.m. ET.
Mock Auction	March 5, 2007.
Auction Begins	March 7, 2007.

v. Requirements for Participation

32. Those wishing to participate in the auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. Eastern Time (ET), on December 19, 2006, following the electronic filing procedures set forth in Attachment C of the *Auction No. 70 Procedures Public Notice;* (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, on February 5, 2007; and (3) comply with all provisions outlined in the *Auction No. 70 Procedures Public Notice and applicable Commission rules.*

II. Short-Form Application (FCC Form 175) Requirements

33. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicants' short-form applications and certifications, as well as their upfront payments. In the second phase of the process, winning bidders file a more comprehensive long-form application.

34. Entities and individuals seeking construction permits available in Auction No. 70 must file a short-form application electronically via the FCC Auction System prior to 6 p.m. ET on December 19, 2006, following the procedures prescribed in Attachment C of the *Auction No. 70 Procedures Public Notice*. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify under penalty of perjury on their short-form applications that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment C of the *Auction No. 70 Procedures Public Notice* carefully and should consult the Commission's rules to ensure that all the information that is required under the Commission's rules and relevant public notices is included with their short-form applications.

35. An entity may not submit more than one short-form application for a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

36. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true, complete and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. Noncommercial Educational Facilities

37. The opening of a window for nonreserved vacant FM allotments provides a filing opportunity for an applicant to apply for both noncommercial educational (NCE) and commercial facilities. However, while non-mutually exclusive NCE applications will not be resolved through competitive bidding, any applications specifying NCE facilities that are mutually exclusive with any applications specifying commercial facilities will be returned as unacceptable for filing pursuant to 47 CFR 73.5002(b).

38. As with the previous two FM auction proceedings, applicants for NCE broadcast stations will be allowed to submit Form 175 applications for the specific non-reserved spectrum to be auctioned in Auction No. 70 in the forthcoming filing window. The instant public notice recognizes the opportunity for NCE applicants to participate in the upcoming auction process and amply addresses the process for participation.

B. New Entrant Bidding Credit

39. The Commission has adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

40. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications, including both NCE and commercial full-power broadcast stations, shall be considered when determining an applicant's eligibility for the New Entrant Bidding Credit. The bidder's attributable interests shall be determined as of the short-form application (FCC Form 175) filing deadline—December 19, 2006. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Applicants intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline—December 19, 2006. Prospective bidders are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

41. Under traditional broadcast attribution rules, including 47 CFR 73.3555 Note 2, those entities or individuals with an attributable interest in a bidder include: (1) All officers and directors of a corporate bidder; (2) any owner of 5 percent or more of the voting stock of a corporate bidder; (3) all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and (4) all members of a limited liability company, unless sufficiently insulated.

42. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant. Applicants should note that the mass media attribution rules were revised in 1999.

43. Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

44. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. Further, any bidder asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit pursuant to 47 CFR 73.5007. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock or equivalent level of interest in cases where the bidder is not a corporate entity. *De facto* control is determined on a case-by-case basis.

45. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008(b). Full service noncommercial educational stations, on both reserved and nonreserved channels, are included among media of mass communications as defined in § 73.5008(b).

C. Application Requirements

46. In addition to the ownership information required pursuant to 47 CFR 1.2112, applicants are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be provided in completing the applicant's short-form application. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

i. Bidding Credits

47. Applicants that qualify for the New Entrant Bidding Credit, as specified in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders: (1) A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008; (2) a 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008; (3) no bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

48. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and Note 2 of that section. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

49. The Bureaus are unable to adopt for Auction No. 70 the suggestions by commenters to revise the criteria for and

the amount of the new entrant bidding credit, and to adopt new bidding credits based on other criteria. Implementation of these proposals would require amendment of the Commission's competitive bidding and broadcast service rules, which can only be accomplished through a rulemaking proceeding. The Bureaus' process for seeking comment on auction procedures is not the appropriate forum in which to raise such rule changes. Such rule change suggestions should have been raised in the context of the rulemaking proceeding establishing bidding credits for the FM broadcast service.

ii. Installment Payments

50. Installment payment plans will not be available in Auction No. 70.

D. Permit Selection

51. In Auction No. 70, applicants must select the construction permits on which they want to bid from the Eligible Permits list. There will be no opportunity to change construction permit selection after the short-form filing deadline. It is critically important that an applicant confirm its construction permit selections before submitting its short-form application because the FCC Auction System will not accept bids on construction permits that an applicant has not selected on its short-form application.

E. Disclosure of Bidding Arrangements

52. Applicants will be required to identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

53. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants provided that: (i) The attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matter because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management sales, local marketing agreements, rebroadcast agreements, and other transactional agreements. Further, as discussed above, compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

F. Ownership Disclosure Requirements

54. The Commission specified in the *Broadcast Competitive Bidding First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, all applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party- or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

55. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Applicants are responsible for ensuring that the information submitted in their short-form application for Auction No. 70 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update directly in the short-form application any information that was entered automatically and needs to be changed.

G. Provisions Regarding Former and Current Defaulters

56. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify under penalty of perjury on its short-form application that as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, are not in default on any payment for a Commission construction permit or license (including a down payment) and that they are not delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

57. *Former defaulters—i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that in the past have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 70, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

58. *Current defaulters—i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission construction permit or license (including a down payment) or are

delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction—are not eligible to bid in Auction No. 70.

59. Applicants are encouraged to review the Wireless Telecommunications Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. However, even where Commission rules expressly permit late payment subject to payment of an additional late fee, and do not imposed a final payment deadline, the Commission may in some cases issue a demand for payment by a certain date. Failure to comply with the terms of a particular demand letter in the time period provided may render the subject debt delinquent, notwithstanding rules generally permitting late payments.

60. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in this auction or of its upfront payment obligation.

61. Prospective applicants in Auction No. 70 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

H. Other Information

62. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation in its auctions of designated entities, which include rural telephone companies.

I. Minor Modifications to Short-Form Applications (FCC Forms 175)

63. After the deadline for filing short-form applications (FCC Forms 175) at 6 p.m. ET on December 19, 2006, applicants are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit or change their identification of the application's proposed facilities as noncommercial educational). Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

64. Any application amendment and related statements of fact must be certified by: (1) The applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

65. An applicant must make permissible minor changes to its short-form application, as such changes are defined by 47 CFR 1.2105(b), electronically, using the FCC Auction System. Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number. Applicants should note, however, that after the filing window has closed, the FCC Auction System will not permit applicants to make certain changes , such as legal classification or NCE identification.

66. In addition, an applicant should submit a letter briefly summarizing the changes and subsequently update their short-form applications in ISAS as soon as possible. Any letter describing changes to an applicant's short-form application must be submitted by electronic mail to the following address: *auction70@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 70 and the name of the applicant. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

67. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS), which was used for submitting comments regarding Auction No. 70 procedures.

J. Maintaining Current Information in Short-Form Applications (FCC Form 175)

68. 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally submitted Form 175 application must be reported

immediately. If an amendment reporting substantial changes is a major amendment as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

69. After the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications, for example, deletion and addition of authorized bidders (to a maximum of three). Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants must submit a letter, briefly summarizing the changes, by electronic mail at the following address: *auction70@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 70 and the name of the applicant. The Bureaus requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

70. Applicants must not submit application-specific material through the Commission's electronic comment filing system (ECFS) into the record of the proceeding concerning Auction No. 70 procedures.

III. Pre-Auction Procedures

A. Auction Seminar

71. On Wednesday, December 6, 2006, the FCC will sponsor a free seminar for parties interested in participating in Auction No. 70 at the FCC headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provided attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the FM broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements and other matters related to this auction.

72. To register, complete the registration form in Attachment B of the *Auction No. 70 Procedures Public Notice* and submit it by Monday, December 4, 2006. Registrations are accepted on a first-come, first-served basis. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC's Auction No. 70 web page at *http://wireless.fcc.gov/auctions/70/*.

B. Short-Form Application (FCC Form 175)—Due Before 6:00 p.m. ET on December 19, 2006

73. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application electronically via the FCC Auction System. This application must be received at the Commission prior to 6 p.m. ET on December 19, 2006. Late applications will not be accepted. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

74. Applications may generally be filed at any time beginning at noon ET on December 6, 2006, and the filing window will close at 6 p.m. ET on December 19, 2006. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on December 19, 2006.

75. An applicant must always click on the SUBMIT button on the Certify & Submit screen of the electronic form to successfully submit its FCC Form 175 or modifications. Any form that is not submitted will not be reviewed by the FCC. Information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C of the *Auction No. 70 Procedures Public Notice.*

C. Application Processing and Minor Corrections

76. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) Those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications.

77. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in that public notice. All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction. Applications for NCE FM stations on nonreserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station. Accordingly, if an FCC Form 175 filed during the Auction No. 70 filing window identifying the applicant as noncommercial educational is mutually exclusive with any application filed during that window by an applicant for a commercial station, the former will be returned as unacceptable for filing. However, if stations are not identified as NCE by applicants on the short-for application, the applications will be considered, as a matter of law, as applications for commercial broadcast stations.

78. After the short-form filing deadline on December 19, 2006, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications.

D. Upfront Payments—Due February 5, 2007

79. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. All upfront payments must be received in the proper account at Mellon Bank before 6 p.m. ET on February 5, 2007.

i. Making Auction Payments by Wire Transfer

80. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

81. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank, using the specified telephone number. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

82. Please note that: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction No. 70 go to a lockbox number

different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments; and (4) failure to deliver the upfront payment by the specified deadline on February 5, 2007 will result in dismissal of the application and disqualification from participation in the auction.

ii. FCC Form 159

83. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction No. 70 Procedures Public Notice.* An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Upfront Payments and Bidding Eligibility

84. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a construction permit, otherwise qualified bidders that selected that construction permit on FCC Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its FCC Form 175, but rather to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time. Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round.

85. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum and sought comment on this proposal. The Bureaus received no comments in response to the proposed upfront payments. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of the *Auction No. 70 Procedures Public Notice.*

86. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, because it is not possible to increase a bidder's eligibility after the upfront payment deadline. In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder, pursuant to 47 CFR 1.1206(a), has either previously been in default on a Commission license or delinquent on a non-tax debt owned to a Federal agency, or has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits the applicant selected on its FCC Form 175 application.

87. Applicants that are former defaulters are required to pay upfront payments 50 percent greater than non-former defaulters. For purposed of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interest, as defined by 47 CFR 1.2110. Accordingly, former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits for which the applicant applied on its FCC Form 175, the applicant will not be eligible to participate in the auction.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

88. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information specified in the *Auction No. 70 Procedures Public Notice* be supplied to the FCC. For example, the Commission must be provided with a Taxpayer Identification Number (TIN) before it can disburse refunds. Applicants can provide the information electronically during the initial short-form application filing window after the application has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Wire Transfer Instructions can also be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, using the specified telephone number. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise.

E. Auction Registration

89. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

90. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® cards that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

91. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, March 1, 2007, should call (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for

ensuring it has received all of the registration material.

92. In the event that SecurID® cards are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring the replacement of these items must call Technical Support.

F. Remote Electronic Bidding

93. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID® card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID® cards, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID® card is tailored to a specific auction; therefore, SecurID® cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 70.

G. Mock Auction—March 5, 2007

94. All qualified bidders will be eligible to participate in a mock auction on Monday, March 5, 2007. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

95. The first round of bidding for Auction No. 70 will begin on Wednesday, March 7, 2007. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

96. In the *Auction No. 70 Comment Public Notice,* the Bureaus proposed to auction all construction permits in Auction No. 70 in a single auction using the Commission's standard simultaneous multiple-round (SMR) auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit, unless a modified stopping rule is invoked.

97. Despite the suggestions made by one commenter, the Bureaus therefore concluded that it is operationally feasible and appropriate to auction these FM broadcast stations construction permits through a simultaneous multiple round auction and the Bureaus declined to adopt the commenter's proposal. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

ii. Eligibility and Activity Rules

98. In the *Auction No. 70 Comment Public Notice,* the Bureaus proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder. The Bureaus received no comments concerning the eligibility rule.

99. Accordingly, the Bureaus adopted the proposed use of upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction No. 70. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 70 Procedures Public Notice* on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

100. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

101. A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round or if it submits a bid in the current round. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Bureaus adopted them for Auction No. 70. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

iii. Auction Stages

102. In the *Auction No. 70 Comment Public Notice,* the Bureaus proposed to conduct the auction in two stages and employ an activity rule. The Bureaus further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on construction permits representing at least 75 percent of its current bidding eligibility. Finally, the Bureaus proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility. The Bureaus also invited comment on conducting the auction with a single stage that would use an activity requirement of 100 percent. The Bureaus received no comments on any of these proposals.

103. The Bureaus adopted their proposals for the activity rules and stages, while reserving the discretion to further alter the activity percentages

before and/or during the auction. As explained further in the *Auction No. 70 Procedures Public Notice,* during Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by four-thirds (4/3). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19). Because the procedures have proven successful in maintaining the proper pace in previous auctions, the Bureaus adopted them for Auction No. 70.

104. Failure by a bidder to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used, if any remain. Because activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging in to the FCC Auction System.

iv. Stage Transitions

105. In the *Auction No. 70 Comment Public Notice,* the Bureaus proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately 20 percent or lower for three consecutive rounds of bidding. The Bureaus further proposed that the Bureaus would retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureaus proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureaus received no comments on this issue.

106. The Bureaus believed that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 70. Thus, the Bureaus adopted their proposal. The auction will start in Stage One and will generally advance to Stage Two when, in each of three consecutive rounds of bidding, the provisionally winning bids have been placed on 20 percent or less of the construction permits being auctioned (as measured in bidding units). In addition, the Bureaus will retain the discretion to regulate the pace of the auction by announcement.

v. Activity Rule Waivers

107. In the *Auction No. 70 Comment Public Notice,* the Bureaus proposed that each bidder in the auction be provided with three activity rule waivers. The Bureaus received no comments on this issue. The Bureaus adopted their proposal that each bidder be provided three activity rule waivers.

108. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either applied proactively by the bidder (a proactive waiver) or applied automatically by the FCC Auction System (an automatic waiver) and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

109. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

110. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the REDUCE ELIGIBILITY function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility even if the round has not yet closed.

111. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the APPLY WAIVER function in the FCC Auction System) during a bidding round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.

vi. Auction Stopping Rules

112. For Auction No. 70, the Bureaus proposed to employ a simultaneous stopping rule approach. The Bureaus also sought comment on a modified version of the simultaneous stopping rule (modified stopping rule). The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver or submits any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

113. The Bureaus further proposed retaining the discretion to keep the auction open even if no new bids or proactive waivers are submitted in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

114. In addition, the Bureaus proposed that the Bureaus reserve the right to declare that the auction will end

after a specified number of additional rounds (special stopping rule). If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s) and the auction will close.

115. The Bureaus proposed to exercise these options only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. The Bureaus noted that before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

116. The Bureaus received no comments on the proposals about stopping rules. The Bureaus found that the proposed stopping rules are appropriate for Auction No. 70, because experience in prior auctions demonstrates that these stopping rules balance interests of administrative efficiency and maximum bidder participation. Therefore, the Bureaus adopted the stopping rule proposals made in the *Auction No. 70 Comment Public Notice.* Auction No. 70 will begin under the simultaneous stopping rule approach, and the Bureaus will retain the discretion to employ the other versions of the stopping rule. Moreover, the Bureaus will retain the discretion to use the modified stopping rule with or without prior announcement during the auction.

vii. Auction Delay, Suspension, or Cancellation

117. Because the Bureaus approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopted their proposal that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. The Bureaus emphasized that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

118. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day.

119. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price and Minimum Opening Bids

120. In the *Auction No. 70 Comment Public Notice,* the Bureaus proposed to establish minimum opening bids for Auction No. 70, reasoning that a minimum opening bid, successfully used in other broadcast auctions, is a valuable tool, effectively regulating the pace of the auction. Specifically, a minimum opening bid was proposed for each construction permit listed in Attachment A of the *Auction No. 70 Procedures Public Notice.* The minimum opening bid was determined by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data, and recent broadcast transactions. The Bureaus sought comment on the proposed minimum opening bids. In the alternative, the Bureaus sought comment on whether, consistent with 47 U.S.C. 309(j), the public interest would be served by having no minimum opening bid or reserve price.

121. A commenter sought to reduce the minimum opening bid amount for MM-FM 620–A, Ephraim, Wisconsin, Channel 295A. The Bureaus were persuaded that lowering the minimum opening bid amount for Ephraim, Wisconsin, Channel 295A, to $5,000 would serve the public interest, and adopted this change.

122. The Bureaus concluded that the proposed minimum opening bid amounts with the exception of Ephraim, Wisconsin, are appropriate, and the Bureaus adopted those proposed amounts. The Bureaus did not receive any comments in response to the proposal in the *Auction No. 70 Comment Public Notice* that the Bureaus would retain the discretion to lower the minimum opening bid amounts. Thus, the Bureaus adopted this proposal. The minimum opening bid amounts the Bureaus adopted for Auction No. 70 are reducible at the discretion of the Bureaus. The Bureaus emphasized, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureaus will not entertain requests to reduce the minimum opening bid amount on specific construction permits. The Bureaus noted that effectively the minimum opening bid amounts operate as reserve prices.

123. The specific minimum opening bid amounts for each construction permit available in Auction No. 70 are set forth in Attachment A of the *Auction No. 70 Procedures Public Notice.*

iii. Bid Amounts

124. In the *Auction No. 70 Comment Public Notice,* the Bureaus proposed that in each round, eligible bidders be able to place a bid on a given construction permit in any of nine different amounts. Under the proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each construction permit. Contrary to the suggestion of one commenter that, as an alternative to using large minimum opening bids, the Commission increase the number of acceptable bid amounts so that the maximum acceptable bid amount is three times higher than the current bid, the Bureaus decided that the minimum opening bid amounts and the number of additional bid amounts that the Bureaus have established for this auction should help ensure that the bidding moves at a sufficient pace and will help promote an efficient outcome. Based on experience in prior auctions, the Bureaus adopted this proposal.

125. The first of the nine acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a

provisionally winning bid for a permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. For example, if the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10). The Bureaus will round the result using its standard rounding procedures.

126. In the *Auction No. 70 Comment Public Notice,* the Bureaus proposed to use a minimum acceptable bid percentage of 10 percent. The Bureaus did not receive any comments on this proposal. Experience in the previous FM auctions provides assurance that a bid increment percentage of 10 percent is sufficient to ensure active bidding. Therefore, the Bureaus will begin the auction with a minimum acceptable bid percentage of 10 percent.

127. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.10), rounded, or (minimum acceptable bid amount) * 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.30, rounded; etc. The Bureaus will round the results of these calculations using its standard rounding procedures. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

128. In the *Auction No. 70 Comment Public Notice,* the Bureaus proposed to use a bid increment percentage of 10 percent. The Bureaus received no comment on this issue. Believing that a bid increment percentage of 10 percent will give bidders the flexibility to speed up the pace of the auction, if appropriate, the Bureaus therefore adopted their proposal, and will begin the auction with a bid increment percentage of 10 percent.

129. The Bureaus did not receive any comments on their proposal to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System during the auction.

iv. Provisionally Winning Bids

130. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

131. In the *Auction No. 70 Comment Public Notice,* the Bureaus proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids). No comments were received on this proposal. Therefore, the Bureaus adopted their proposal.

132. A pseudo-random number generator based on the L'Ecuyer algorithms will be used to assign a random number to each bid. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. The remaining eligible bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the selected provisionally winning bid.

v. Bidding

133. During a round, a bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid), remove bids placed in the current bidding round, or permanently reduce eligibility. Bidders also have the option of submitting and removing multiple bids during a round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with construction permits for which the bidder has removed its bid do not count towards the bidder's current activity.

134. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 70. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a telephonic bid submission.

135. A bidder's ability to bid on specific construction permits is determined by two factors: (1) The construction permits selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

136. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® card and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

137. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts, if the bidder has sufficient eligibility to place a bid on the particular construction permit. For each construction permit, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

138. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there are bids on a construction permit, minimum acceptable bids for a construction permit for the following round will be determined.

vi. Bid Removal

139. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the REMOVE BIDS function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal

payments. Removing a bid will affect a bidder's activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity. Once a round closes, a bidder may no longer remove a bid. The Bureaus received no comments on the issue of bid removals. To enhance bidder flexibility during the auction, the Bureaus adopted their proposed procedures concerning bid removals for Auction No. 70.

vii. Bid Withdrawal

140. Once a round closes, a bidder may no longer remove a bid. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed bid withdrawal procedures. The Bureaus proposed to prohibit bidders from withdrawing any bids after the round in which bids were placed has closed. This proposal was made in recognition of the site-specific nature and wide geographic dispersion of the permits available in this auction. As an alternative, the Bureaus sought comment on whether to permit each bidder to withdraw provisionally winning bids in no more than one round during the course of the auction.

141. Experience with auctions generally, and with past FM auctions in particular, convinces the Bureaus that bid withdrawals are unnecessary in FM broadcast auctions. Because of the stand-alone nature of FM facilities, it is not necessary for bidders to aggregate facilities being offered in the same FM auction in order to realize full value from those facilities, or to put the spectrum to effective and efficient use. On the other hand, evidence suggests that some bidders may have used the bid withdrawal mechanism improperly to keep new facilities out of the hands of competitors, thus delaying implementation of new service. Accordingly, the Bureaus adopted their proposal prohibiting bid withdrawals in FM Auction No. 70. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction No. 70, even if a bid was mistakenly or erroneously made.

viii. Round Results

142. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 70 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

ix. Auction Announcements

143. The Commission will use auction announcements to announce items such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

A. Down Payments

144. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments and final payments due.

145. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 70 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

B. Final Payments

146. Recognizing the public benefit of maintaining a consistent set of auction procedures across the various auctionable services, in the *CSEA/Part 1 Report and Order*, 71 FR 6214, February 7, 2006, the Commission recently conformed the broadcast final payment procedures to the analogous part 1 requirements. Specifically, the part 1 rules provide that, unless otherwise specified by public notice, auction winners are required to pay the balance of their winning bids in a lump sum within ten business days following the release of a public notice establishing the payment deadline. In recent spectrum auctions, the Commission has required each winning bidder to submit the balance of the net amount of its winning bid(s) within ten business days after the deadline for submitting down payments. Consistent with this approach, in the *Auction No. 70 Comment Public Notice*, the Bureaus announced that for this auction each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.

C. Long-Form Application

147. Within thirty days after the release of the auction closing notice, winning bidders must electronically submit a properly completed FCC Form 301, Application for FM Construction Permit, and required exhibits for each construction permit won through Auction No. 70. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. Further filing instructions will be provided to auction winners at the close of the auction.

D. Default and Disqualification

148. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments prescribed in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Pursuant to recent modifications to the rule governing default payments, the percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction No. 70 Comment Public Notice,* the Bureaus proposed to set the additional default payment for the auction of these FM broadcast construction permits at twenty percent (20%) of the applicable bid. The Bureaus sought comment on their proposal. No comments were received on this proposal. Based on experience and the record before the Bureaus, the additional default payment for this auction of FM broadcast construction permits was set at twenty percent (20%) of the applicable bid.

149. Finally, the Bureaus note that in the event of a default, the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

E. Refund of Remaining Upfront Payment Balance

150. All applicants that submit upfront payments but after the close of the auction are not winning bidders for a construction permit in Auction No. 70 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

151. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers and have no remaining bidding eligibility may also be eligible for a refund of their upfront payment before the close of the auction. Instructions for seeking refunds may be found in the *Auction No. 70 Procedures Public Notice*.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E6–20006 Filed 11–24–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: *Thursday, November 30, 2006 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Best Efforts Notice of Proposed Rulemaking.

Best Efforts Policy Statement.

Policy Statement on Probable Cause Hearings.

Sua Sponte Policy.

Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, *Telephone:* (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–9418 Filed 11–22–06; 11:14 am]

BILLING CODE 6715–01–M

FEDERAL TRADE COMMISSION

[File No. 062 3057]

Guidance Software, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 15, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Guidance Software, File No. 062 3957,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *hhtp://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Alain Sheer, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2252.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 16, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/11/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Guidance Software Inc. (''Guidance'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

appropriate action or make final the agreement's proposed order.

Guidance sells software and related training, materials, and services that customers use to, among other things, investigate and respond to computer breaches and other security incidents. In selling its products and services, Guidance routinely collected sensitive personal information from customers, including name, address, e-mail address, telephone number, and, for customers paying with a credit card, the card number, expiration date, and security code number. It collected this information through its website, sales representatives, and telephone and fax orders and stored the information on its computer network. This matter concerns alleged false or misleading representations Guidance made about the security it provided for this information.

The Commission's proposed complaint alleges that Guidance represented that it implemented reasonable and appropriate security measures to protect the privacy and confidentiality of personal information. The complaint alleges this representation was false because Guidance engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for sensitive personal information stored on its computer network. In particular, although it employed SSL encryption, Guidance: (1) Stored the information in clear readable text; (2) did not adequately assess the vulnerability of its web application and network to certain commonly known or reasonably foreseeable attacks, such as ''Structured Query Language'' (or ''SQL'') injection attacks; (3) did not implement simple, low-cost, and readily available defenses to such attacks; (4) stored in clear readable text network user credentials that facilitate access to sensitive personal information on the network; (5) did not use readily available security measures to monitor and control connections from the network to the Internet; and (6) failed to employ sufficient measures to detect unauthorized access to sensitive personal information.

The complaint further alleges that beginning in September 2005 and continuing through December 7, 2005, a hacker exploited these vulnerabilities by using SQL injection attacks on Guidance's Web site and web application to install common hacking programs on Guidance's computer network. The hacking programs were used to find sensitive personal information, including credit card numbers, expiration dates, and security code numbers, stored on the network and to transmit the information over the Internet to computers outside the network. As a result, the hacker obtained unauthorized access to information for thousands of credit cards.

The proposed order applies to personal information Guidance obtains from consumers. It contains provisions designed to prevent Guidance from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits Guidance, in connection with the online advertising, marketing, promotion, offering for sale, or sale of any product or service, from misrepresenting the extent to which it maintains and protects the privacy, confidentiality, or security of any personal information collected from or about consumers.

Part II of the proposed order requires Guidance to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to Guidance's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. Specifically, the order requires Guidance to:

Designate an employee or employees to coordinate and be accountable for the information security program.

Identify material internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.

Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures.

Develop and use reasonable steps to retain service providers capable of appropriately safeguarding personal information they receive from Guidance, require service providers by contract to implement and maintain appropriate safeguards, and monitor their safeguarding of personal information.

Evaluate and adjust its information security program in light of the results of testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that it knows or has reason to know may have material impact on its information security program.

Part III of the proposed order requires that Guidance obtain within 180 days, and on a biennial basis thereafter for a period of ten (10) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) It has in place a security program that provides protections that meet or exceed the protections required by Part II of the proposed order; and (2) its security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information has been protected.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires Guidance to retain documents relating to their compliance with the order. For most records, the order requires that the documents be retained for a five-year period. For the third-party assessments and supporting documents, Guidance must retain the documents for a period of three years after the date that each assessment is prepared. Part V requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that Guidance submit compliance reports to the FTC. Part VIII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–19965 Filed 11–24–06; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0001]

30-Day Notice; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension.

Title of Information Collection: Application for Waiver of the 2-Year Foreign Residence Requirement of the Exchange Visitor Program.

Form/OMB No.: OS–0990–0001.

Use: The information requested by this form and supplementary information sheets is used by this Department to make a determination, in accordance with its published regulations, as to whether or not to request from the Department of State, a waiver of the two-year foreign residence requirement for applicants in the United States on a J–I visa.

Frequency: Reporting Single time.

Affected Public: Not-for-profit institutions.

Annual Number of Respondents: 250.

Total Annual Responses: 250.

Average Burden Per Response: 10 hrs.

Total Annual Hours: 2500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the Desk Officer at the address below:

OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, *Attention:* (OMB #0990–0001), New Executive Office Building, Room 10235, Washington DC 20503.

Dated: November 14, 2006.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–19741 Filed 11–22–06; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0000]

30-Day Notice; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection.

Title of Information Collection: Oklahoma Marriage Initiative Process Evaluation.

Form/OMB No.: OS–0990–New.

Use: This data collection will support the HHS effort to document implementation lessons from the Oklahoma Marriage Initiative. Since the Oklahoma Marriage Initiative is the largest and most longstanding intervention of its kind, this evaluation will fill a gap in our understanding of the implications of implementation decisions in marriage programming, Information will be collected through structured interviews and focus groups with program developers, practitioners, and participants.

Frequency: Reporting single time.

Affected Public: State, Local or Tribal Government.

Annual Number of Respondents: 260.

Total Annual Responses: 260.

Average Burden Per Response: 1.5 hrs.

Total Annual Hours: 390.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the Desk Officer at the address below:

OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, *Attention:* (OMB #0990–New), New Executive Office Building, Room 10235, Washington DC 20503.

Dated: November 14, 2006.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–19743 Filed 11–22–06; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Assessment of Proposed Revisions to the Youth Tobacco Survey: Impact on Measures of Youth Tobacco Use, Request for Application Number (RFA) DP07–001

Notice of Cancellation: This notice was published in the **Federal Register** on November 15, 2006, Volume 71, Number 220, page 66534. The meeting previously scheduled to convene on December 12, 2006 has been cancelled.

Contact Person for more Information: Brenda Colley Gilbert, Acting Director, Office of Extramural Research, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., MS K–92, Atlanta, GA 30341, Telephone 770.488.8390.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: November 17, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–19996 Filed 11–24–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Community and Tribal Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH)/Agency for Toxic Substances and Disease Registry (ATSDR): Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), The Centers for Disease Control and Prevention, NCEH/ATSDR announces the following subcommittee meeting:

Time and Date: 5 p.m.—7:30 p.m., December 5, 2006.

Place: Hilton Atlanta Hotel, 225 Courtland Street, Atlanta, Georgia 30303.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 50 people.

Purpose: Under the charge of the BSC, NCEH/ATSDR the CTS will provide the BSC, NCEH/ATSDR with a forum for community and tribal first-hand perspectives on the interactions and impacts of the NCEH/ATSDR's national and regional policies, practices and programs.

Matters To Be Discussed: The meeting agenda will include a review and discussion on the Coordinating Center's Environmental Justice Policy; discussion on the ongoing NCEH/ATSDR activities related to health disparities and environmental justice; discussion on the ATSDR Environmental Justice Web site; update on the ATSDR Office of Tribal Affairs; and a discussion of the CDC/ATSDR Tribal Consultation Advisory Committee.

Items are subject to change as priorities dictate.

Due to programmatic matters, this **Federal Register** Notice is being published on less than 15 calendar days notice to the public (41 CFR 102–3.150(b)).

Contact Person for More Information: Individuals interested in attending the meeting, please contact Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 1600 Clifton Road, Mail Stop E–28, Atlanta, GA 30303, telephone 404/498–0003, fax 404/498–0059; *E-mail: smalcom@cdc.gov.* The deadline for notification of attendance is November 30, 2006.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

Dated: November 17, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–19837 Filed 11–24–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

National Institute for Occupational Safety and Health (NIOSH) Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the following committee meetings:

Available working group time and date:
9 a.m.–11 a.m., December 11, 2006
Subcommittee meeting time and date:
11 a.m.–12 p.m., December 11, 2006.
Committee meeting times and dates:
1 p.m.–4:45 p.m., December 11, 2006.
8:30 a.m.–5 p.m., December 12, 2006.
8:30 a.m.–5 p.m., December 13, 2006.
Public comment times and dates:
5 p.m.–6 p.m., December 11, 2006.
7:30 p.m.–8:30 p.m., December 12, 2006.

Place: Holiday Inn Select, 1801 N. Naper Blvd, Naperville, Illinois 60563. Phone 630.505.4900, Fax 630.505.1984.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 75 to 100 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2007.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be discussed: The agenda for the Subcommittee meeting includes Individual Dose Reconstruction Reviews; the Selection of the 7th Round of Individual Dose Reconstructions; and Future Plans and Schedules. The agenda for the Advisory Board meeting includes SEC Petitions for Blockson Chemical, Monsanto, General Atomics, Allied Chemical, Harshaw, and Dow Chemical; Update on the Chapman Valve SEC Petition; Board Administrative Issues; Working Group Reports; Subcommittee Reports; NIOSH (Office of Compensation Analysis and Support) and Department of Labor Updates; Discussion of a Procedure for Assuring Board's Precise Wording of SEC Recommendations; Upcoming SEC Petitions; Update on Science Issues; Selection of Additional Procedures to be Reviewed by S. Cohen and Associates; Discussion of Overarching Issues Identified Through Dose Reconstruction, Site Profiles, and SEC Reviews; Board/Working Group

Tracking Mechanisms; and Board Future Plans and Schedules.

The agenda is subject to change as priorities dictate. In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Due to programmatic matters, this **Federal Register** Notice is being published on less than 15 calendar days notice to the public (41 CFR 102–3.150(b)).

Contact person for more information: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513.533.6825, Fax 513.533.6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other Committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: November 17, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–20000 Filed 11–24–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1668–DR]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1668–DR), dated November 2, 2006, and related determinations.

EFFECTIVE DATE: November 17, 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 Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 2, 2006:

The parishes of Allen, Calcasieu, Jefferson Davis, St. Helena, and St. Landry for Individual Assistance.

The parish of Beauregard for Individual Assistance (already designated for Public Assistance).

The parishes of Calcasieu, Evangeline, Jefferson Davis, and St. Helena for Public Assistance, including direct Federal assistance, if warranted as determined by FEMA.

The parishes of Acadia, Allen, Evangeline, Jefferson Davis, St. Helena, and St. Landry in the State of Louisiana 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. E6–19969 Filed 11–24–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services; Agency Information Collection Activities: Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Application for Status as Temporary Resident under Section 245A of the Immigration and Nationality Act; Form I–687. OMB Control No. 1615–0090.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 26, 2007.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0090 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Status as Temporary Resident under Section 245A of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–687. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. The collection of information on Form I–687 is required to verify the applicant's eligibility for temporary status, and if the applicant is deemed eligible, to grant him or her the benefit sought.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 1 hour and 10 minutes (1.16 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 116,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Date: November 20, 2006.

Stephen Tarragon,

Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E6–19956 Filed 11–24–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, As Amended; Amendment of an Existing System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed amendment of an existing system of records.

SUMMARY: The Office of the Secretary, Department of the Interior (DOI), is issuing public notice of its intent to amend an existing Privacy Act system of records entitled, OHA–01, ''Hearings and Appeals Files.'' Changes include updating information under the following headings: System location; Categories of records in the system; Routine uses of records maintained in the system; and Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system. Changes also include the renumbering of the system as OS–09, ''Hearings and Appeals Files.''

EFFECTIVE DATE: Under 5 U.S.C. 552a(e)(11), the public is provided a 30-day period in which to comment on the agency's intended use of the information in the system of records. The Office of Management and Budget (OMB), in its Circular A–130, requires an additional 10-day period in which to make comments. Any persons interested in commenting on this proposed amendment may do so by submitting comments in writing to the Privacy Act Officer, Office of the Secretary, 1849 C St., NW., MS 1413 MIB, Washington, DC 20240. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The Office of the Secretary will publish a revised notice if changes are made based upon a review of comments received.

FOR FURTHER INFORMATION CONTACT: Director, Office of Hearings and Appeals, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203, 703–235–3810.

SUPPLEMENTARY INFORMATION: OHA–01 is being amended to reflect administrative changes occurring since it was last published, including updated addresses for the Office of Hearings and Appeals (OHA) headquarters office, for its three Hearings Divisions, and for the System Manager. It is also being amended to provide additional information on the types of records assembled in hearings and appeals case files and the categories of hearings and appeals currently handled by OHA, to include several additional categories of disclosures outside the Department, and to reflect OHA's development of tracking systems to facilitate access to and to better manage the processing of hearings and appeals. Lastly, its numbering is being changed from OHA–01 to OS–9 to bring it into conformity with the current pattern of numbering Privacy Act System of Record Notices in the Office of the Secretary.

Sue Ellen Sloca,

Privacy Act Officer, Office of the Secretary.

INTERIOR/OS–09

SYSTEM NAME:

Hearings and Appeals Files—Interior, OS–09.

SYSTEM LOCATION:

(1) Director's Office and Appeals Boards: Office of Hearings and Appeals, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203.

(2) Probate Hearings Division, Office of Hearings and Appeals, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203.

(3) Departmental Cases Hearings Division, Office of Hearings and Appeals, 405 S. Main Street, Suite 400, Salt Lake City, Utah 84111.

(4) White Earth Reservation Land Settlement Act (WELSA) Hearings Division, Office of Hearings and Appeals, Bishop Henry Whipple Federal Building, 1 Federal Drive, Suite 3600A, Ft. Snelling, Minnesota 55111–4040.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved or otherwise identified in hearings and appeals proceedings before the Office of the Director, Appeals Boards, and Hearings Divisions of the Office of Hearings and Appeals (OHA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information assembled in case files and docket systems pertaining to the following categories of hearings and appeals proceedings. Types of records vary from category to category and case to case, but may include correspondence; pleadings and briefs submitted by the parties; administrative record materials, other documentary evidence, and transcripts of testimony; notices, orders, and decisions issued by administrative law judges, administrative judges, and other deciding officials; names and addresses of parties; and associated docket cards and docket system data entries. During the active consideration of a case, records may also include deliberative process materials such as a judge's notes, draft orders or decisions, and comments on such drafts from other judges or staff.

Primary categories of hearings and appeals proceedings covered by OS–09:

(1) Contract disputes arising out of decisions (and failures to decide) by contracting officers considered and decided by the Interior Board of Contract Appeals.

(2) Indian probate matters, including determination of heirs, approval of wills, and proceedings relating to tribal acquisition of certain interests of decedents in trust and restricted lands, considered and decided by the Probate Hearings Division; and appeals in such matters considered and decided by the Interior Board of Indian Appeals.

(3) Heirship determinations under the White Earth Reservation Land Settlement Act of 1985 considered and decided by the WELSA Hearings Division; and appeals in such matters considered and decided by the Interior Board of Indian Appeals.

(4) Appeals pertaining to administrative actions of the Bureau of Indian Affairs considered and decided by the Interior Board of Indian Appeals.

(5) Contest proceedings and other hearings relating to the use and disposition of public lands and their resources, including land selections arising under the Alaska Native Claims Settlement Act, considered and decided by the Departmental Cases Hearings Division; appeals in such matters considered and decided by the Interior Board of Land Appeals; and appeals

from decisions of the Bureau of Land Management relating to the use and disposition of public lands and their resources, considered and decided by the Interior Board of Land Appeals.

(6) Appeals from decisions of Departmental officials relating to the use and disposition of mineral resources in certain acquired lands of the United States and in the submerged lands of the Outer Continental Shelf, considered and decided by the Interior Board of Land Appeals.

(7) Hearings in appeals relating to surface coal mining and reclamation operations, considered and decided by the Departmental Cases Hearings Division; appeals in such matters considered and decided by the Interior Board of Land Appeals; and appeals from decisions of the Office of Surface Mining Reclamation and Enforcement relating to surface coal mining and reclamation operations, considered and decided by the Interior Board of Land Appeals.

(8) Hearings and appeals in various matters considered and decided by the Director or his or her designees, including employee grievance proceedings, employee debt collection matters, requests for waiver of claims for erroneous payments, determinations of employee liability for loss or damage to government property, adjustment of rental rates for government quarters, acreage limitations under the Reclamation Reform Act, relocation assistance claims, enforcement actions under the Indian Gaming Regulatory Act, and Director's review matters under 43 CFR 4.5(b).

(9) Any other hearings or appeals proceedings conducted by the Office of Hearings and Appeals under statutes or Departmental regulations providing for a hearing and/or a right to appeal within the Department.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 551 *et seq.*; 16 U.S.C. 791 *et seq.*; 25 U.S.C. 2, 9, 372, 373, 373a, 373b, 374, 2201 *et seq.*; 30 U.S.C. chap. 2, 3, 3A, 5, 7, 15, 16, 23, 25 and 29; 41 U.S.C. 601 *et seq.*; 43 U.S.C. 315a, 1201, 1331 *et seq.*, 1601 *et seq.*, 1701 *et seq.*; 43 CFR Parts 4, 45.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is to support the adjudication or other resolution of administrative disputes assigned to the Office of Hearings and Appeals.

Disclosure outside DOI of final opinions rendered in the adjudication of cases is required by law and regulation (5 U.S.C. 552(a)(2), 43 CFR 2.4(c)(1)(i)). Other disclosures outside DOI may be made:

(1) To the parties to any hearing or appeal proceeding and their authorized representatives upon request or in the course of case adjudication, when the disclosure involves documents of record in the proceeding, other than documents protected from disclosure under 43 CFR 4.31;

(2)(a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ):

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(3) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the congressional office about the individual;

(4) To the appropriate Federal agency that is responsible for investigating or prosecuting a violation of, or for enforcing or implementing, a statute, rule, regulation, or order, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, or order;

(5) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained;

(6) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2903 and 2904;

(7) To state and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation; and

(8) To contractors, grantees, or volunteers performing or working on a contract, grant, cooperative agreement, or job for the Federal Government related to the purposes for which the records were collected and maintained.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case file records are maintained in manual form in file folders. Electronic records, including those created for the purpose of tracking case files, are maintained on the OHA computer network.

RETRIEVABILITY:

Both manual and electronic records are retrieved by the name of the appellant, claimant, or other party, or by designated OHA docket number.

SAFEGUARDS:

Records are maintained in accordance with 43 CFR 2.51. Most of the records covered by this notice are in manual form. Access is provided on a need-to-know basis. Manual records are maintained in locked file cabinets under the control of authorized personnel during working hours, and according to the maintenance standards detailed in 43 CFR 2.51. Electronic records are maintained in conformity with OMB and DOI guidelines implementing the Federal Information Security Management Act. Electronic data are protected through user identification, passwords, database permissions, and software controls. These security measures establish different degrees of access to different types of users. A separate Privacy Impact Assessment for the applications was not required.

RETENTION AND DISPOSAL:

Records are retained in accordance with approved records retention and disposal schedules. Board of Contract

Appeals records are currently scheduled as Item 1, Record Category H, of the Office of the Secretary's Comprehensive Records Disposal Schedule. A new records schedule, covering these and other records covered by this notice, is under development as series 7100 of OSCODE, the Office of the Secretary comprehensive records disposal schedule.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203.

NOTIFICATION PROCEDURE:

If you wish to determine if this system of records contains information about you, you must write to the System Manager at the address listed above. Your request must be in writing and signed by you. To ensure proper handling of your request, you should include the words ''PRIVACY ACT INQUIRY'' at the top of the first page of your letter and on the envelope in which you mail the letter, per 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

If you wish to obtain a copy of any records that the system may contain that are about you, you must write to the System Manager at the address listed above. Your request must be in writing and signed by you. You should let us know whether you are seeking all of the records about you that may be maintained in the system, or only a specific portion of them. If you are only seeking a portion of them, you should describe those records you are seeking with sufficient detail to enable an individual familiar with the system to locate them with a reasonable amount of effort. To ensure proper handling of your request, you should include the notation ''PRIVACY ACT REQUEST FOR ACCESS'' at the top of the first page of your letter and on the envelope in which you mail the letter, per 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

If you wish to request that any specific records that the system may contain that are about you be corrected, you must write to the System Manager at the address listed above. Your request must be in writing and signed by you. Before you make such a request, you must first have requested access to your records, and have either inspected them or obtained copies of them, as described above. You must also identify which record or portion thereof you are contesting, indicating why you believe that it is not accurate, relevant, timely, or complete, and provide a copy of any documents in your possession that support your claim with your letter. You may also propose specific language to implement the changes sought. To ensure proper handling of your request, you should include the notation ''PRIVACY ACT REQUEST FOR AMENDMENT'' at the top of the first page of your letter and on the envelope in which you mail the letter.

RECORD SOURCE CATEGORIES:

Records in the system contain information submitted by all parties to the adjudication, including but not limited to appellants, claimants, grievants, and other persons involved in the hearings and appeals proceedings, and government officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E6–20034 Filed 11–24–06; 8:45 am]

BILLING CODE 4310–79–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Privacy Act as Amended; Amendment of an Existing System of Records

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Proposed amendment of an existing system of records notice.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of the Interior issues this public notice of its intent to modify an existing Privacy Act system of records managed by the U.S. Fish and Wildlife Service (FWS). The changes are to the system of records called ''Real Property Records—Interior, FWS–11 which is published in its entirety below.

DATES: 5 U.S.C. 552a (e)(11) requires that the public be provided a 30-day period in which to comment on an agency's intended use of the information in the system of records. The Office of Management and Budget in its Circular A–130, requires an additional 10-day period in which to make these comments. Comments received within the 40 days from the publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The Department will publish a revised notice if changes are made based upon a review of comments received. Any person interested in commenting on this proposed amendment may do so by submitting comments in writing to Mr. Johnny R. Hunt, Privacy Act Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 222, Arlington square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203, or by e-mail to *Johnny_Hunt@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Johnny R. Hunt, Privacy Act Officer, U.S. Fish and Wildlife Service, *telephone*: (703) 358–1730, or *fax*: (703) 358–2269.

SUPPLEMENTARY INFORMATION: The Refuge Revenue Sharing Act of October 17, 1978, Public Law 95–469, amended the Act of June 15, 1935 [amended by the Act of August 30, 1964 (78 Stat. 701; 16 U.S.C.715s)] authorizes the Department of Interior to deposit into the United States Treasury revenues received by the Secretary of Interior from such activities as the ''sale or other disposition of animals, salmonoid carcasses, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities * * *'' The Department applies such revenues toward the maintenance of the National Wildlife Refuge system.

Monies from the Migratory Bird Conservation Fund and other Congressional Appropriation provide for such activities as land appraisals, surveys, and payments for acquisition of real property interests. The FWS established a subcomponent of the Real Property Records system called the Land Acquisition Network Database System (LANDS) to reconcile end-of-year transaction reports required by the Internal Revenue Service (IRS) for payments made to landowners who are selling an interest to FWS. The system will also allow the program to more quickly obtain land transaction status related to individual property parcels. Because the system will retrieve personal information such as name, address, social security number, land ownership status, and records of payment that must be reported as income to the IRS, it is subject to the Privacy Act of 1974 (5 U.S.C. 552a).

Johnny R. Hunt,

Privacy Act Officer, U.S. Fish & Wildlife Service.

INTERIOR/FWS–11

SYSTEM NAME:

Real Property Records—Interior, FWS–11

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

We maintain records at (1) the Division of Realty, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203 (2) all regional and field offices of the Ecological Services program. The records are stored on the server of the Branch of Communication Technology, U.S. Fish and Wildlife Service, Division of Realty, 755 Parfet Street, Suite 349, Lakewood, CO 80228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are on landowners, tenants and permitees from whom the U.S. Fish and Wildlife Service has acquired land, water or interests therein (including options to buy property or an interest in property). Specifically, records may be on private landowners who have (1) signed an option for selling property or an interest in their property to the Fish and Wildlife Service or (2) have requested an evaluation of their property value related to that option.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains:

(1) The title file (contains title evidence, the instrument of conveyance, the acquisition contract, title curative and closing data, title opinions, the survey description and plat, payment vouchers and the appraisal summary);

(2) The case file (contains the acquisition contract, the instrument of conveyance, closing data, the survey description and plat, payment vouchers, and the appraisal summary);

(3) The correspondence file (contains all general correspondence associated with the acquisition, the negotiator's contacts, and all material used for relocation assistance permits or outgrants);

(4) The appraisal report (contains the property description, local market data, comparable sales information, location maps, and an analysis of property value); and

(5) The option file (contains landowner's names, social security or employee identification numbers, home addresses, property acreages, bureau-assigned tract numbers, legal descriptions of lands, limitations of any easements, status of appraisal requests and/or offers to landowners, and money obligated and spent to acquire the property).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act of 1949 (63 Stat. 377); Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222); Migratory Bird Hunting Stamp Act, as amended (16 U.S.C. 718 *et seq.*); Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a *et seq.*); Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661–666c); Recreational Use of Conservation Areas Act, as amended (16 U.S.C. 460k–460k4); Colorado River Storage Project Act, as amended 943 U.S.C. 602g); Endangered Species Act of 1973 (16 U.S.C. 1531–1543); National Wildlife Refuge System Administration Act as amended (16 U.S.C. 668dd–668ee); Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (40 U.S.C. 4601 *et seq.*); Refuge Revenue Sharing Act of October 17, 1978, Public L. 95–469, amended the Act of June 15, 1935 [amended by the Act of August 30, 1964 (78 Stat. 701; 16 U.S.C. 715s)].

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The FWS is the primary user of the system, and the primary uses of the records are to:

(1) Obtain title evidence for closing from title companies or abstractors;

(2) Obtain title opinions and judgments on condemnation from our Solicitor's Offices and the Department of Justice;

(3) Use in negotiations regarding property appraisal;

(4) Obtain relocation assistance permits or outgrants;

(5) Report excess lands to the General Services Administration for transfer or disposal;

(6) Produce required agency annual reports which are stripped of personal identifiers;

(7) Reconcile end-of-year financial transaction reports required by the IRS and the FWS related to the land acquisition activities;

(8) Reconcile and track payments made to private landowners who are selling land or a land interest to the FWS;

(9) Monitor and update the status of land transaction activities with private landowners;

(10) Maintain a listing of counties that are eligible and that will receive revenue sharing payments as a result of the bureaus' land acquisition activities and also as a result of appraisal of those properties in accordance with the Refuge Revenue Sharing Act of October 17, 1978, Public Law 95–469;

(11) Report taxable income as required by the Internal Revenue Service.

Disclosure to any of the following entities outside the DOI may be made under any of the routine uses listed below without the consent of the individual if the disclosure is compatible with the purpose for which the records were collected:

(1) To another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains;

(2) To Federal, State, and local authorities as needed to conduct inquiries related to land acquisition activities carried out under any of the previously stated authorities;

(3) To the Department of Justice (DOJ), or to a court or adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(i) The DOI or any component of the DOI;

(ii) Any employee acting in his or her official capacity;

(iii) Any DOI employee acting in his or her individual capacity where the DOI or DOJ has agreed to represent the employee; or

(iv) The United States, when DOI determines that DOI is likely to be affected by the proceeding; and

(b) The DOI deems the disclosure to be:

(i) Relevant and necessary to the proceedings and

(ii) compatible with the purpose for which DOI compiled the information.

(4) To an appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, order or license when we become aware of an indication of a violation or potential violation of the statute, rule regulation, order or license.

(5) To Federal, State, and local authorities as needed to conduct inquiries related to land acquisition activities carried out under the Refuge Revenue Sharing Act of October 17, 1978, Public Law 95–469.

(6) To a congressional office in response to a written inquiry to that office by the individual to whom the record pertains.

(7) To a contractor, expert, or consultant employed by the FWS—only when necessary to accomplish a function related to this system of records.

(8) To the IRS as part of the IRS-required year-end financial reports to

produce the 1099 notice to the landowner as taxable income.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)12, disclosures may be made from this system to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (931 U.S.C. 3701(A)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records both in paper and electronic files. Electronic records are stored in a computer system on a secure server. Hardcopy input records associated with reconciliation of bureau financial reports or records required to report taxable income are temporarily secured in a locked file that bears a Privacy Act warning label.

RETRIEVABILITY:

Generally we store the records by individual name, project name, project number and location. Electronic records may be searched on or reported by any data field. Retrieval is generally dependent upon the report or purpose of usage and whether a need to know exists. For example, records may be retrieved by social security number, name, tract number, State, or county. Records are retrievable for several purposes, such as determining landowner payments that need to be reported to IRS, tracking payments made to landowners, reconciliation of the bureau's financial reports, and tracking status of acquisition activities or requests for surveys and appraisals related to those activities.

SAFEGUARDS:

We maintain the records in accordance with safeguards specified in the Department of the Interior Privacy Act regulations (43 CFR 2.51). Safeguards include password-protected computers and on site locked storage rooms. Electronic records have a multi-level password-protected database. The file server uses active directory for logon. The application uses secure socket layer (SSL) through port 443 so that HTTP traffic is encrypted with 128-bit encryption for external protection. Therefore, data is secure between the client and the Branch of Communication Technology's Server. The tax identification number, Social Security Number and Employee Identification Number are encrypted using base 64 encryption algorithms and converted to HEX. Electronic records are password-protected, backed up daily, and maintained with safeguards meeting the security requirements of 43 CFR 2.51. A Privacy Impact Assessment was completed to ensure that Privacy Act requirements and safeguard requirements are met.

RETENTION AND DISPOSAL:

Records are maintained in accordance with U.S. Fish and Wildlife Service Records Schedule and the General Records Schedule (GRS–7).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Realty, U.S. Fish and Wildlife Service, Mail Stop 622, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203 and (2) U.S. Fish and Wildlife Service Regional Offices (See 50 CFR 2.2 for addresses).

NOTIFICATION PROCEDURES:

Any individual may request notification of the existence of records on him or herself may do so by writing to the system manager at the address above. The request must be in writing, be signed by the requester, and include the requester's full name, address, and Social Security Number (see 43 CFR 2.60).

RECORDS ACCESS PROCEDURES:

See ''Notification procedures'' above and 43 CFR 2.63(b)(4)).

CONTESTING RECORD PROCEDURES:

See ''Notification procedures'' above and 43 CFR 2.71).

RECORDS SOURCE CATEGORIES:

Records come from landowners who have signed an option for selling land or interests in lands to the Fish and Wildlife Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E6–20033 Filed 11–24–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–956–07–1420–BJ]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey, supplemental and amended protraction diagram described below are scheduled to be officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, December 27, 2006.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat representing the dependent resurvey of the south, east, west, and north boundaries, and the subdivision lines, and the survey of the subdivision of all sections, Township 22 North, Range 15 East, accepted May 26, 2006, and officially filed June 1, 2006, for Group 946 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 4, Township 22 North, Range 21 East, accepted June 26, 2006, and officially filed June 30, 2006 for Group 939 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the subdivisional lines, Township 22 North, Range 27 East, accepted April 6, 2006, and officially filed April 14, 2006 for Group 947 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the subdivisional lines, Township 22 North, Range 28 East, accepted October 2, 2006, and officially filed October 6, 2006 for Group 956 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (8 sheets) representing the dependent resurvey of a portion of The Seventh Auxiliary Guide Meridian East (west boundary), the south and east boundaries, a portion of the subdivisional lines, the subdivision of certain sections, and metes-and-bounds surveys, Township 22 North, Range 29 East, accepted October 2, 2006, and officially filed October 6, 2006 for Group 921 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (7 sheets) representing the dependent resurvey of the Arizona-New Mexico State Line from mile post 115 to the witness corner to mile post 120, the west boundary and the subdivisional lines, and the subdivision of certain sections and metes- and bounds surveys, Township 22 North, Range 31 East, accepted June 12, 2006 and

officially filed June 16, 2006 for Group 899 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the south and north boundaries, and the subdivisional lines, and the subdivision of certain sections, Township 23 North, Range 20 East, accepted June 26, 2006, and officially filed June 30, 2006, for Group 945 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of a portion of the Seventh Standard Parallel North (south boundary), Township 29 North, Range 23 East, and the west boundary and the subdivisional lines, Township 28 North, Range 24 East, accepted June 26, 2006, and officially filed June 30, 2006 for Group 955 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the subdivisional lines, a portion of Homestead Entry Survey No. 401, a portion of tract 37, the subdivision of section 23, the survey of tract 39 and a metes-and-bounds survey in section 23, Township 30 North, Range 2 East, accepted April 6, 2006, and officially filed April 14, 2006 for Group 968 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the survey of The Ninth Standard Parallel North (south boundary), the east, west and north boundaries, and the subdivisional lines, Township 37 North, Range 14 East, accepted May 1, 2006, and officially filed May 10, 2006 for Group 949 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of a portion of The Tenth Standard Parallel North (south boundary), Township 41 North, Range 9 East and the dependent resurvey of a portion of the subdivisional lines, the survey of a portion of The Second Guide Meridian East (west boundary), the south and east boundaries and a portion of the subdivisional lines, Township 40 North, Range 9 East, accepted June 7, 2006, and officially filed June 14, 2006 for Group 950 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the metes-and-bounds survey of The Warm Springs Wilderness Area Boundary, Township 16 North, Range 19 West, accepted November 3, 2006, and officially filed November 9, 2006, for Group 933 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of The Fourth Standard Parallel North (north boundary), Township 16½ North, Range 18 West, accepted November 3, 2006, and officially filed November 9, 2006 for Group 933 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat (2 sheets) representing the dependent resurvey of a portion of The Fourth Standard Parallel North (north boundary), a portion of the south and east boundaries, a portion of the subdivisional lines, and the metes-and-bounds survey of The Warm Springs Wilderness Area Boundary, Township 16½ North, Range 19 West, accepted November 3, 2006 and officially filed November 9, 2006 for Group 933 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat (2 sheets) representing the dependent resurvey of portions of the west and north boundaries, a portion of the subdivisional lines, and Mineral Survey No. 904, the subdivision of sections 3 and 4 and the metes-and-bounds survey of The Wabayuma Peak Wilderness Area Boundary, Township 17 North, Range 16 West, accepted November 8, 2006, and officially filed November 16, 2006 for Group 981 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat (5 sheets) representing the dependent resurvey of portions of the south, east, and north boundaries, and a portion of the subdivisional lines, and the metes-and-bounds survey of The Wabayuma Peak Wilderness Area Boundary, Township 18 North, Range 17 West, accepted November 8, 2006, and officially filed November 16, 2006 for Group 982 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat (2 sheets) representing the dependent resurvey of a portion of the subdivisional lines, and the metes-and-bounds survey of The Warm Springs Wilderness Area Boundary, Township 19 North, Range 18 West, accepted April 6, 2006 and officially filed April 14, 2006 for Group 934 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat (3 sheets) representing the dependent resurvey of a portion of The Fifth Guide Meridian West (east boundary), a portion of the south boundary, a portion of the subdivisional lines, and the metes-and-bounds survey of The Warm Springs Wilderness Area Boundary through sections 20, 22, 23, 26 and 35, Township 19 North, Range 19 West, accepted June 5, 2006 and officially filed June 9, 2006 for Group 928 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of The Second Guide Meridian West (east boundary), and a portion of the subdivisional lines, and the metes-and-bounds survey of a portion of The Mount Logan Wilderness Area Boundary, Township 33 North, Range 9 West, accepted May 18, 2006 and officially filed May 26, 2006 for Group 833 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivisional lines, an informative traverse in section 23, Township 33 North, Range 9 West, accepted May 25, 2006 and officially filed May 31, 2006 for Group 948 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat (5 sheets) representing the dependent resurvey of a portion of the south boundary, and a portion of the subdivisional lines, the subdivision of section 19 and the metes-and-bounds survey of The Mount Logan Wilderness Area Boundary, Township 34 North, Range 8 West, accepted May 18, 2006 and officially filed May 26, 2006 for Group 833 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat (6 sheets) representing the dependent resurvey of a portion of The Second Guide Meridian West (east boundary), a portion of the south boundary and a portion of the subdivisional lines, and the metes-and-bounds survey of The Mount Logan Wilderness Area Boundary, Township 34 North, Range 9 West, accepted May 18, 2006 and officially filed May 26, 2006 for Group 833 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of The Tenth Standard Parallel North (north boundary), and the west boundary and the survey of a portion of the subdivisional lines, Township 40 North, Range 2 West, accepted March 27, 2006

and officially filed April 7, 2006 for Group 937 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of The Tenth Standard Parallel North (north boundary), and the survey of a portion of the subdivisional lines, Township 40 North, Range 3 West, accepted March 27, 2006 and officially filed April 7, 2006 for Group 940 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the survey of a portion of the subdivisional lines, Township 40 North, Range 5 West, accepted July 5, 2006 and officially filed July 7, 2006 for Group 964 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of The Tenth Standard Parallel North (north boundary), a portion of the subdivisional lines, the subdivision of sections 11 and 14 and a metes-and-bounds survey of a portion of The Paiute Wilderness Area Boundary, Township 40 North, Range 15 West, accepted July 10, 2006 and officially filed July 14, 2006 for Group 962 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of the east boundary and the survey of the north boundary and the subdivisional lines, Township 41 North, Range 3 West, accepted May 9, 2006 and officially filed May 18, 2006 for Group 959 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of The Tenth Standard Parallel North (south boundary), and a portion of the subdivisional lines, and the survey of a portion of the north boundary and a portion of the subdivisional lines, Township 41 North, Range 5 West, accepted May 9, 2006 and officially filed May 18, 2006 for Group 960 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of the west boundary identical with a portion of The Paiute Wilderness Area Boundary, Township 41 North, Range 14 West, accepted July 10, 2006 and officially filed July 14, 2006 for Group 963 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of The Arizona and Utah State Boundary (north boundary), from the 70 mile post to the 76.453 mile post and the survey of the east and west boundaries and the subdivisional lines, Fractional Township 42 North, Range 4 West, accepted March 27, 2006 and officially filed April 7, 2006 for Group 938 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of The Arizona and Utah State Boundary (north boundary), from the 76.453 mile post to the 82 mile post and the survey of the subdivisional lines, Fractional Township 42 North, Range 3 West, accepted May 10, 2006 and officially filed May 18, 2006 for Group 965 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of The Arizona and Utah State Boundary (north boundary), from the 67 mile post to the 70 mile post and a portion of the subdivisional lines and the survey of a portion of the subdivisional lines, Fractional Township 42 North, Range 5 West, accepted May 10, 2006 and officially filed May 18, 2006 for Group 961 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

If a protest against a survey, supplemental and or amended protraction diagram as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona, 85004–4427.

Dated: November 13, 2006.

Stephen K. Hansen,

Chief Cadastral Surveyor.

[FR Doc. E6–19993 Filed 11–24–06; 8:45 am]

BILLING CODE 4310–32–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board (MSPB).

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Protection Board is requesting approval from the Office of Management and Budget (OMB) to conduct employee surveys for a period of three years from the approval date. Before submitting the Information Collection Request (ICR) to OMB for review and approval, MSPB is soliciting comments on specific aspects of the information collection in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). In this regard, we are soliciting comments on the public reporting burden. The reporting burden for the collection of information on this form is estimated to average 30 minutes per respondent, including time for reviewing instructions and completing the survey. In addition, the MSPB invites comments on (1) Whether the proposed collection of information is necessary for the proper performance of MSPB's functions, including whether the information will have practical utility; (2) the accuracy of MSPB's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

DATES: According to the procedures prescribed in 5 CFR 1320.10, MSPB plans to submit an ICR to OMB for review and approval following the 60 day comment period. Comments must be received on or before January 31, 2007.

ADDRESSES: You may submit comments via any of the following methods:

E-mail: *anne.marrelli@mspb.gov*. Please Include ''Employee Surveys'' in the subject line of the message. Fax: (202) 653–7211. Mail: Dr. Anne Marrelli, U.S. Merit Systems Protection Board, Room 515, 1615 M St., NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: For information on the survey questions, contact Anne Marrelli by phone on 202–653–6772, ext. 1341, by FAX on 202–653–7211, or by e-mail *anne.marrelli@mspb.gov*. You may contact Dr. Marrelli via V/TDD at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Proposed Project: ''Merit Principles Survey''

As part of its purpose, MSPB is responsible for conducting studies of the Federal civil service to ensure that all Federal government agencies follow merit systems practices and avoid prohibited personnel practices. To support this research agenda, MSPB periodically conducts surveys of samples of Federal employees. To obtain insight into employees' current perspectives, MSPB requests approval to conduct additional surveys over the next three years.

The surveys will ask employees to share their perceptions of the implementation of the merit system in the workplace including topics such as agency and work unit performance, job satisfaction, compensation and rewards, fair treatment, performance management, training and development, and leadership.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 0.50 hours per respondent.

Respondents/Affected Entities: Participants are selected via stratified random sampling to facilitate a representative sample of Federal employees.

Estimated Number of Respondents: 80,000.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 40,000.

Dated: November 20, 2006.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. E6–19914 Filed 11–24–06; 8:45 am]

BILLING CODE 7401–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following Astronomy and Astrophysics Advisory Committee (#13883) meeting:

Date and Time: December 19, 2006 4 p.m.–5:30 p.m. EST.

Place: Teleconference. National Science Foundation, Room 1020, Stafford I Building, 4201 Wilson Blvd., Arlington, VA, 22230.

Type of Meeting: Open.

Contact Person: Dr. G. Wayne Van Citters, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4908.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agencies: To discuss the Report of the National Science Foundation Division of Astronomical Sciences Senior Review Committee.

Dated: November 21, 2006.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 06–9406 Filed 11–24–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Foundation, National Science Board and Its Subdivisions Sunshine Act Meetings Notice

DATE AND TIME: November 29–30, 2006.

Wednesday November 29, 2006, 7:30 a.m.–5:15 p.m.

7:30–7:45 Open
7:45–8 Closed
8–8:45 Open
8:45–9:30 Open
9:30–10 Open
10–11:30 Open
11:30–12 Closed
12:45–2:15 Open
2:15–3:45 Open
3:45–5:15 Closed

Thursday November 30, 2006, 8 a.m.–3 p.m.

8–8:45 Open
8:45–9:30 Open
9:30–10 Closed
10–12 Open
1:15–1:30 Closed
1:30–1:45 Closed
1:45–3 Open

PLACE: National Science Foundation, 4201 Wilson Blvd, Room 1235, Arlington, VA 22230.

PUBLIC MEETING ATTENDANCE: All visitors must report to the NSF's visitor's desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

CONTACT INFORMATION: Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for any schedule updates. *NSB Office:* Dr. Robert Webber, (703) 292–7000.

STATUS: Part of this meeting will be closed to the public; Part of this meeting will be open to the public.

Matters To Be Considered

Wednesday, November 29, 2006

Open

Executive Committee (7:30 a.m.–7:45 a.m.)
- Approval of Minutes for September 2006 Meeting
- Updates or New Business from Committee Members

CPP Task Force on Transformative Research (8 a.m.–8:45 a.m.)
- Approval of Minutes for September 2006 Meeting
- Task Force Chairman's Remarks
- Review of Draft Report, ''Enhancing Support of Transformative Research at the National Science Foundation'' and Recommendations

CPP Subcommittee on International Science (8:45 a.m.–9:30 a.m.)
- Approval of Minutes
- Task Force Chairman's Remarks
- Discussion of the September 25 Roundtable Discussion Summary Notes
- Information Item: Partnerships for International Research and Education (PIRE)
- Discussion of Future Task Force Activities

CPP Task Force on Hurricane Science and Engineering (9:30 a.m.–10 a.m.)
- Approval of Minutes for September 2006 Meeting
- Task Force Co-Chairmen's Remarks
- Discussion of the Draft NSB Report, Hurricane Warning: Critical Need for a National Hurricane Research Initiative
- Future Activities of the Task Force

Committee on Audit and Oversight (10 a.m.–11:30 a.m.)
- Approval of Minutes of September, 2006 Meeting
- Committee Chairman's Remarks

- OIG Semiannual Report
- Management Response to OIG Semiannual Report
- 2006 Financial Statement Audit
- Chief Information Officer's Update
- Chief Financial Officer's Update, including Performance and Accountability Report/2006 Financial Statement Audit (available at *http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf0701*)
- Initiative on Interim Progress Reports (Research Business Models Subcommittee of the Committee on Science)

EHR Subcommittee on Science and Engineering Indicators (12:45 p.m.–2:15 p.m.)
- Approval of September Minutes
- Subcommittee Chairman's Remarks
- Brief discussion of Revised Chapter Outlines
- Review of Science and Engineering Indicators Draft Chapters
  - NSB Review—Matrix for Chapter Reviewers and Lead Reviewers
  - External Expert Review
- Discussion of Possible Topics for Board Companion Piece
- Parallel Discussion of Science and Engineering Indicators 2010
  - Data Gaps
  - Meeting with State Representatives
  - Meeting with Industry Representatives
- Web Presentation and Electronic Dissemination of Indicators
- Chairman's Summary

Committee on Programs and Plans (2:15 p.m.–3:45 p.m.)
- Approval of Minutes
- Committee Chairman's Remarks
- Status Reports:
  - Task Force on International Science
  - Subcommittee on Polar Issues
  - Task Force on Transformative Research
  - Task Force on Hurricane Science and Engineering
- FY 2007 Schedule of Actions and Information Items for NSB Review
- NSB Policy on Recompetition of NSF Awards
- NSB Information Item: Division of Astronomical Sciences Senior Review
- NSB Information Item: National Optical Astronomy Observatory (NOAO) and National Solar Observatory (NSO)–Management Review of the 5-year Cooperative Agreement with the Association of Universities for Research in Astronomy, Inc. (AURA)

Closed

Executive Committee (7:45 a.m.–8 a.m.)
- Director's Items
  - Specific Personnel Matters
  - Future Budgets

Committee on Audit and Oversight (11:30 a.m.–12 noon)
- Pending Investigations: OIG Staff

Committee on Programs and Plans (3:45 p.m.–5:15 p.m.)
- NSB Action Item: Request for Proposals and Award of a Contract for the Conduct of the Survey of Doctorate Recipients (SDR)
- NSB Action Item: Continuity and Change in American Economic and Social Life: The Panel Study of Income Dynamics (PSID) for Fiscal Years 2007–2011

Thursday, November 30, 2006

Open

CPP Subcommittee on Polar Issues (8 a.m.–8:45 a.m.)
- Approval of September Minutes
- Subcommittee Chairman's Remarks
- OPP Director's Remarks
- Polar Icebreakers in a Changing World: An Assessment of U.S. Needs, A Report of The National Academies, September 2006

Committee on Strategy and Budget (8:45 a.m.–9:30 a.m.)
- Approval of September 28, 2006 CSB Minutes
- Committee Chairman's Remarks
- Findings of NSF Working Group on the Impact of Proposal and Award Management Mechanisms (IPAMM) Study of Award Size, Duration and Proposal Success Rates
- NSF FY 2007 Budget Request

Committee on Education and Human Resources (10 a.m.–12 p.m.)
- Approval of September 2006 Minutes
- Chairman's Remarks
- Evaluation and the Academic Competitiveness Council
- Update on Education Commission
- NSF–EHR Directorate Program Evaluations
- Discussion of Board Response to Congressman Rush Holt Letter
- Subcommittee on Science and Engineering Indicators
- Summary of Nov. 7 Engineering Education Workshop
- NSB Executive Officer's Report

Closed

Committee on Strategy and Budget (9:30 a.m.–10 a.m.)
- NSF FY 2008 Budget Request
  - Status of NSF FY 2008 Budget Request
  - Potential Impacts of Grants Management Line of Business on Future Budgets

Plenary Sessions of the Board (1:15 p.m.–3 p.m.)

Plenary Executive Closed (1:15 p.m.–1:30 p.m.)
- Approval of September 2006 Minutes

Plenary Closed (1:30 p.m.–1:45 p.m.)
- Approval of September 2006 Minutes
- Awards and Agreements
  - NSB Action Item: Request for Proposals and Award of a Contract for the Conduct of the Survey of Doctorate Recipients (SDR)
  - NSB Action Item: Continuity and Change in American Economic and Social Life: The Panel Study of Income Dynamics (PSID) for Fiscal Years 2007–2011
- Closed Committee Reports

Plenary Open (1:45 p.m.–3 p.m.)
- Approval of September 2006 Minutes
- Closed Session Items for February 2007 Meeting
- Chairman's Report
- Director's Report
- Open Committee Reports
- Presentation: Overview of NSF Outreach Activities

Michael P. Crosby,
Executive Officer and NSB Office Director.

[FR Doc. E6–19970 Filed 11–24–06; 8:45 am]
BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 171, ''Duplication Request.''

3. *The form number if applicable:* NRC 171.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Individuals or companies requesting document duplication.

6. *An estimate of the number of annual responses:* 7,940 responses.

7. *The estimated number of annual respondents:* 7,940.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 990 hours (about 8 minutes per respondent).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* N/A.

10. *Abstract:* This form is utilized by individual members of the public requesting reproduction of publicly available documents in NRC Headquarters' Public Document Room. Copies of the form are utilized by the reproduction contractor to accompany the orders and are then discarded.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by December 27, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Sarah P. Garman, Office of Information and Regulatory Affairs (3150–0066), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Sarah_P._Garman@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 20th day of November 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–19973 Filed 11–24–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the position of radiation therapy medical physicist on the Advisory Committee on the Medical Uses of Isotopes (ACMUI).

DATES: Nominations are due on or before January 26, 2007.

ADDRESSES: Submit 4 copies of your resume or curriculum vitae to The Office of Human Resources, Attn: Ms. Joyce Riner, Mail Stop T2D32, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION, CONTACT: Mohammad S. Saba, Office of Federal and State Materials and Environmental Management Program, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 415–7608; e-mail *mss@nrc.gov*.

SUPPLEMENTARY INFORMATION: The ACMUI advises NRC on policy and technical issues that arise in the regulation of the medical use of byproduct material. Responsibilities include providing comments on changes to NRC rules, regulations, and guidance documents; evaluating certain non-routine uses of byproduct material; providing technical assistance in licensing, inspection, and enforcement cases; and bringing key issues to the attention of NRC, for appropriate action.

ACMUI members possess the medical or technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) medical physicist in nuclear medicine unsealed byproduct material; (d) therapy medical physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) Agreement State representative; and (k) health care administrator. NRC is inviting nominations for the therapy medical physicist to the ACMUI. The term of the individual currently occupying this position will end on September 30, 2007. Committee members will serve a 4-year term. Committee members may be considered for reappointment to one additional term.

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to Committee business. Members who are not Federal employees are compensated for their service. In addition, members are reimbursed travel (including per-diem in lieu of subsistence) and are reimbursed secretarial and correspondence expenses. Full-time Federal employees are reimbursed travel expenses only.

Security Background Check: Nominees will undergo a thorough security background check to obtain the security clearance that is mandatory for all ACMUI members. This check will include a requirement to complete financial disclosure statements to avoid conflict-of-interest issues. The security background check will involve the completion and submission of paperwork to NRC and will take approximately four weeks to complete.

Dated at Washington, DC, this 18th day of November 2006.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer, Office of the Secretary of the Commission.

[FR Doc. E6–19911 Filed 11–24–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application on Technical Specification Improvement To Modify Requirements Regarding LCO 3.10.1, Inservice Leak and Hydrostatic Testing Operation Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model licensee application relating to the modification of shutdown testing requirements in technical specifications (TS) for Boiling Water Reactors (BWR). The purpose of this model is to permit the NRC to efficiently process amendments that propose to modify LCO 3.10.1, and the associated Bases, to expand its scope to include provisions for temperature excursions greater than [200]°F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4. Licensees of nuclear power

reactors to which the model applies could then request amendments, confirming the applicability to their reactors.

DATES: The NRC staff issued a **Federal Register** Notice on September 25, 2006 (71 FR 55807) that provided a model application relating to modification of requirements regarding LCO 3.10.1, ''Inservice Leak and Hydrostatic Testing Operation.'' The NRC staff hereby announces that the model application may be referenced in plant-specific applications to adopt the changes. The staff will post the model application on the NRC Web site to assist licensees in using the consolidated line item improvement process (CLIIP) to revise the TS on LCO 3.10.1, ''Inservice Leak and Hydrostatic Testing Operation.''

FOR FURTHER INFORMATION CONTACT: Tim Kobetz, Mail Stop: O–12H2, Division of Inspections and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1932.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on a proposed change to the STS after a preliminary assessment by the NRC staff and a finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or announce the availability of the change for adoption by licensees.

A model safety evaluation and no significant hazards determination regarding the proposed changes to LCO 3.10.1 have been previously posted in the **Federal Register** for availability on October 27, 2006 (71 FR 63050). This notice makes available a model application that will permit the NRC to efficiently process amendments that propose to modify LCO 3.10.1, and the associated Bases, to expand its scope to include provisions for temperature excursions greater than [200]°F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4.

Applicability

Licensees opting to apply for this TS change are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. To efficiently process the incoming license amendment applications, the NRC staff requests that each licensee applying for the changes addressed by TSTF–484, Revision 0, using the CLIIP, submit a license amendment request that adheres to the attached model application. Variations from the model application in this notice may require additional review by NRC staff, and may increase the time and resources needed for review. Significant variations from the model application, or inclusion of additional changes to the license, may result in staff rejection of the submittal. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

Public Notices

In a notice in the **Federal Register** dated September 25, 2006 (71 FR 55807), the staff requested comment on the use of a model application to process requests to revise the TS regarding LCO 3.10.1, ''Inservice Leak and Hydrostatic Testing Operation.'' No comments have been received. TSTF–484, as well as the NRC staff's safety evaluation and model application, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, (the Electronic Reading Room).

Model Application for License Amendments Adopting TSTF–484, Rev. 0, ''use of TS 3.10.1 for Scram Time Testing Activities''

U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555.

SUBJECT: [Plant Name]

Docket No. 50—License Amendment Request for Adoption of TSTF–484, Rev. 0, ''Use of TS 3.10.1 for Scram Time Testing Activities''

In accordance with the provisions of Section 50.90 of Title 10 of the Code of Federal Regulations (10 CFR 50.90), [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NO.].

The proposed amendment would revise LCO 3.10.1, and the associated Bases, to expand its scope to include provisions for temperature excursions greater than [200]°F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4. This change is consistent with NRC approved Revision 0 to Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler, TSTF–484, ''Use of TS 3.10.1 for Scram Time Testing Activities.'' The availability of the TS 3.10.1 revision was announced in the **Federal Register** on October 27, 2006 (71 FR 63050) as part of the consolidated line item improvement process (CLIIP).

Attachment 1 provides an evaluation of the proposed change. Attachment 2 provides the existing TS pages marked up to show the proposed change. Attachment 3 provides the proposed TS changes in final typed format. Attachment 4 provides the existing Bases pages marked up to show the proposed change.

[LICENSEE] requests approval of the proposed license amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with attachments, is being provided to the designated [STATE] Official.

If you should have any questions regarding this submittal, please contact [ ].

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct.

Executed on [DATE].

[NAME, TITLE]

Attachments: 1. Evaluation of Proposed Change; 2. Proposed Technical Specification Change (Mark-Up); 3. Proposed Technical Specification Change (Re-Typed); 4. Proposed Technical Specification Bases Change (Mark-Up).

cc: [NRR Project Manager]

[Regional Office]

[Resident Inspector]

[State Contact]

Attachment 1—Evaluation of Proposed Change

License Amendment Request for Adoption of TSTF–484, Rev. 0, ''Use of TS 3.10.1 for Scram Time Testing Activities''

1.0 Description
2.0 Proposed Change
3.0 Background
4.0 Technical Analysis
5.0 Regulatory Safety Analysis
5.1 No Significant Hazards Determination
5.2 Applicable Regulatory Requirements/ Criteria
6.0 Environmental Consideration
7.0 References

1.0 Description

The proposed amendment would revise LCO 3.10.1, and the associated Bases, to expand its scope to include provisions for temperature excursions greater than [200]°F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4. This change is consistent with NRC approved Revision 0 to Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler, TSTF–484, ''Use of TS 3.10.1 for Scram Time Testing Activities.'' The availability of the TS 3.10.1 revision was announced in the **Federal Register** on October 27, 2006 (71 FR 63050) as part of the consolidated line item improvement process (CLIIP).

2.0 Proposed Change

Consistent with the NRC approved Revision 0 of TSTF–484, the proposed TS changes include a revised TS 3.10.1, ''Inservice Leak and Hydrostatic Testing Operation.'' Proposed revisions to the TS Bases are also included in this application. Adoption of the TS Bases associated with TSTF–484, Revision 0 is an integral part of implementing this TS amendment. The changes to the affected TS Bases pages will be incorporated in accordance with the TS Bases Control Program.

This application is being made in accordance with the CLIIP. [LICENSEE] is [not] proposing variations or deviations from the TS changes described in TSTF–484, Revision 0, or the NRC staff's model safety evaluation (SE) published on October 27, 2006 (71 FR 63050) as part of the CLIIP Notice of Availability. [Discuss any deviations]

3.0 Background

The background for this application is adequately addressed by the NRC Notice of Availability published on October 27, 2006 (71 FR 63050).

4.0 Technical Analysis

[LICENSEE] has reviewed the safety evaluation (SE) published on October 27, 2006 (71 FR 63050) as part of the CLIIP Notice of Availability. [LICENSEE] has concluded that the technical justifications presented in the SE prepared by the NRC staff are applicable to [PLANT, UNIT NO.] and therefore justify this amendment for the incorporation of the proposed changes to the [PLANT] TS.

5.0 Regulatory Safety Analysis

5.1 No Significant Hazards Determination

[LICENSEE] has reviewed the no significant hazards determination published on August 21, 2006 (71 FR 48561) as part of the CLIIP Notice for Comment. The no significant hazards determination was made available on October 27, 2006 (71 FR 63050) as part of the CLIIP Notice of Availability. [LICENSEE] has concluded that the determination presented in the notice is applicable to [PLANT, UNIT NO.] and the determination is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

5.2 Applicable Regulatory Requirements / Criteria

A description of the proposed TS change and its relationship to applicable regulatory requirements was provided in the NRC Notice of Availability published on October 27, 2006 (71 FR 63050).

6.0 Environmental Consideration

[LICENSEE] has reviewed the environmental evaluation included in the safety evaluation (SE) published on October 27, 2006 (71 FR 63050) as part of the CLIIP Notice of Availability. [LICENSEE] has concluded that the staff's findings presented in that evaluation are applicable to [PLANT, NO.] and the evaluation is hereby incorporated by reference for this application.

7.0 References

1. **Federal Register** Notice, Notice of Availability published on October 27, 2006 (71 FR 63050).

2. **Federal Register** Notice, Notice for Comment published on August 21, 2006 (71 FR 48561)

3. TSTF–484 Revision 0, ''Use of TS 3.10.1 for Scram Times Testing Activities''

Attachment 2

Proposed Technical Specification Change (Mark-Up)

Attachment 3

Proposed Technical Specification Change (Re-Typed)

Attachment 4

Proposed Technical Specification Bases Change (Mark-Up)

Principal Contributor: Aron Lewin.

Dated at Rockville, Maryland this 20th of November 2006.

For the Nuclear Regulatory Commission.

Timothy Kobetz,

Chief, Technical Specifications Branch, Division of Inspections and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. E6–19972 Filed 11–24–06; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application to Act as Representative Payee; OMB 3220–0052. Under Section 12 of the Railroad Retirement Act, the Railroad Retirement Board (RRB) may pay benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or is a minor. A representative payee may be a court-appointed guardian, a statutory conservator or an individual selected by the RRB. The procedures pertaining to the appointment and responsibilities of a representative payee are prescribed in 20 CFR Part 266.

The forms furnished by the RRB to apply for representative payee status,

and for securing the information needed to support the application follow. RRB Form AA–5, *Application for Substitution of Payee*, obtains information needed to determine the selection of a representative payee who will serve in the best interest of the beneficiary. RRB Form G–478, *Statement Regarding Patient's Capability to Manage Payments*, obtains information about an annuitant's capability to manage payments. The form is completed by the annuitant's personal physician or by a medical officer, if the annuitant is in an institution. It is not required when a court has appointed an individual or institution to manage the annuitant's funds or, in the absence of such appointment, when the annuitant is a minor. The RRB also provides representative payees with a booklet at the time of their appointment. The booklet, RRB Form RB–5, *Your Duties as Representative Payee-Representative Payee's Record,* advises representative payees of their responsibilities under 20 CFR 266.9 and provides a means for the representative payee to maintain records pertaining to the receipt and use of RRB benefits. The booklet is provided for the representative payee's convenience. The RRB also accepts records that were kept by representative payee's as part of a common business practice.

Completion is voluntary. One response is requested of each respondent. The RRB is proposing non-burden impacting editorial changes to Forms AA–5 and G–478. No changes are proposed for the Booklet RB–5. The estimated completion time(s) is estimated at 17 minutes for Form AA–5, 6 minutes for Form G–478 and 60 minutes for Booklet RB–5. The RRB estimates that approximately 3,000 Form AA–5's, 2,000 Form G–478's and 15,300 RB–5's are completed annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E6–19964 Filed 11–24–06; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 27, 2006:

A Closed Meeting will be held on Wednesday, November 29, 2006 at 10 a.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B) and (10) and 17 CFR 200.402(a) (3), (5), (7), (8), (9)(ii), and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Closed Meeting scheduled for Wednesday, November 29, 2006 will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Resolution of litigation claims;
An adjudicatory matter; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: November 21, 2006.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–9423 Filed 11–22–06; 11:42 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54790; File No. SR–Amex–2006–01]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendments No. 1, 2, and 3 Thereto Relating to the Listing and Trading of Principal Protected Notes Linked to the Dow Jones-AIG ExEnergy Sub-Index

November 20, 2006.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On March 21, Amex submitted Amendment No. 1 to the proposed rule change.[3] On May 24, 2006, Amex submitted Amendment No. 2 to the proposed rule change.[4] On November 13, 2006, Amex submitted Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade, principal protected notes, linked to the performance of the Dow Jones-AIG ExEnergy Sub-Index (the ''DJAIG ExEnergy Index'' or the ''Index'').

The text of the proposed rule change is available on Amex's Web site at *http://www.amex.com*, at Amex's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 superseded and replaced the original filing in its entirety.

[4] In Amendment No. 2, the Exchange makes representations regarding specialist prohibitions and accounts and clarifies certain aspects of the index methodology.

[5] Amendment No. 3 supersedes and replaces the original filing, Amendment No. 1, and Amendment No. 2 in its entirety.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Notes

Under Section 107A of the Amex Company Guide (the ''Company Guide''), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[6] The Amex proposes to list for trading under Section 107A of the Company Guide principal protected notes linked to the performance of the Index (the ''Notes'').[7] Merrill Lynch will issue the Notes under the name ''Market Index Target-Term Securities'' or ''MITTS.'' The Notes will provide for participation in the positive performance of the Index during their term while reducing the risk exposure to investors through principal protection.

The Notes will conform to the initial listing guidelines under Section 107A [8] and continued listing guidelines under Sections 1001–1003 [9] of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch. The Notes will have a term of no more than ten (10) years. Merrill Lynch will issue the Notes in denominations of whole units, with each unit representing a single Note. The original public offering price was $10 per Note [10] and thus the notes are currently trading over-the-counter but are not listed on any national securities exchange.[11] At a minimum, the Notes will entitle the owner at maturity to receive at least 100% of the principal investment amount. At maturity, the holder would receive the full principal investment amount of each Note plus a supplemental redemption amount (the ''Supplemental Redemption Amount'') based on the percentage change or performance of the Index over the term of the Note. The performance of the Index will be based on an arithmetic average of the levels of the Index at the close of market on five (5) business days shortly prior to the maturity of the Notes. The Notes are not callable by Merrill Lynch.

The Supplemental Redemption Amount that a holder of a Note will be entitled to receive is defined as the greater of zero or the product of $10, the performance of the Index and the Participation Rate (which is 106.92%). The performance of the Index will be determined at maturity based on the relation of the ''Ending Value'' [12] to the ''Starting Value'' of the Index. The ''Ending Value'' is generally equal to the average of the closing levels of the Index, determined on five (5) separate calculation days. The ''Starting Value'' is the closing level of the Index on the date the Notes are priced for initial sale to the public. The Ending Value may be calculated by reference to fewer than five or even a single day's closing level if, during the period shortly before the maturity date of the Notes, there is a disruption in the trading of a sufficient number of commodity futures included in the Index or certain futures or option contracts relating to the Index.[13]

At maturity, a holder will receive a maturity payment amount per Note equal to:

$$\text{Principal Amount} + \left(\$10 \times \left(\frac{(\text{Ending Value} - \text{Starting Value})}{\text{Starting Value}}\right) \times \text{Participation Rate}\right)$$

[6] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (approving File No. SR–Amex–89–29).

[7] Merrill Lynch & Co. (''Merrill Lynch''), Dow Jones & Company, Inc. (''Dow Jones'') and AIG International, Inc. (''AIGI'') have entered into a non-exclusive license agreement providing for the use of the Dow Jones-AIG ExEnergy Sub-Index by Merrill Lynch and certain affiliates and subsidiaries in connection with certain securities including the Notes. Dow Jones and AIGI are not responsible and will not participate in the issuance and creation of the Notes.

[8] The initial listing standards for the Notes require: (i) A market value of at least $4 million and (ii) a minimum public distribution requirement of one million trading units with a minimum of 400 public shareholders. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million and stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer that is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million.

[9] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[10] Telephone conference among Florence Harmon, Senior Special Counsel, Commission, Kristie Diemer, Special Counsel, Commission, Jeffrey P. Burns, Vice President and Associate General Counsel, Amex, and Sudhir C. Bhattacharyya, Assistant General Counsel, Amex on November 16, 2006 (''November 16 Telephone Conference'').

[11] Telephone conference between Kristie Diemer, Special Counsel, Commission and Sudhir C. Bhattacharyya, Assistant General Counsel, Amex on November 20, 2006.

[12] The ''Ending Value'' is equal to the average of the closing levels of the Index, determined on each of the five calculation days shortly prior to maturity (*i.e.*, the calculation period). If there are fewer than five calculation days during the calculation period, due to a market disruption event, then the Ending Value will equal the average of the closing levels of the Index on those calculation days. If there is only one calculation day during the calculation period, then the Ending Value will equal the closing level of the Index on that calculation day. If no calculation days occur during the calculation period, then the Ending Value will equal the closing level of the Index determined on the last scheduled Index business day in the calculation period, regardless of the occurrence of a market disruption event on that scheduled Index business day.

[13] A ''market disruption event'' means any of the following events as determined by the calculation agent: (i) The suspension of or material limitation on trading for more than two hours of trading, or during the one-half hour period preceding the close of trading, on the applicable exchange (without taking into account any extended or after-hours trading session), in any futures contract used in the calculation of the Index or any successor index; (ii) the suspension of or material limitation on trading, in each case, for more than two hours of trading, or during the one-half hour period preceding the close of trading, on the applicable exchange (without taking into account any extended or after-hours trading session), whether by reason of movements in price otherwise exceeding levels permitted by the relevant exchange or otherwise, in option contracts or futures contracts related to the Index, or any successor index, which are traded on any major U.S. exchange; or (iii) the failure on any day of the applicable exchange to publish the official daily settlement prices for that day for any futures contract used in the calculation of the Index.

The Supplemental Redemption Amount may not be less than zero. If the Ending Value is less than the Starting Value, the amount paid at maturity will be 100% of the Principal Amount. The amount paid at maturity per Note will never be less than the Principal Amount.

Dow Jones-AIG ExEnergy Sub-Index

The Dow Jones-AIG Commodity Index and the DJAIG ExEnergy Index are proprietary indexes that AIGI International Inc. (''AIGI'') developed, that each year are determined by ''AIG-Financial Products Corp. (''AIG–FP'') [14], subject to oversight and approval of the Oversight Committee (defined below), and that Dow Jones calculates. The Index is designed to track rolling futures positions in a diversified basket of fifteen commodity futures (each, an ''Index Component'') which, plus energy commodities, comprise the Dow Jones-AIG Commodity Index.

The DJAIG ExEnergy Index tracks what is known as a rolling futures position, which is a position where, on a periodic basis, futures contracts on physical commodities specifying delivery on a nearby date must be sold and futures contracts on physical commodities that have not yet reached the delivery period must be purchased. An investor with a rolling futures position is able to avoid delivering underlying physical commodities while maintaining exposure to those commodities. The rollover for each Index Component occurs over a period of five Dow Jones-AIG business days each month according to a pre-determined schedule. Currently, Dow Jones calculates and disseminates the DJAIG ExEnergy Index level at least 15-second intervals from 8 a.m. to 3 p.m., Eastern time (''ET''),[15] and publishes a daily settlement price for the Index at approximately 5 p.m., ET each day the Amex is open for trading. Any disseminated value of the Index after 3 p.m. is static.

The fifteen commodities for 2006 that comprise the DJAIG ExEnergy Index are (weightings as of November 15, 2006 noted in parentheses): aluminum (9.31%); coffee (3.49%); copper (10.24%); corn (11.87%); cotton (3.48%); gold (8.41%); lean hogs (5.03%); live cattle (6.58%); nickel (6.54%); silver (3.33%); soybeans (9.81%); soybean oil (4.03%); sugar (2.73%); wheat (8.43%); and zinc (6.73%).[16]

Dow Jones-AIG Commodity Index.

The calculation of the DJAIG ExEnergy Index follows the same rules as the calculation of the Dow Jones-AIG Commodity Index; provided that the daily value of the DJAIG ExEnergy Index is determined by summing the product of the prices of the Index Components and their respective CIMs (as defined below).

The Dow Jones-AIG Commodity Index was created by Dow Jones and AIGI to provide a liquid and diversified benchmark for commodities. The Dow Jones-AIG Commodity Index was established on July 14, 1998 and is currently comprised of futures contracts on nineteen physical commodities.[17]

The nineteen commodities for 2006 that comprise the Dow Jones-AIG Commodity Index (the ''Dow Jones-AIG Commodity Index Commodities'') are (weightings as of November 15, 2006 noted in parentheses): aluminum (6.90%); coffee (2.59%); copper (7.59%); corn (8.80%); cotton (2.58%); crude oil (10.30%); gold (6.24%); heating oil (3.16%); lean hogs (3.73%); live cattle (4.88%); natural gas (9.34%); nickel (4.85%); silver (2.47%); soybeans (7.27%); soybean oil (2.99%); sugar (2.03%); unleaded gasoline (3.06%); wheat (6.25%); and zinc (4.99%).[18] Futures contracts on the Dow Jones-AIG Commodity Index are currently listed for trading on the Chicago Board of Trade (the ''CBOT''). The Dow Jones-AIG Commodity Index commodities currently trade on United States exchanges, with the exception of aluminum, nickel and zinc, which trade on the London Metal Exchange (the ''LME'').

The Index was created using the following four main principles:

- Economic significance. The Dow Jones-AIG Commodity Index is designed to reflect the importance of a diversified group of physical commodities to the world economy. To achieve a fair representation, the Dow Jones-AIG Commodity Index uses both liquidity data and dollar-adjusted production data in determining the relative quantities of the commodities. The Dow Jones-AIG Commodity Index primarily relies on the liquidity of a particular commodity (*i.e.*, the relative amount of trading activity of a particular commodity), as an important indicator of the value placed on that commodity by financial and physical market participants. In addition, production data is also identified to measure the importance of a commodity to the world economy. Production data alone would underestimate the economic significance of storable commodities, such as gold, relative to non-storable commodities, such as livestock. Production data alone also may underestimate the value that the financial community places on certain commodities and/or the amount of commercial activity related to various commodities. The Dow Jones-AIG Commodity Index accordingly relies on both futures market liquidity of commodities and production in determining relative weightings.
- Diversification. The Dow Jones-AIG Commodity Index is designed to provide diversified exposure to commodities as an asset class. Disproportionate weightings of any particular commodity or sector may increase the volatility and negate the concept of a broad-based commodity index. As described further below, diversification rules have been established and are applied annually. Additionally, the Dow Jones-AIG Commodity Index is re-balanced annually on a price-percentage basis in order to maintain diversified commodities exposure over time.
- Continuity. The Dow Jones-AIG Commodity Index is designed to be responsive to the changing nature of the commodity markets in a manner that does not completely reshape the character of the Dow Jones-AIG Commodity Index from year to year. The Dow Jones-AIG Commodity Index is intended to provide a stable benchmark, so that end-users may be reasonably confident that historical performance data is based on a structure that bears some resemblance to both the current and future composition of the Dow Jones-AIG Commodity Index.
- Liquidity. The Dow Jones-AIG Commodity Index is designed to provide a highly liquid index. Liquidity

[14] AIG–FP is not a broker-dealer or futures commission merchant; however, AIG–FP may have such affiliates. Therefore, AIG–FP (i) implemented and agrees to maintain procedures reasonably designed to prevent the use and dissemination by relevant employees of AIG–FP, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Index or the Dow Jones-AIG Commodity Index and (ii) agrees to periodically check the application of such procedures as they relate to personnel of AIG–FP responsible for such changes. Dow Jones has informed the Exchange that they do not have any affiliates engaged in the securities or commodities trading businesses and, as such, do not believe that such firewall procedures are necessary in its case. In addition, the Oversight Committee is subject to written policies that acknowledge their obligations with respect to material non-public information.

[15] November 16 Telephone Conference.

[16] E-mail from Sudhir C. Bhattacharyya, Assistant General Counsel, Amex, to Florence Harmon, Senior Special Counsel, Commission, dated November 17, 2006.

[17] A futures contract is an agreement that provides for the purchase and sale of a specified type and quantity of a commodity during a stated delivery month for a fixed price.

[18] November 16 Telephone Conference.

as a weighting factor helps to ensure that the Dow Jones-AIG Commodity Index can accommodate substantial investment flows. The liquidity of an index affects transaction costs associated with current investments and may also affect the reliability of historical price performance data.

Designated Contracts for Each Dow Jones-AIG Commodity Index Commodity

A futures contract, known as a Designated Contract, is selected by the Dow Jones-AIG Oversight Committee (the ''Oversight Committee'') [19] for each Dow Jones-AIG Commodity Index Commodity. The Oversight Committee was established by Dow Jones and AIGI to assist with the operation of the Dow Jones-AIG Commodity Index. The Exchange states that the Oversight Committee includes prominent members of the financial, academic and legal communities selected by AIGI and meets annually to consider any changes to be made to the Dow Jones-AIG Commodity Index for the coming year. The Oversight Committee may also meet at such other times as may be necessary.

With the exception of several LME contracts, where the Oversight Committee believes that there exists more than one futures contract with sufficient liquidity to be chosen as a Designated Contract for a Dow Jones-AIG Commodity Index Commodity, the Oversight Committee selects the futures contract that is traded in the U.S. and denominated in U.S. dollars. If more than one of those contracts exists, the Oversight Committee will select the most actively traded contract. Data concerning this Designated Contract will be used to calculate the Dow Jones-AIG Commodity Index. If a Designated Contract were to be terminated or replaced, a comparable futures contract would be selected, if available, to replace that Designated Contract.[20]

The Designated Contracts for the Dow Jones-AIG Commodity Index Commodities included in the Dow Jones-AIG Commodity Index for 2006 are traded on the LME, the CBOT, the New York Board of Trade (the ''NYBOT''), the Chicago Mercantile Exchange, Inc. (the ''CME'') and the New York Mercantile Exchange (the ''NYMEX'').[21] The particular commodities futures exchange for each futures contract with Web site information is as follows: (i) Aluminum, nickel and zinc—LME at *http://www.lme.com*; (ii) corn, soybeans, soybean oil and wheat—CBOT at *http://www.cbot.com*; (iii) live cattle and lean hogs—CME at *http://www.cme.com*; (iv) coffee and sugar—NYBOT at *http://www.nybot.com* and (v) copper, crude oil, gold, heating oil, natural gas, silver and unleaded gasoline—NYMEX at *http://www.nymex.com*. In addition, various market data vendors and financial news publications publish futures prices and data. The Exchange represents that futures quotes and last sale information for the commodities underlying the Index are widely disseminated through a variety of major market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such futures is available by subscription from Reuters and Bloomberg. The CBOT, LME and NYMEX also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites, and for a fee, will provide real-time futures data. The specific contract specifications for the futures contracts are also available from the futures exchanges on their Web sites, as well as other financial informational sources.

Annual Reweighting and Rebalancing of the Dow Jones-AIG Commodity Index.

The Dow Jones-AIG Commodity Index is reweighted and rebalanced each year in January on a price percentage basis. The annual weightings for the Dow Jones-AIG Commodity Index are determined each year in June or July by AIGI under the supervision of the Oversight Committee. The annual weightings are announced in July and implemented the following January. The weightings for 2006, as listed below, have been approved and became effective in January 2006.

The relative weightings of the component commodities included in the Dow Jones-AIG Commodity Index are determined annually according to both liquidity and dollar-adjusted production data. Each June, for each commodity designated for potential inclusion in the Dow Jones-AIG Commodity Index, liquidity is measured by the commodity liquidity percentage (the ''CLP'') and production by the commodity production percentage (the ''CPP''). The CLP for each commodity is determined by taking a five-year average of the product of the trading volume and the historic dollar value of the Designated Contract for that commodity, and dividing the result by the sum of the products for all commodities that were designated for potential inclusion in the Dow Jones-AIG Commodity Index. The CPP is determined for each commodity by taking a five-year average of annual world production figures, adjusted by the historic dollar value of the Designated Contract, and dividing the result by the sum of the production figures for all the commodities that were designated for potential inclusion in the Dow Jones-AIG Commodity Index. The CLP and CPP are then combined (using a ratio of 2:1) to establish the Commodity Dow Jones-AIG Commodity Index Percentage (the ''CIP'') for each commodity. The CIP is then adjusted in accordance with the diversification rules described below to determine the commodities to be included in the Dow Jones-AIG Commodity Index and their respective percentage weights.

To ensure that no single commodity or commodity sector dominates the Dow Jones-AIG Commodity Index, the following diversification rules are applied to the annual reweighting and rebalancing of the Dow Jones-AIG Commodity Index, as of January of the applicable year:

- No related group of commodities designated as a Commodity Group (*e.g.*, energy, precious metals, livestock or grains) may constitute more than 33% of the Dow Jones-AIG Commodity Index;
- No single commodity may constitute more than 15% of the Dow Jones-AIG Commodity Index;
- No single commodity, together with its derivatives (*e.g.*, crude oil, together with heating oil and unleaded gasoline), may constitute more than 25% of the Dow Jones-AIG Commodity Index; and
- No single commodity in the Dow Jones-AIG Commodity Index may constitute less than 2% of the Dow Jones-AIG Commodity Index.

Following the annual reweighting and rebalancing of the Dow Jones-AIG Commodity Index in January, the percentage of any single commodity or group of commodities at any time prior to the next reweighting or rebalancing

[19] The Exchange has been informed by Merrill Lynch that none of the members of the Oversight Committee are officers, directors or employees of Merrill Lynch.

[20] The Oversight Committee may exclude any otherwise eligible contract from the Dow Jones-AIG Commodity Index if it determines that it has an inadequate trading window. The Dow Jones-AIG Commodity Index currently includes contracts traded on the London Metal Exchange (''LME''), which is located in London. During the hours where the LME is closed, Dow Jones uses the last price and uses the settlement price once it is available in order to publish the Dow Jones-AIG Commodity Index value through the end of the trading day. The Dow Jones-AIG Commodity Index value does not reflect any after-hours or overnight trading in contracts traded on the LME.

[21] November 16 Telephone Conference (confirming designated contracts for 2005 and 2006 are traded on same exchanges).

will fluctuate and may exceed or be less than the percentage set forth above.[22]

Following application of the diversification rules discussed above, CIPs are incorporated into the Dow Jones-AIG Commodity Index by calculating the new unit weights for each Dow Jones-AIG Commodity Index commodity. Near the beginning of each new calendar year (the ''CIM Determination Date''), the CIPs, along with the settlement prices on that date for Designated Contracts included in the Dow Jones-AIG Commodity Index, are used to determine a Commodity Index Multiplier (''CIM'') for each Dow Jones-AIG Commodity Index commodity. This CIM is used to achieve the percentage weightings of the Dow Jones-AIG Commodity Index commodities, in dollar terms, indicated by their respective CIPs. After the CIMs are calculated, they remain fixed throughout the year. As a result, the observed price percentage of each Dow Jones-AIG Commodity Index commodity will float throughout the year, until the CIMs are reset the following year based on new CIPs.

To avoid delivering the underlying physical commodities and to maintain exposure to the underlying physical commodities, periodically futures contracts on physical commodities specifying delivery on a nearby date must be sold and futures contracts on physical commodities that have not yet reached the delivery period must be purchased. The rollover for each contract occurs over a period of five DJ-AIG Business Days[23] each month according to a pre-determined schedule. This process is known as ''rolling'' a futures position. The Dow Jones-AIG Commodity Index is a ''rolling index.''

The Dow Jones AIG-Commodity Index is calculated by Dow Jones by applying the impact of the changes to the futures prices of commodities included in the Dow Jones-AIG Commodity Index (based on the commodities' relative weightings). Once the CIMs are determined as discussed above, the calculation of the Dow Jones-AIG Commodity Index is a mathematical process whereby the CIMs for the Dow Jones-AIG Commodity Index commodities are multiplied by the daily settlement prices in U.S. dollars for the applicable Designated Contracts. These products are then summed. During the rollover period, the sum includes both nearby and deferred contracts weighted according to the specified roll percentage. The percentage change in this sum from the prior day is then applied to the prior Dow Jones-AIG Commodity Index value. Finally, the value of one day's interest is added, calculated using the most recent (lagged by one day) 91-Day U.S. Treasury Bill Auction High Rate to arrive at the current Dow Jones-AIG Commodity Index value.

Dow Jones-AIG Commodity Index Calculation Disruption Events.

From time to time, the Exchange states that disruptions can occur in trading futures contracts on various commodity futures exchanges. The daily calculation of the Dow Jones-AIG Commodity Index and the Index will be adjusted in the event that AIGI determines that any of the following index calculation disruption events exists: (i) The termination or suspension of, or material limitation or disruption in the trading of any futures contract used in the calculation of the Dow Jones-AIG Commodity Index on that day; (ii) the settlement price of any futures contract used in the calculation of the Dow Jones-AIG Commodity Index reflects the maximum permitted price change from the previous day's settlement price; (iii) the failure of an exchange to publish official settlement prices for any futures contract used in the calculation of the Dow Jones-AIG Commodity Index; or (iv) with respect to any futures contract used in the calculation of the Dow Jones-AIG Commodity Index that trades on the LME, a business day on which the LME is not open for trading. In the case of a temporary disruption in connection with the trading of the futures contracts of the commodities comprising the Index, the Exchange believes that it is unnecessary for a filing pursuant to Section 19(b) under the Act[24] to be submitted to the Commission. The Exchange submits that for a temporary disruption of said futures contracts, AIGI will typically use the prior day's price for an Index commodity or commodities. In exceptional cases, AIGI may employ a ''fair value'' price. However, the Exchange represents that if the use of a prior day's price or ''fair value'' pricing for an Index commodity or commodities is more than of a temporary nature, a rule filing will be submitted pursuant to Section 19(b) of the Act[25] seeking approval to continue trading the Notes. Unless such approval is received, the Exchange will commence delisting the Notes.

Exchange Rules Applicable to the Notes

The Notes are cash-settled in U.S. dollars and do not give the holder any right or other ownership interest in the Index or commodities comprising the Index. The Notes are designed for investors who desire to participate in, or gain exposure to, an index composed of a basket of actively-traded commodities, are willing to hold the investment to maturity, and who want to limit risk exposure by receiving principal protection of their investment amount.

The Notes will trade as equity securities subject to the Amex equity trading rules including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening, and customer suitability requirements. In addition, the Notes will be subject to the equity margin rules of the Exchange.[26] The Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (i) To determine that such transaction is suitable for the customer, and (ii) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Merrill Lynch will deliver a prospectus in connection with the initial sales of the Notes. The circular will also reference that the Commission has no jurisdiction over the trading of the physical commodities or the futures contracts or on such commodities upon which the value of the Notes is based.[27]

[22] The Exchange represents and clarifies that the weightings of the components of the DJAIG ExEnergy Index are determined in conjunction with the annual reweighting and rebalancing of the Dow Jones-AIG Commodity Index by assigning weightings of zero to the energy commodities included in the Dow Jones-AIG Commodity Index and proportionally increasing the weightings of the remaining commodities. For example, assume the Dow Jones-AIG Commodity Index includes five equally weighted (20%) commodities, including an energy commodity. If the energy component were assigned a weight of 0%, the weightings of the remaining four non-energy components comprising the DJAIG ExEnergy Index would be increased pro rata and assigned equal weightings of 25%.

[23] A DJ–AIG Business Day (''DJ–AIG Business Day'') is a day on which the sum of the CIPs for the Dow Jones-AIG Commodity Index commodities that are available to trade is greater than 50%.

[24] 15 U.S.C. 78s(b).

[25] *Id.*

[26] *See* Amex Rule 462.

[27] November 16 Telephone Conference.

Criteria for Initial and Continued Listing

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[28] The Exchange also has a general policy that prohibits the distribution of material, non-public information by its employees. The Notes will be subject to the criteria in Section 107D of the Company Guide for initial and continued listing. The continued listing criteria provides for the delisting or removal from listing of the Notes under any of the following circumstances:

- If the aggregate market value or the principal amount of the Notes publicly held is less than $400,000;
- If the value of the Index is no longer calculated or widely disseminated by a major market data vendor on at least a 15-second basis during the time the Notes trade on the Exchange; or
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Additionally, the Exchange represents that it will file a proposed rule change pursuant to Rule 19b–4 under the Act,[29] seeking approval to continue trading the Notes and unless approved, the Exchange will commence delisting the Notes if:

- Dow Jones and AIG–FP substantially change either the index component selection methodology or the weighting methodology;
- If a new component is added to the Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement; or
- If a successor or substitute index is used in connection with the Notes. The filing will address, among other things the listing and trading characteristics of the successor or substitute index and the Exchange's surveillance procedures applicable thereto.

Trading Halts

The Exchange will halt trading in the Notes if the circuit breaker parameters of Exchange Rule 117 have been reached. In exercising its discretion to halt or suspend trading in the Notes, the Exchange may consider factors such as those set forth in Exchange Rule 918C(b), in addition to other factors that may be relevant. In particular, if the Dow Jones-AIG Commodity Index value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Dow Jones-AIG Commodity Index value occurs. If the interruption to the dissemination of the Dow Jones-AIG Commodity Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[30]

Specialist Prohibitions

The Exchange submits that current Rule 1203A will be applicable to the Notes. In connection with the Notes, Rule 1203A provides that the prohibitions in Rule 175(c) apply to a specialist in the Notes, so that the specialist or affiliated person may not act or function as a market maker in the underlying commodities, related futures contracts or options, or any other related commodity derivative. Consistent with Rule 193, an affiliated person of the specialist may be afforded an exemption to act in a market making capacity, other than as a specialist in the Notes on another market center, in the underlying commodities, related futures or options, or any other related commodity derivative. In particular, Rule 1203A provides that an approved person of the specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Notes on another market center, in the underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

Additionally, the Exchange further submits that Rule 1204A will be applicable to the Notes. Rule 1204A was adopted to ensure that specialists provide the Exchange with all the necessary information relating to their trading in physical commodities and related futures contracts and options thereon or any other related commodities derivative. This Rule further reminds members that, in connection with trading the physical asset or commodities, futures or options on futures, or any other related derivatives, the use of material, non-public information received from any person associated with a member, member organization or employee of such person regarding trading by such person or employee in the physical asset or commodities, futures or options on futures, or any other related derivatives is prohibited by the Exchange.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing exchange-traded funds, trust issued receipts (including the iShares Comex Gold Trust, streetTRACKS Gold Trust and DB Commodity Index Tracking Fund) and index-linked securities.[31] With regard to the Index Components, the Exchange currently has in place a comprehensive surveillance sharing arrangement with the NYMEX and the LME, for the purpose of providing information in connection with trading in or related to futures contracts traded on their respective exchanges comprising the Index. The Exchange also notes that the CBOT, CME, and NYBOT are members of the Intermarket Surveillance Group (''ISG''). As a result, the Exchange asserts that it can obtain market surveillance information, including customer identity information, from the CBOT, CME, LME, NYBOT, and NYMEX, if necessary, due to regulatory concerns that may arise in connection with the futures contracts.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[32] in general, and furthers the objectives of Section 6(b)(5) of the Act,[33] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[28] *See* Rule 10A–3(c)(1), 17 CFR 240.10A–3(c)(1).

[29] 17 CFR 240.19b–4.

[30] November 16 Telephone Conference. The Exchange deleted inconsistent language regarding trading halts.

[31] The Commission requested, and the Exchange agreed, to remove the phrase ''which have been deemed adequate under the Act'' at the end of this sentence. November 16 Telephone Conference.

[32] 15 U.S.C. 78f.

[33] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–01 and should be submitted on or before December 18, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[34] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[35] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

A. Surveillance

Information sharing agreements with primary markets are an important part of a self-regulatory organization's ability to monitor for trading abuses with respect to derivative securities. The Commission believes that Amex's comprehensive surveillance sharing agreements with the NYMEX and the LME for the purpose of providing information in connection with the Notes create the basis for Amex to monitor for fraudulent and manipulative practices in the trading of the Notes.

Moreover, Amex Rules, including Rule 1204A, give Amex the authority to request information to monitor for fraudulent and manipulative trading facilities. The Commission believes that these rules provide the Amex with the tools necessary to adequately surveil trading in the Notes.

B. Dissemination of Information

The Commission believes that sufficient venues for obtaining reliable information exist so that investors in the Notes can monitor the underlying Index Components, the Dow Jones-AIG Commodity Index, and the Index. There is a considerable amount of information about the Index Components, the Dow Jones-AIG Commodity Index, and the Index available through public Web sites, and real time intraday prices and daily closing prices for the Index Components are available by subscription from major market vendors.

The Commission notes that the amount paid at maturity, per Note, will be based on the percentage change or performance of the Index over the term of the Note. As more specifically described herein, the amount paid at maturity, per Note, will consist of at least 100% of the Principal Amount, plus a Supplemental Redemption Amount, but it will never be less than the Principal Amount.

The Commission believes that the wide availability of such information will facilitate transparency and reduce the potential of unfair informational advantage with respect to the Notes and, when coupled with the principal-protected nature of the Notes, will diminish the risk of manipulation.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the Notes are consistent with the Act. The Notes will trade as equity securities subject to the Amex equity trading rules including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening, and customer suitability requirements. In addition, the Notes will be subject to the equity margin rules of the Exchange, set forth in Amex Rule 462. The Commission believes that the listing and delisting criteria for the Notes should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Notes.

The Commission notes that prior to trading the Notes, Amex will distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities and highlighting the special risks and characteristics of the Notes. Specifically, the Exchange will require those recommending a transaction in the Notes to determine that such transaction is suitable for the customer, and to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and bear the financial risks of, such transaction. The Commission believes that the information circular will inform members about the terms, characteristics and risks in trading the Notes.

D. Accelerated Approval

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the **Federal Register**. The Commission notes that this principal protected product is similar to other products already

[34] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[35] 15 U.S.C. 78f(b)(5).

approved by the Commission.[36] Therefore, accelerating approval of this proposed rule change should benefit investors who desire to participate in an index composed of a basket of actively-traded commodities, who are willing to hold the investment to maturity, and who want to limit risk exposure, by creating, without undue delay, opportunities for such investments.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change, as amended (SR–Amex–2006–01), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19978 Filed 11–24–06; 8:45 am]

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[36] *See e.g.,* Securities Exchange Act Release No. 54731 (November 9, 2006), 71 FR 66814 (notice and order granting accelerated approval to the New York Stock Exchange LLC to list and trade two series of principal protected, commodity-linked securities); Securities Exchange Act Release No. 54033 (June 22, 2006), 71 FR 37131 (June 29, 2006) (order approving the listing and trading of principal protected notes linked to the Metals-China basket on Amex).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54777; File No. SR–Amex–2006–89]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Establish Fees for the Receipt and Use of Proprietary Market Data Disseminated by the Exchange

November 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 15, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Amex Fees Schedule to establish fees for the receipt and use of proprietary market data disseminated by the Exchange. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at Amex's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Through the new Auction and Electronic Market Integration trading platform (known as AEMI), the Exchange's hybrid trading system, the Exchange plans to make available for dissemination on a real-time basis[4] a compilation of all visible limit orders resident in the AEMI central limit order book (''AEMI Depth of Book''). The Exchange proposes that AEMI Depth of Book information be made available to market data vendors, broker-dealers, private network providers, and other entities by means of data feeds. The Exchange believes that, by making the AEMI Depth of Book available, the Exchange would be enhancing market transparency and fostering competition among orders and markets. With the adoption of Regulation NMS, the Commission rescinded ''the prohibition on SROs and their members from disseminating their trade reports independently.'' The Commission requires such dissemination to be fair, reasonable and not unreasonably discriminatory. The Exchange believes that the Exchange's data distribution and proposed fees would be consistent with these standards and reflect an equitable allocation of the Exchange's overall costs to users of its facilities.

The Exchange proposes to establish the Market Data Fee Schedule for the receipt and use of various forms of Amex market data. The Market Data Fee Schedule being proposed is limited to market data for equities and exchange-traded fund shares (''ETFs'') trading on the AEMI system. Amex plans to implement use of the AEMI system over a period of time, commencing with four products. The Exchange will monitor the operation of AEMI and will deploy additional products when appropriate. It is anticipated that all equity and ETF products will be trading on AEMI prior to the implementation of Regulation NMS in February 2007. The Exchange would begin charging for the AEMI Depth of Book data once all products are trading on the AEMI system and the market data is available for all products. When AEMI is expanded to other product lines, such as options, the Exchange may further amend its fee schedule to include fees for the receipt and use of Amex market data for those products. As the Market Data Fee Schedule details, the Exchange is proposing to assess data access fees and professional and nonprofessional device fees for the AEMI Depth of Book. The Exchange states that these categories of fees are consistent with fees the New York Stock Exchange's (''NYSE'') charges for the receipt and use of their market data through the NYSE OpenBook[5] and the fees proposed to be charged for the NYSE Arca, Inc.'s (''NYSE Arca'') ArcaBook.[6]

• *Data Access Fees. Direct Access.*—The Exchange proposes to impose a monthly fee of $2,000 for a data recipient to gain direct access to the data feeds through which the Exchange makes AEMI market data available.

• *Indirect Access.*—The Exchange proposes to impose a monthly fee of $1,500 for a data recipient to gain indirect access to the data feeds through which the Exchange makes AEMI market data available. ''Indirect access'' refers to access to an AEMI market data

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the original filing in its entirety.

[4] It should be noted that the Exchange makes available to vendors the best bids and offers that are included in the AEMI limit order book data no earlier than it makes those best bids and offers available to the processors under the CQ Plan and the Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis (the ''UTP Plan'').

[5] NYSE OpenBook provides information relating to limit orders.

[6] The ArcaBook provides a compilation of all limit orders resident in the NYSE Arca limit order book. *See* Securities Exchange Act Release No. 53952 (June 7, 2006), 71 FR 33496 (June 9, 2006) (notice of filing of proposed rule change for SR–NYSEArca–2006–21).

feed indirectly through one or more intermediaries, rather than by means of a direct connection or linkage with the Exchange's facilities.

The Exchange believes that these Data Access Fees compare favorably with fees charged by other exchanges for similar products. For example, NYSE charges $5,000 per month for direct and indirect access to NYSE OpenBook. While NYSE Arca proposes to charge only $750 per month for direct access to ArcaBook, that access is limited to four ''Logons.'' Amex does not propose to place any limitation on the number of ''Logons.''

• *Device Fees.*—The Exchange proposes to establish device fees for professional and nonprofessional subscribers for the display of AEMI Depth of Book. In differentiating between professional and nonprofessional subscribers, the Exchange proposes to apply the same criteria for nonprofessional qualification as used by the CTA and CQ Plan Participants.

a. Professional Subscribers. For professional subscribers, the Exchange is proposing to establish a monthly fee of $20 per device for the receipt of AEMI Depth of Book data relating to all securities traded on AEMI. The Exchange believes this fee compares favorably with fees charged by other exchanges for similar products. For example, for professional subscribers, Nasdaq charges $76 for its combined TotalView [7] and OpenView [8] products and NYSE charges $60 for NYSE OpenBook.[9] In addition, NYSE Arca proposes to charge a combined monthly professional subscriber device fee of $30 for receipt of ArcaBook data.[10]

b. Nonprofessional subscribers. For nonprofessional subscribers, the Exchange is proposing to reduce those monthly fees to $10 per device for the receipt of AEMI Depth of Book data for securities traded on AEMI. NYSE Arca proposes to charge a combined monthly nonprofessional subscriber device fee of $10 for receipt of ArcaBook data.[11]

The Exchange would require each recipient of a data feed containing AEMI market data to enter into the form of ''vendor'' agreement into which the CTA and CQ Plans require recipients of the Network B data feeds to enter. The agreement would authorize the data feed recipient to provide AEMI Market Data services to its customers or to distribute the data internally.

In addition, the Exchange would require each professional end-user that receives AEMI market data displays from a vendor or broker-dealer to enter into the form of professional subscriber agreement into which the CTA and CQ Plans require end users of Network B data to enter into. The Exchange would also require vendors and broker-dealers to subject nonprofessional subscribers to the same contract requirements as the CTA and CQ Plan Participants require of Network B nonprofessional subscribers.

The Exchange proposes to provide its market data under the same contracts that the CTA and CQ Plans use since those contracts are drafted as generic, one-size-fits-all agreements and explicitly apply to the receipt and use of certain market data that individual exchanges make available in the same way as they apply to data made available under the CTA and CQ Plans. According to the Exchange, no amendments to those contracts are needed to cause them to govern the receipt and use of the Exchange's market data. Moreover, the Exchange is not imposing restrictions on the use or display of the AEMI market data beyond those set forth under these preexisting agreements.

The Exchange believes that the proposed market data fees would reflect an equitable allocation of its overall costs to users of its facilities. As described above, the Exchange believes that the fees are fair and reasonable because they compare favorably to fees that other markets charge for similar products.

2. Statutory Basis [12]

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[13] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act [14] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act, [15] which requires that the rules an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[7] Through TotalView, Nasdaq provides information relating to the displayed quotes and orders of Nasdaq participants in UTP Plan Securities. TotalView displays quotes and orders at multiple prices and is similar to AEMI Depth of Book.

[8] Through OpenView, Nasdaq provides information relating to the displayed quotes and orders of Nasdaq participants in CTA Plan Securities. OpenView displays quotes and orders at multiple prices and is similar to AEMI Depth of Book.

[9] Through NYSE OpenBook, NYSE provides information relating to limit orders.

[10] *See* Securities Exchange Act Release No. 53952 (June 7, 2006), 71 FR 33496 (June 9, 2006) (notice of filing of proposed rule change for SR–NYSEArca–2006–21).

[11] *See id.*

[12] *See* E-mail to David Hsu, Special Counsel, Division of Market Regulation, Commission, from Claire McGrath, Senior Vice President and General Counsel, Amex, dated November 17, 2006 (clarifying the statutory basis of the proposed rule change).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2006–89 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-Amex-2006–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–89 and should be submitted on or before December 18, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54789; File No. SR–BSE–2006–49]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Implement a Pilot Program To Trade Certain Options in Pennies

November 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 17, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Boston Options Exchange (''BOX'') Rules to reflect BOX's participation in a six-month Penny Pilot Program, which will commence on January 26, 2007. The text of the proposed rule change is available on the BSE's Web site at *http://www.bostonstock.com,* at the Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the BOX Rules to reflect BOX's participation in a six-month Penny Pilot Program, which will commence on January 26, 2007. The Exchange proposes to amend Section 6 (''Minimum Trading Increments'') and to add a new section, Section 33, (''Penny Pilot Program'') to Chapter V (''Doing Business on BOX'') of the BOX Rules.

All six options exchanges, including BOX, currently quote options in nickel and dime increments. Once the Penny Pilot Program commences in January, investors will be able to begin quoting in pennies in a limited number of option classes. The thirteen (13) classes represented in the Penny Pilot Program include: IWM (Ishares Russell 2000), QQQQ (NASDAQ–100 Index Tracking Stock), SMH (Semiconductor Holders), GE (General Electric), AMD (Advanced Micro Devices), MSFT (Microsoft), INTC (Intel), CAT (Caterpillar), WFMI (Whole Foods), TXN (Texas Instruments), FLEX (Flextronics International), and SUNW (Sun Microsystems).[3] These classes represent a diverse group of options with various trading characteristics. This diversity will allow for broad-based reporting, which will enable analysis on the impact of penny quoting on options with different volumes, liquidity, and strike prices.

All classes contained in the Penny Pilot Program, except for the QQQQs will be quoted in the following manner: If the options contract trades below $3, one (1) cent; and if the options contract trades at $3 or above, five (5) cents. The QQQQs will be quoted in one (1) cent increments for all options series. The Exchange believes that this change in minimum increments should help investors by providing more competitive pricing, reducing payment for order flow, reducing costs, and tightening spreads.

BOX will deliver a report, which will be comprised of data from the first three months of trading, to the Commission during the fourth month of the pilot. The report will detail the impact of quote updating to the Options Price Reporting Authority (''OPRA''), the effect the Penny Pilot Program has on price improvement, and data on average spreads. BOX anticipates that this report will be used in conjunction with the reports from the other five exchanges to analyze the impact that the penny quoting would have on the options industry.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange understands that another options class will be added to the Penny Pilot Program to bring the total number of classes in the Penny Pilot Program to thirteen. Telephone Conversation between Lisa J. Fall, General Counsel, BOX, and Johnna B. Dumler, Special Counsel, Division of Market Regulation, Commission, on November 20, 2006.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that the proposed rule change is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml;* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BSE–2006–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BSE–2006–49. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BSE–2006–49 and should be submitted on or before December 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19979 Filed 11–24–06; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54779; File No. SR–BSE–2006–48]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Implement a Quote Mitigation Plan

November 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Boston Options Exchange (''BOX'') Rules to add a Quote Mitigation Plan. The text of the proposed rule change is available on the BSE's Web site at *http://www.bostonstock.com*, at the BSE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background and Introduction

The U.S. options industry has witnessed an explosion in market broadcast data traffic over the past six

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

years due to a number of factors, including, but not limited to:

• Automation of the quote updating mechanisms used by market makers and specialists;

• Two additional, fully automated exchanges;

• Opening of access to market making status at several exchanges, resulting in multiple ''quote streamers'' versus the previous environment where essentially only one market maker, the ''specialist'', was able to electronically stream quote updates into the exchange trading systems; and

• Proliferation of additional options instruments due to additional options classes and narrower intervals between strike prices (''dollar pilot'').

While the trends which have caused the dramatic increase in options market data traffic have been to the benefit of the investor in terms of improved market quality due to increased competition on the liquidity provider side of the market, they are not without costs. Specifically, according to the Exchange, the Order Flow Providers (''OFPs'') and market data vendors find it increasingly difficult to provide real-time and accurate market data to investors without contemplating significant increases in the costs to the end users (either in the form of higher rates in the case of the data vendors or higher commissions in the case of the OFPs). It is common belief that this trend will be exacerbated by the implementation of the ''penny pilot program'' in January 2007.

Many observers feel that a point of diminishing returns has been reached where the marginal extra cost of yet more traffic is not justified in terms of improved market quality or information to the investor. Allowing for different levels of service whereby the end user would pay for the level of market data he wished to receive (*e.g.* a user wanting real-time, across the board data would pay more than a user who only required market data refreshing at, say, half-second intervals) has been rejected by the industry as presenting an ''unlevel playing field'' which would ultimately be to the detriment of the private investor. Furthermore, there are ''firm quote obligations'' that each exchange must take into account in any strategy it used to reduce traffic.

Quote Mitigation

The Exchange believes it is possible to significantly reduce overall peak market data traffic with a relatively small impact on the quality of information available to options market users, due to the following:

• *Diminishing Returns of Speed:* ''Timeliness'' of quote updates does indeed have a point of diminishing returns and it is likely that, so long as all options traders and investors are receiving information at the same rate of ''delay'' from pure ''real time'', they are willing to allow similar information to be ''bundled'' and broadcast with a reasonable delay. For example, a series with ten market makers, all of whom are at the same price on the bid and the offer, and who, in response to information on the underlying security's price, wish to update their markets to the same new prices (an admittedly simplistic assumption) can be managed by simply bundling some of the updates so long as the ''slowest'' message due to this bundling is no higher than an agreed upon lapse. Using this approach, what would have been ten individual updates may be reduced to one update, a reduction of 90%.

• *All Series Are Not of Equal Interest to Investors:* BOX presently lists slightly fewer than 500 options classes represented by 80–85,000 different instruments. Market Makers have an obligation to provide continuous two way markets on virtually all of them, representing a staggering amount of update traffic if markets are turbulent. However, not all of these instruments are of ''equal interest'' to options investors. Indeed trading volume tends to concentrate on a relatively small percentage of the overall universe of instruments; arguably, investors and traders are quite willing to tolerate reasonable update delays in those instruments deemed to be of lesser interest. For example, over 25% of all series cleared by the Options Clearing Corporation (''OCC'') have open interest below 100 contracts, a reasonable indication that the updates concerning over one-quarter of the marketplace are of minimal interest.

• *Certain Updates Are More ''Interesting'' Than Others:* There are three types of updates:

a. Those that represent a change in price at the top of the book;

b. Those that represent an increase in quantity at the same price at the top of the book; and

c. Those that represent a decrease in quantity at the same price at the top of the book.

Investors are likely in many cases to tolerate delays in (b) over delays in (c) and consider short delays in (a) to be most important of the three.

• *Reducing Traffic ''Peaks'' Is More Important Than Reducing Overall Quote Update Traffic:* The costs of Data Vendors and Order Flow firms providing market data services to their customers are more sensitive to the requirements of managing peak [3] traffic than they are to processing ''normal'' traffic. This is true of most technology services since systems generally must be built to manage the ''worst'', though they will be, by definition, significantly underutilized over the trading day as a result. In other words, the costs of managing industry traffic will not be significantly reduced if mitigation only reduces overall traffic. Arguably, the biggest ''bang for the buck'' is in decreasing peak traffic levels. While the bundling algorithm proposed by BOX is likely to be more ''efficient'' (that is, result in a proportionally greater reduction of traffic) during busier moments like peaks, BOX intends to bundle some of its traffic all of the time, since the open interest threshold will be set no lower than 50 contracts and the bundling lapse at no lower than 200 milliseconds.

BOX Proposal

BOX believes there are optimal compromises and the accompanying rule proposal for ''quote mitigation'' addresses this in the following manner:

• Rather than adopt an arbitrary definition of which instruments are considered to be ''less interesting,'' BOX proposes to ''let the market decide'' by basing this on the open interest in contracts at the OCC for each instrument. Clearly those series with lower open interest are likely to be of less interest to options traders and investors. The precise threshold of open interest which will determine whether the broadcast of a series is subject to mitigation or not will vary according to the degree BOX is meeting its stated goals of reducing overall traffic. It is anticipated that this threshold could be as high as 300 to 400 contracts, but that it will be no lower than 50 contracts. BOX does not propose to apply mitigation to instruments which have been listed for fewer than ten trading sessions, regardless of the open interest.

• BOX will ''bundle'' at intervals of up to 1,000 milliseconds (and no less than 200 milliseconds) any changes to its broadcast for those instruments which have fallen below the threshold in the previous point.

[3] There are many definitions of ''peaks''; it is not necessary to agree on a precise definition here in order to understand the goals. A peak may be defined as either the ''N'' busiest seconds over the trading session of roughly 23,000 seconds (where ''N'' is likely equal to 100 or fewer or it may be defined as ''those seconds where traffic is ''N'' times greater than the average over the 23,000 seconds of the trading session and ''N'' is set to perhaps 3. The point is that the peaks are the exceptional levels that drive the scaling and, therefore, the costs, of the data broadcast systems.

• BOX will use variable rates of ''bundling'' delays for the three different types of broadcast updates: changes in price, increases in quantity without a change in price, and decreases in quantity without a change in price. Under this proposal, changes in prices may be subject to less delay than changes to quantity at same price. For example, BOX may apply a ''bundling interval'' of 400 milliseconds to updates regarding a price change while using a figure of 1,000 milliseconds for updates concerning only a change in quantity at the same price. The appropriate mix will be determined by the relative success BOX is meeting in its overall goals of traffic reduction.

The Exchange does not propose to apply the above-described bundling to traffic relating to price improvement auctions or NBBO exposure mechanisms, nor to trade reporting messages. Furthermore, no bundling of quotes is proposed for inbound orders and quotes which are sent to BOX by users; messaging will only be bundled for outbound updates.

The Exchange believes this proposal is an optimal trade-off between costs and benefits and that it is fully compliant with its firm quote obligations. The Exchange further believes that the proposed rule is designed to provide the Exchange with a quote mitigation plan which will significantly reduce overall peak market data traffic with a relatively small impact on the quality of information available to options market users.

• BOX's target reduction in outbound peak traffic is 15% to 20% of what the traffic would have been had no mitigation been applied.

• Reduction in overall traffic, as opposed to peaks, will be lower, but still significant, with a target of 8% to 10%.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or

• Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–BSE–2006–48 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BSE–2006–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BSE–2006–48 and should be submitted on or before December 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19983 Filed 11–24–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54771; File No. SR–CBOE–2006–88]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change To Codify a Fee Schedule for the Sale of Open and Close Volume Data on CBOE Listed Options by Market Data Express, LLC

November 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to codify a fee schedule for the sale of open and close volume data on CBOE listed options by Market Data Express, LLC (''MDX''), a wholly-owned subsidiary of CBOE. The text of the proposed rule change is available on the CBOE's Web site (*http://www.cboe.com*), the Office of the Secretary, CBOE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE creates volume data for each CBOE listed option that consists of opening buys and opening sells and closing buys and closing sells.[3] This opening and closing position data is subdivided by origin code (*i.e.,* customer or firm) and the customer data is further subdivided by order size. The volume data is summarized by day and series (symbol, expiration date, strike price, call or put). This volume data is referred to herein as the ''Open/Close Data.''

MDX offers the Open/Close Data for sale to CBOE members and non-members. The fees that MDX assesses for the Open/Close Data are set forth in the Price List on MDX's Web site. Members and non-members are charged the same fees for the Open/Close Data.

Under the proposal, customers may purchase Open/Close Data on a subscription basis or by ad hoc request. Daily Open/Close Data covering all CBOE securities would be available for purchase by subscribing to the Daily Update service at a cost of $600 per month. Subscribers to the Daily Update service would receive a daily data file via download from MDX's Web site. Historical Open/Close Data covering all CBOE securities may be purchased on an ad hoc request basis and is delivered via DVD. The charge for Historical Open/Close Data covering all CBOE securities would be $7,200 per year for requests for one to four years of data. Requests for five or more years of Historical Open/Close Data would receive a 50% discount beginning with the fifth year of data (*i.e.,* MDX charges $7,200 for each of the first four years of data and $3,600 for year five and each subsequent year of data).

Alternatively, a customer may purchase Historical Open/Close Data on an individual CBOE security at a cost of $4.50 per security per month. This data would be available via download form MDX's Web site. A 50% discount would be applied for requests for ten or more years of data, beginning with the tenth year of data.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and issuers and other persons using its facilities. The Open/Close Data is summarized and formatted by MDX in such a way that it increases its usability and value. In order to develop the Open/Close Data, MDX had to develop at significant expense a separate and more detailed system than the system MDX uses to generate its options summary data. The Exchange took these development costs into account when setting the proposed fees for the Open/Close Data. The Exchange is not aware of any data product offered by another exchange that is similar to the Open/Close Data product.[6] While there is no direct comparison to another exchange's product, the Exchange believes the proposed Open/Close Data fees are fair and reasonable in that the fees are less than the fees charged by another exchange for data that is not summarized and formatted in the way the Open/Close Data is.[7] The Exchange also believes the proposed MDX fees are consistent with Rule 603 under the Act (*Distribution, Consolidation, and Display of Information with Respect to Quotations for and Transaction in NMS Stocks*)[8] in that the fees are fair and reasonable and not unreasonably discriminatory. Members and non-members pay the same fees for the Open/Close Data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2006–88 on the subject line.

[3] An opening buy is a transaction that creates or increases a long position and an opening sell is a transaction that creates or increases a short position. A closing buy is a transaction made to close out a position. A closing sell is a transaction to reduce or eliminate a long position.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] The Exchange believes the Options Clearing Corporation provides free of charge gross contract volume by class and by origin code only.

[7] *See* Securities Exchange Act Release No. 53212 (February 2, 2006), 71 FR 6803 (February 9, 2006) (SR–ISE–2006–07) and Securities Exchange Act Release No. 53390 (February 28, 2006), 71 FR 11457 (March 7, 2006) (SR–ISE–2006–08).

[8] 17 CFR 242.603.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–88 and should be submitted on or before December 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19976 Filed 11–24–06; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54792; File No. SR–CBOE–2006–96]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding Allocation of Stocks to CBSX DPMs

November 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 20, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submits this rule change filing to modify its rules relating to the allocation of stocks for the Exchange's proposed stock-trading facility, CBSX. The text of the proposed rule change is set forth below. Additions are in *italics;* deletions are in [brackets].

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

RULE 53.54. [Conditions on the] Allocation of Securities to [STOC] *CBSX* DPMs

(a) CBSX [The STOC DPM Committee] may establish [(i) restrictions applicable to all STOC DPMs on the concentration of securities allocable to a single STOC DPM and to affiliated STOC DPMs and (ii)] minimum eligibility standards applicable to all [STOC] *CBSX* DPMs which must be satisfied in order for a [STOC] *CBSX* DPM to receive allocations of securities, including but not limited to standards relating to adequacy of capital and number of personnel.

(b) CBSX shall determine, for each security in which CBSX begins trading, which CBSX DPM should be allocated such security. Factors to be considered in making such determinations may include, but are not limited to, any one or more of the following: Performance, volume, capacity, market performance commitments, operational factors, efficiency, competitiveness, expressed preferences of issuers, and the best interest of CBSX. Alternatively, in instances where multiple securities are being allocated at one time, CBSX may allocate such securities utilizing a draft where the draft selection order for the eligible CBSX DPMs is determined randomly by CBSX.

(c) Prior to the commencement of trading on CBSX, all securities that will initially trade on CBSX (pursuant to a rollout schedule determined by CBSX) shall be allocated as follows:

(1) CBSX will randomly set a draft rotation for all CBSX DPMs.

(2) The top 500 securities (based on a twelve-month average daily volume) will be selected by the DPMs (one by one) in the established rotation order.

(3) Any additional securities selected by CBSX to initially trade on CBSX shall be allocated equally among the CBSX DPMs in a random fashion by CBSX.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In September 2006, the Commission approved Exchange Chapters 50–55 governing the trading of non-option securities on the Exchange.[3] The Exchange, via a separate rule filing, will be proposing to further modify Chapters 50–55 in connection with the establishment of the CBOE Stock Exchange (''CBSX''). CBSX will be a facility of the Exchange and will serve as the Exchange's vehicle for trading non-option securities. CBSX would be a separate legal entity (a Delaware Limited Liability Company) that is owned by the Exchange and several strategic partners. The Exchange is also submitting rule filings proposing to establish CBSX as a facility of the Exchange and proposing to allow CBSX to appoint CBSX DPMs. The purpose of this filing is to adopt rules that would allow for the allocation of stocks to CBSX DPMs (the Exchange expects that the filing allowing appointment of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (approving SR–CBOE–2004–21). *See also* Securities Exchange Act Release No. 54526 (September 27, 2006), 71 FR 58646 (October 4, 2006) (approving SR–CBOE–2006–70).

CBSX DPMs will become effective prior to approval of this filing). Any such appointments and allocations would be contingent on Commission approval of rules governing CBSX DPM trading procedures and obligations.

Initial CBSX DPM stock allocations would be handled pursuant to proposed modified CBOE Rule 53.54. For the initial launch, and potentially in instances where CBSX seeks to commence trading a number of new securities at one time, CBSX would conduct a ''draft'' for eligible CBSX DPMs to select available stocks. The draft order would be determined randomly. In connection with the initial launch, the draft would only apply to the first 500 securities selected.[4] After that point, all of the remaining securities slated for trading on CBSX would be allocated randomly by CBSX to the CBSX DPMs equally.

CBSX would utilize proposed CBOE Rule 53.54 for future stock allocations as well. In those cases, a draft could be employed or CBSX could allocate the stocks based on any one or more of the following: Performance, volume, capacity, market performance commitments, operational factors, efficiency, competitiveness, expressed preferences of issuers, and the best interest of CBSX.

The ability to allocate stocks to CBSX DPMs ahead of the launch of the CBSX facility would allow the Exchange and the CBSX DPM firms to be prepared to commence trading on CBSX immediately upon approval of CBSX trading rules and pursuant to a robust rollout schedule. The Exchange seeks to launch the CBSX facility on February 5, 2007.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[5] in general and furthers the objectives of Section 6(b)(5) of the Act[6] in particular in that it serves to remove impediments to and perfect the mechanism of a free and open market because it will help the Exchange manage the initial launch of trading on CBSX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that this proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–96 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-CBOE–2006–96. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–96 and should be submitted on or before December 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19982 Filed 11–24–06; 8:45 am]

BILLING CODE 8011–01–P

[4] Telephone conversation between Angelo Evangelou, Assistant General Counsel, CBOE, and Nathan Saunders, Special Counsel, Division of Market Regulation, Commission, November 20, 2006.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54791; File No. SR–CHX–2006–31]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Participant Fees and Credits

November 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 2006, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. On November 15, 2006, the CHX filed Amendment No. 1 to the proposed rule change.[3] The CHX has designated this proposal as one establishing or changing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The purpose of Amendment No. 1 is to provide further clarity as to the proposed NTM Fee Schedule changes, by providing additional commentary with respect to: (i) The provisions of the NTM Fee Schedule that are impacted; (ii) the amounts of the fees established by such provisions; (iii) the basis for certain changes or references to these provisions; and (iv) the correction of certain rule change marking.

a member due, fee, or other charge imposed by the CHX pursuant to Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes several changes to its Schedule of Participant Fees and Credits (the ''NTM Fee Schedule''), relating to the new trading model being implemented by the CHX this fall. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Throughout 2006, the Exchange has been working on the design and development of a new trading model centered around a core matching system that will provide for fully automated electronic matching of orders, as well as corresponding rules and regulatory initiatives. On September 29, 2006, the Exchange's proposed rules relating to the new trading model were approved by the Commission.[6]

On September 29, 2006, the Exchange filed with the Commission its NTM Fee Schedule, contemplating the Exchange's transition to its new trading model, commencing the week of October 23, 2006.[7] Subsequent industry developments, and further refinement of certain NTM Fee Schedule provisions, have necessitated several changes to the NTM Fee Schedule. These changes are summarized below:

Trading Permit Fees: There is no change to the text of Section A of the NTM Fee Schedule. The text of Section A merely incorporates the Trading Permit cancellation fee that was in place prior to submission of the NTM Fee Schedule.[8] This cancellation fee is unchanged and remains in effect for Trading Permits that were issued before October 1, 2006. This provision was inadvertently omitted from the NTM Fee Schedule when it was submitted in SR–CHX–2006–29.[9]

Registration Fees: This change is intended to clarify application of the Off-Exchange trader fee. The $500 annual fee is assessed for a trader who is engaged in proprietary securities trading for an Off-Exchange Participant Firm for which the CHX is the Designated Examining Authority, if such Participant Firm is solely involved in proprietary securities trading. The clarifying change relates to the Participant Firm; the Participant Firm must be solely involved in proprietary securities trading for the fee to be assessed. Other Participant Firms would not be assessed an Off-Exchange trader fee.

Transaction and Order Processing Fees: This change to Section E.1 of the NTM Fee Schedule is intended to clarify that the liquidity taking fee of $0.0028/share for a Matching System single order execution does not apply to a CHX institutional broker in connection with a transaction that is subject to the agency fees set forth in Section E.3 of the NTM Fee Schedule. Because the institutional broker's customer is assessed the agency fee under Section E.3, the institutional broker would not also be subject to a take fee for the same transaction. This change does not modify applicable provisions regarding credits for providing liquidity to the Matching System.

Matching System Routing Fees/Transaction and Order Processing Fees Associated With Securities Not Yet Traded in the Matching System: These changes to Section E.6 and Section E.8 (formerly E.7) of the NTM Fee Schedule relate to the fees that the CHX may assess against its participants on account of outbound NMS Linkage Plan orders. Section E.6 applies to orders that are Matching System eligible and therefore are routed from the Matching System to other market centers. Section E.8 applies to orders that have not yet migrated to the Matching System and therefore are routed from the Exchange's pre-NTM facilities.

This provision was necessitated in order to implement the CHX's participation in the exchange-to-exchange billing arrangement associated with the NMS Linkage Plan, which took effect on October 1, 2006.[10] When an outbound NMS Linkage Plan order is executed on another NMS Linkage participant market, such market will directly invoice the CHX for a transaction fee, in an amount that may not exceed the transaction fee that it would charge its own member for such an execution. The CHX is then responsible for payment of such invoice. Sections E.6 and E.8 of the NTM Fee Schedule provision permit the CHX to collect a corresponding fee from the CHX participant who generated the outbound NMS Linkage Plan order. The CHX believes that it is appropriate to establish outbound NMS Linkage fee rates that reasonably correspond to the respective transaction fee rates being charged by the executing markets. Accordingly, it is submitting changes to Sections E.6 and E.8 of the NTM Fee Schedule, to reflect recent developments regarding applicable transaction fees assessed by other market centers on account of NMS Linkage Plan executions.

As an example, in the NTM Fee Schedule, the CHX originally established an outbound fee, for non-ETF orders routed to the Nasdaq Stock Market, that was significantly higher than Nasdaq's applicable transaction fee rate for October, 2006.[11] This proposed rule change seeks to modify this rate for the balance of the month of October; the rate would then revert to the originally-

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] *See* Securities Exchange Act Release No. 54550 (September 29, 2006); 71 FR 59563 (October 10, 2006) (SR–CHX–2006–05) (referred to as the ''NTM Approval Order'').

[7] *See* Securities Exchange Act Release No. 54657 (October 26, 2006); 71 FR 64590 (November 2, 2006) (SR–CHX–2006–29). The NTM Fee Schedule provides for all fees and charges that are billed by the Exchange to its participants; it does not contain any fees or charges that are applicable to non-participants.

[8] This fee, which is applicable to trading permits in effect before October 1, 2006, is $2,000, or, if less, $500/month for the remainder of the one-year term.

[9] The provision was not shown in Exhibit 5 to SR–CHX–2006–29, but was not deleted in such submission (or any other submission) and remains applicable. *See* Securities Exchange Act Release No. 54657 (October 26, 2006); 71 FR 64590 (November 2, 2006) (SR–CHX–2006–29).

[10] *See* Securities Exchange Act Release No. 54548 (September 29, 2006), 71 FR 59159 (October 6, 2006) (SR–CHX–2006–28) (approving NMS Linkage Plan exchange-to-exchange billing procedures); Securities Exchange Act Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006) (approving NMS Linkage Plan).

[11] The CHX anticipated that Nasdaq's transaction fee rate was increasing, but the increase ultimately was filed with an effective date of November 1, 2006 instead of October 1.

filed rate effective November 1, 2006. Specifically, from October 23 through October 31, 2006, the outbound fee for NMS Linkage orders routed to Nasdaq (in issues other than exchange-traded funds) would decrease from $.0030/share to $.0007/share. On November 1, 2006, the effective date of Nasdaq's fee increase, the CHX outbound NMS Linkage routing fee for such issues would return to $.0030/share. This change is not applicable to orders for exchange-traded funds.

Trade Processing Fees: New Section E.7 of the NTM Fee Schedule is not a new provision; this provision, which provides for a Trade Processing Fee of $.0015/share, up to $100 per side of the trade, is merely relocated from former Section H.2. New Section H.2. establishes a Clearing Support Activity Fee, which will be assessed by the CHX beginning January 1, 2007. This fee of $.02 per ticket, capped at $8,000 per month, will apply to firms that average, within a month, at least 2,500 tickets per day. In establishing this fee, the CHX is attempting to defray some of the expenses associated with clearing support services that it provides to certain participant firms. Prior to submission of the NTM Fee Schedule, these expenses were largely offset by a portion of the Specialist Fixed Fee, which was eliminated in the NTM Fee Schedule. Although this fee is a new fee, the actual aggregate amount assessed by the CHX will decrease, due to elimination of the Specialist Fixed Fee. Accordingly, the CHX believes that it is appropriate to institute the new Clearing Support Activity Fee.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b)(4) of the Act [12] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a member due, fee or other charge imposed by the Exchange, it has become effective pursuant to Section 19(B)(3)(A) of the Act [14] and subparagraph (f)(2) of Rule 19b–4 thereunder.[15] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CHX–2006–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2006–31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2006–31 and should be submitted on or before December 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19981 Filed 11–24–06; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f(b)(4).

[13] Email from Kathleen Boege, Vice President and Associate General Counsel, CHX, to Joseph Morra, Special Counsel, Division of Market Regulation (''Division''), Commission, and Sara Gillis, Attorney, Division, Commission, dated November 16, 2006.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on November 15, 2006, the date on which the CHX filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54775; File No. SR–DTC–2006–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend Its Certificate of Organization To Provide for the Issuance of an Additional 500,000 Shares of DTC Series A Preferred Stock

November 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 6, 2006, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on November 14, 2006, amended, the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested

[1] 15 U.S.C. 78s(b)(1).

persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purposed rule change relates to changes to DTC's Certificate of Organization to provide for the issuance of an additional 500,000 shares of DTC Series A Preferred Stock.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1999, DTC's Certificate of Organization was amended to provide for the issuance of up to $150 million of Series A Preferred Stock as thereafter authorized by the Board of Directors.[3] In February 2000, the Board decided to increase the capital of DTC by issuing 750,000 shares of variable rate, noncumulative, nonvoting Series A Preferred Stock at the par value of $100 per share and to reduce the mandatory deposits to the Participants Fund by a corresponding amount.[4] DTC participants are required to purchase and own shares of the Series A Preferred Stock in proportion to their use of DTC services. DTC treats the Series A Preferred Stock held by participants substantially the same as the mandatory cash deposits made by participants to the Participants Fund for purposes of collateralizing securities transactions, limiting net debit positions, implementing default procedures, and allocating unrecovered losses.

In order to further increase capital,[5] DTC is proposing to amend its Certificate of Organization to provide for the issuance of an additional 500,000 shares of Series A Preferred Stock at the par value of $100 per share and to further reduce mandatory cash deposits by a corresponding amount.[6] The proceeds of the reductions of the mandatory cash deposits will be used to pay the purchase price of the shares, and all reductions and payments will be settled through the facilities of DTC with no action required on the part of any participant.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder applicable to DTC because the proposed rule change will not affect the safeguarding of securities and funds in DTC's custody or control for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) [8] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. For the reasons set forth below, the Commission finds that DTC's proposed rule change is consistent with DTC's obligations under the Act.

The Series A Preferred Stock will be used in conjunction with and will have the characteristics of required deposits to the Participants Fund. The proposed rule change enables DTC to increase its capital base and maintain the same level of assets for use in the event of a participation default without imposing any additional financial burden on its participants and enables DTC to continue to meet the risk-based capital guidelines issued by the Board of Governors of the Federal Reserve. Therefore, the Commission finds that the rule change is consistent with DTC's obligation to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing will allow DTC to implement the proposed rule change prior to the end of the year.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR-DTC–2006–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-DTC–2006–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The amended Certificate of Organization was the subject of a DTC rule filing previously approved by the Commission. Securities Exchange Act No. 41529 (June 15, 1999), 64 FR 33333 (June 22, 1999) [File No. SR–DTC–99–08].

[4] This restructuring of DTC's Participants Fund was the subject of a rule filing previously approved by the Commission. Securities Exchange Act No. 43197 (August 23, 2000), 65 FR 52459 (August 29, 2000) [File No. SR-DTC–00–02].

[5] DTC, as a depository institution, is subject to risk-based capital guidelines issued by the Board of Governors of the Federal Reserve. To be considered ''well capitalized'' under these guidelines, DTC must maintain a Tier I Leverage Ratio of at least 3% and Tier I Risk Based Capital Ratio of at least 8%. The issuance of the additional Series A Preferred Stock will enable DTC to continue to meet these requirements.

[6] The issuance of an additional 500,000 shares will increase the outstanding amount of Preferred Stock to $125 million and will reduce the mandatory cash portion of the Participants Fund deposit to $475 million, maintaining the total mandatory amount at $600 million.

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78q–1(b)(3)(F).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtc.org.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC–2006–14 and should be submitted on or before December 18, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19961 Filed 11–24–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54787; File No. SR–FICC–2006–14]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating To Returning Excess Clearing Fund Collateral

November 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 22, 2006, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this rule filing is to amend FICC's Government Securities Division's (''GSD'') rules to permit GSD members to request the return of their excess clearing fund collateral held on deposit with FICC on a more frequent basis than is currently allowed under GSD's rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, GSD members generally are permitted to request the return of excess clearing fund collateral once per month.[3] In addition, on any business day, if a GSD member has an excess clearing fund deposit in the amount of $5 million or more, the member may request the return of the excess deposit provided, among other requirements, that the member retain on deposit with GSD the greater of at least 110 percent of its calculated required clearing fund deposit or $1 million more than its calculated required clearing fund deposit.

In an effort to harmonize GSD's process with respect to the return of excess collateral with the processes of other Depository Trust & Clearing Corporation (''DTCC'') subsidiary clearing agencies, FICC proposes to change GSD's rules to give GSD the discretion to return excess clearing fund more frequently whether or not the excess reaches 110 percent of the required clearing fund deposit or $5 million.[4] Under the proposal, GSD members would be able to request the return of excess clearing fund on a daily basis. GSD would retain the right, however, to deny the return of some or all of a member's excess collateral in the following instances: (i) If, the member has an outstanding payment obligation to FICC; (ii) if a member's funds-only settlement amounts or net settlement positions over the upcoming 90 days may reasonably be expected to be materially different than those of the preceding 90 days; (iii) if the member is on the watch list; or (iv) when the return of excess clearing fund will cause the member to be in violation of another GSD rule. In addition, excess clearing fund would not be returned to a member if doing so would reduce a member's cross-guaranty repayment deposit or cross-margining repayment deposit to the clearing fund below the required amount.[5]

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules thereunder because by enabling FICC members to request and receive an earlier return of excess clearing fund collateral held on deposit at FICC while maintaining the GSD's ability to deny the return of excess collateral in order to protect FICC from undue risk, the proposed rule change should not adversely affect FICC's ability to safeguard securities and funds in its possession or control or for which it is responsible and at the same time should enhance member liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited written comments relating to the proposed rule change. FICC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] Excess clearing fund is the amount of collateral held on deposit at GSD that is greater than a member's required clearing fund deposit as set forth in GSD Rule 4 (Clearing Fund, Watch List and Loss Allocation).

[4] The rules of the National Securities Clearing Corporation (''NSCC'') and FICC's Mortgage Backed Securities Division (''MBSD'') permit their respective members to request (under normal circumstances) the return of their excess clearing fund more frequently than once per month. Currently, NSCC's and MBSD's procedures allow members to request the return of excess collateral on a daily basis.

[5] Under GSD's rules, a ''cross-guaranty repayment deposit'' is a deposit to the clearing fund required to be made by a cross-guaranty beneficiary member pursuant to Rule 41, Section 4 of GSD's rules. A ''cross-margining repayment deposit'' is a deposit to the clearing fund required to be made by a cross-margining beneficiary participant pursuant to Rule 43, Section 6 of GSD's rules.

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–FICC–2006–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File No. SR–FICC–2006–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at FICC's principal office and on FICC's Web site at <*http://ficc.com/gov/gov.docs.jsp?NS-query=#rf*>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File No. SR–FICC–2006–14 and should be submitted on or before December 18, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19984 Filed 11–24–06; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54773; File No. SR–NASD–2006–120]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Extend the Hours of Operation of the NASD/Nasdaq TRF, the OTC Reporting Facility and the Trade Reporting of Non-Nasdaq Exchange-Listed Securities Under the NASD Rule 6400 Series

November 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 27, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On November 3, 2006, NASD filed Amendment No. 1. NASD filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on November 3, 2006, the date NASD filed Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to extend the hours of operation of (1) the Trade Reporting Facility established by NASD and the Nasdaq Stock Market, Inc. (''NASD/Nasdaq TRF'');[6] (2) the trade reporting of non-Nasdaq exchange-listed securities under the NASD Rule 6400 Series; and (3) the trade reporting of OTC Equity Securities to the OTC Reporting Facility (''ORF'')[7] under the NASD Rule 6600 Series, until 8 p.m. Eastern Time (''ET''). The text of the proposed rule change is available at NASD, on the NASD Web site at *http://www.nasd.com,* and at the Commission's Public Reference Room.[8]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any

[6] During the initial transitional period, the NASD/Nasdaq TRF is used to report transactions executed otherwise than on an exchange in all Nasdaq Global Market, Nasdaq Capital Market securities and convertible bonds listed on Nasdaq. *See* NASD Rule 4000 Series and 6100 Series. NASD filed a separate proposed rule change to expand the scope of the NASD/Nasdaq TRF rules to include trade reporting in non-Nasdaq exchange-listed securities. *See* Securities Exchange Act Release No. 54451 (September 15, 2006), 71 FR 55243 (September 21, 2006) (SR–NASD–2006–104).

[7] For purposes of the NASD Rule 6600 Series, the ORF is the service provided by NASD that accommodates reporting and dissemination of last sale reports in OTC Equity Securities. Regarding those OTC Equity Securities that are not eligible for clearance and settlement through the facilities of the National Securities Clearing Corporation, the ORF comparison function is not available. However, the ORF supports the entry and dissemination of last sale data on such securities. *See* NASD Rule 6610(k).

[8] NASD has proposed changes to NASD Rule 4623(e), among other NASD rules, in SR–NASD–2006–104, which is currently pending at the Commission. *See* Securities Exchange Act Release No. 54451 (September 15, 2006), 71 FR 55243 (September 21, 2006). Those proposed changes include the insertion of ''NASD/Nasdaq'' before each reference to the Trade Reporting Facility in NASD Rule 4632, which also is reflected in the proposed rule text. Further, the Commission has approved changes to NASD Rules 4632(e), 6420(e) and 6620(e) in SR–NASD–2006–055, which becomes effective on December 1, 2006. *See* Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) (SR–NASD–2006–055) (approval order). Lastly, the Commission also has approved changes to NASD Rule 6420, among others, in SR–NASD–2006–091, which is scheduled to become effective on February 5, 2007. *See* Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006). Upon the implementation of SR–NASD–2006–091, the requirements in NASD Rule 6420, among others, will no longer be necessary as they will be incorporated directly into NASD's Alternative Display Facility rules.

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 30, 2006, the Commission approved SR–NASD–2005–087, which amended certain NASD rules to reflect separation of the Nasdaq Stock Market, Inc. from NASD upon the operation of the Nasdaq Stock Market LLC as a national securities exchange.[9] As part of SR–NASD–2005–087, the Commission approved the establishment of, and rules governing, the NASD/Nasdaq TRF, which currently provides members another mechanism for reporting transactions in Nasdaq-listed securities effected otherwise than on an exchange.[10]

Pursuant to the NASD Rule 6600 Series, members use the ORF for purposes of reporting transactions in OTC Equity Securities to NASD.[11] In addition, pursuant to the NASD Rule 6400 Series, members report over-the-counter trades for non-Nasdaq exchange-listed securities to NASD. Nasdaq's Automated Confirmation Transaction Service (''ACT'') is the system used for each of these purposes.

Currently, the NASD/Nasdaq TRF trade reporting rules reflect a system closing time of 6:30 p.m. ET, which was consistent with the system closing time of the UTP Securities Information Processor (''UTP SIP''). Effective September 18, 2006, the UTP SIP system closing time was extended from 6:30 p.m. ET to 8 p.m. ET. To accommodate the extended UTP SIP system closing time, NASD proposes to extend the closing time of the NASD/Nasdaq TRF from 6:30 p.m. to 8 p.m. ET. In addition, to keep the hours of operation uniform across the ACT system, NASD proposes to extend the closing time to 8 p.m. for reporting OTC Equity Securities under NASD Rule 6600 and non-Nasdaq exchange-listed securities under NASD Rule 6400.

Finally, the text of NASD Rule 6920 incorrectly reflects a system closing time of 5:15 p.m. ET. This closing time should have been amended at the time that the other NASD trade reporting rules were amended to reflect a system closing time of 6:30 p.m. Accordingly, as part of this proposed rule change, NASD also proposes to amend NASD Rule 6920 to extend the time from 5:15 p.m. until 8 p.m., the closing time of the ORF.

NASD filed the instant proposed rule change for immediate effectiveness. NASD proposes to make the proposed rule change operative on December 4, 2006. To ensure that market participants have sufficient time to program their internal systems to accommodate a new closing time of 8 p.m. ET for the NASD/Nasdaq TRF and ORF, the extended closing time was announced in a Nasdaq Head Trader Alert on August 23, 2006.[12]

Extension of the system hours for the NASD/Nasdaq TRF and ORF will allow market participants to timely report more trades taking place after normal market hours. NASD believes that the proposed effective date draws an appropriate balance between the benefits of expanded access to the NASD/Nasdaq TRF and ORF systems with the needs of market participants to prepare for it.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[13] in general, and with Section 15A(b)(6) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will afford market participants additional time to report trades taking place after normal market hours, resulting in more timely and accurate trade reporting, which in turn will result in greater transparency.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–120 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–120. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[9] *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006).

[10] *See supra* note 6.

[11] NASD Rule 6610(d) defines ''OTC Equity Securities'' as any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.

[12] *See* Nasdaq Head Trader Alert 2006–120 (August 23, 2006) (available at *http://www.nasdaqtrader.com).*

[13] 15 U.S.C. 78*o*–3.

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–120 and should be submitted on or before December 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19966 Filed 11–24–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54778; File No. SR–NASD–2006–127]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New NASD Rule 7000C Series Relating to Fees and Credits for the Trade Reporting Facility Established by NASD and the National Stock Exchange (NASD/NSX TRF)

November 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to adopt a new NASD Rule 7000C Series relating to fees and credits for the Trade Reporting Facility (''NASD/NSX TRF'') established by NASD and the National Stock Exchange (''NSX''). The text of the proposed rule change is available at *http://www.nasd.com,* at the principal offices of NASD, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 6, 2006, the Commission approved SR–NASD–2006–108,[6] which proposed rules relating to the new NASD/NSX TRF. The NASD/NSX TRF will provide NASD members another mechanism for reporting to NASD over-the-counter transactions in exchange-listed securities. The NASD/NSX TRF will only accept locked-in trades. The NASD/NSX TRF will likely accept trade reports for Nasdaq-listed securities on the first day of operation and for non-Nasdaq exchange-listed securities at a later date, which will be announced within 90 days of Commission approval. However, it is possible that the NASD/NSX TRF will accept trade reports in all exchange-listed securities on the first day of operation.

The instant proposed rule change would adopt a new NASD Rule 7000C Series relating to fees and credits applicable to the NASD/NSX TRF. NASD proposes that under new NASD Rule 7002C, there will be no transaction fee for reporting locked-in trades to the NASD/NSX TRF in securities listed on the New York Stock Exchange (''Tape A''), the American Stock Exchange (''Tape B'') and the Nasdaq Exchange (''Tape C''). Although NASD is not required to file a proposed rule change where no fees are to be assessed, for members' convenience and to avoid potential confusion with the fee structures of other NASD facilities, NASD is proposing NASD Rule 7002C to clarify that there will be no charge for use of the NASD/NSX TRF to report locked-in transactions in exchange-listed securities effected otherwise than on an exchange.

In addition, NASD is proposing a transaction credit program under proposed new NASD Rule 7001C. NASD members reporting trades in Tape A, Tape B and Tape C stocks to the NASD/NSX TRF will receive a 50% pro rata credit on gross market data revenue earned by the NASD/NSX TRF with respect to those trade reports. Credits will be paid on a quarterly basis. To the extent that market data revenue is subject to any adjustment, credits may be adjusted accordingly.

Tape A and Tape B revenue is currently distributed to NASD and the exchanges based on the number of trades reported, while Tape C revenue is distributed based on an average of number of trades and number of shares reported. Thus, under the proposed program, the Tape A and Tape B revenue attributable to a member will be based on number of trades reported, while the Tape C revenue attributable to a member would be based on number of trades and number of shares reported. A member will receive 50% of the gross revenue attributable to it in each of the three tapes. ''Gross revenue'' is the revenue received by the NASD/NSX TRF from the three tape associations after the tape associations deduct allocated support costs and unincorporated business costs.

The proposed transaction credit program is identical to the existing transaction credit program for the NSX, which provides a 50% transaction credit on gross revenues generated by transactions in Tape A, Tape B and Tape C securities and is allocable to NSX members on a pro rata basis based

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–(f)(6).

[5] NASD gave the Commission written notice of its intent to file the proposed rule change on November 2, 2006.

[6] *See* Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (approval order).

upon the revenue generated by NSX members in the three tapes.[7]

NASD filed the proposed rule change for immediate effectiveness. NASD proposes to implement the proposed rule change (1) for Nasdaq-listed securities on the first day of operation of the NADS/NSX TRF, which is currently anticipated to be in November 2006, and (2) for non-Nasdaq exchange-listed securities on the day on which the NASD/NSX TRF commences operation with respect to such securities.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Section 15A(b)(5) of the Act,[9] in particular, which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed rule change is a reasonable and equitable fee and credit structure in that there will be no fees charged for trade reporting to the NASD/NSX TRF for locked-in transactions in exchange-listed securities effected otherwise than on an exchange, and the proposed transaction credit program is identical to existing credits for the NSX.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[7] *See* Securities Exchange Act Release Nos. 54194 (July 24, 2006), 71 FR 43258 (July 31, 2006) (SR–NSX–2006–10), and 53860 (May 24, 2006), 71 FR 31250 (June 1, 2006) (SR–NSX–2006–07). ''Gross revenue'' is defined under the existing NSX program the same way as under the proposed program for the NASD/Nasdaq TRF.

NASD also notes that the proposed transaction credit program is substantially equivalent to the existing transaction credit program for the NASD/Nasdaq TRF under NASD Rule 7001B. The only difference between the two programs is that under the NASD/Nasdaq TRF transaction credit program, members receive 50% of revenue after deducting any amounts that the NASD/Nasdaq TRF will be required to pay to the Consolidated Tape Association or the Nasdaq Securities Information Processor for capacity usage. Under the proposed transaction credit program for the NASD/NSX TRF, such expenses will not be deducted.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NASD has asked that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii) under the Act.[12] The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow NASD to implement the proposed rule change on the first day of operation of the NASD/NSX TRF. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–127 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NASD–2006–127. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–127 and should be submitted on or before December 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19967 Filed 11–24–06; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34792]

Portland & Western Railroad, Inc.—Acquisition and Operation Exemption—Union Pacific Railroad Company

Portland & Western Railroad, Inc. (P&W), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire a permanent, exclusive rail freight operating easement from Union Pacific Railroad Company (UP) to operate over an approximately 5-mile rail line between milepost 749.95 in Tigard, OR, and milepost 755.43 in

Beaverton, OR. Currently, P&W conducts local and overhead freight operations on the rail line pursuant to a lease with UP. The proposed transaction will change P&W's property interest in the rail line, but P&W will continue to operate over the line as the only common carrier providing rail freight service.

P&W has certified that its projected annual revenues as a result of this transaction will not exceed the annual revenues of a Class III railroad, but will exceed $5 million.

The transaction is scheduled to be consummated by no later than November 27, 2006.[1]

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] P&W seeks a waiver of the notice requirements of 49 CFR 1150.42(e). The Board will address that request in a separate decision. In the absence of a waiver granted by the Board on or before November 27, 2006, the earliest the transaction would be able to be consummated would be the date established by the Board as the effective date of the exemption in the decision addressing the waiver request.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34792, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of any pleading filed with the Board must be sent to P&W's representative: Marc D. Machlin, 600 Fourteenth Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*.''

Decided: November 16, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–9416 Filed 11–24–06; 8:45 am]

BILLING CODE 4915–01–P

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

DATE/TIME: Tuesday, November 28, 2006, 9 a.m.–3 p.m.

LOCATION: 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: November 28, 2006 Board Meeting; Approval of Minutes of the One Hundred Twenty-Fourth Meeting (September 28, 2006) of the Board of Directors; Chairman's Report; President's Report; Budget Update; Iraq Study Group Update; Other General Issues.

CONTACT: Tessie F. Higgs, Executive Office, Telephone: (202) 429–3836.

Dated: November 20, 2006.

Patricia P. Thomson,

Executive Vice President, United States Institute of Peace.

[FR Doc. 06–9415 Filed 11–22–06; 10:33 am]

BILLING CODE 6820–AR–M

Federal Register

Monday,
November 27, 2006

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 482

Medicare and Medicaid Programs; Hospital Conditions of Participation; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 482

[CMS–3122–F]

RIN 0938–AM88

Medicare and Medicaid Programs; Hospital Conditions of Participation: Requirements for History and Physical Examinations; Authentication of Verbal Orders; Securing Medications; and Postanesthesia Evaluations

AGENCY: Centers for Medicare & Medicaid Services (CMS), DHHS.

ACTION: Final rule.

SUMMARY: In this rule, we finalize changes to four of the current requirements (or conditions of participation (CoPs)) that hospitals must meet to participate in the Medicare and Medicaid programs. Specifically, this final rule revises and updates our CoP requirements for: Completion of the history and physical examination in the medical staff and the medical record services CoPs; authentication of verbal orders in the nursing service and the medical record services CoPs; securing medications in the pharmaceutical services CoP; and completion of the postanesthesia evaluation in the anesthesia services CoP. We also respond to timely public comments submitted on the proposed rule published in the March 25, 2005 **Federal Register** (70 FR 15266). The changes specified in this final rule are consistent with current medical practice and will reduce the regulatory burden on hospitals.

DATES: Effective Date: These regulations are effective on January 26, 2007.

FOR FURTHER INFORMATION CONTACT: Patricia Chmielewski, (410) 786–6899, Monique Howard, (410) 786–3869, Jeannie Miller, (410) 786–3164.

SUPPLEMENTARY INFORMATION: *Copies:* You can view and photocopy this **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The Web site address is *http://www.gpoaccess.gov/fr/index.html.*

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I. Legislative and Regulatory Background

A. General

On March 25, 2005 we published a proposed rule in the **Federal Register** entitled ''Medicare and Medicaid Programs; Hospital Conditions of Participation: Requirements for History and Physical Examinations; Authentication of Verbal Orders; Securing Medications; and Postanesthesia Evaluations'' (70 FR 15266). In that document, we presented our proposals to: (1) Expand the timeframe for completion of the history and physical examination to 30 days and expand the number of permissible professional categories of individuals who may perform the history and physical examination; (2) require that all orders, including verbal orders, be dated, timed, and authenticated by a practitioner responsible for the care of the patient. In the absence of a State law specifying the timeframe for authentication of verbal orders, verbal orders would need to be authenticated within 48 hours; (3) require that all drugs and biologicals be kept in secure areas, and locked when appropriate; and, (4) permit the postanesthesia evaluation for inpatients to be completed and documented by any individual qualified to administer anesthesia. This action was initiated in response to broad criticism from the medical community that the current requirements governing these areas are burdensome and do not reflect current practice.

Previously, we published a proposed rule in the December 19, 1997 **Federal Register** (62 FR 66726), entitled ''Medicare and Medicaid Programs; Hospital Conditions of Participation (CoPs); Provider Agreements and Supplier Approval'' which specified our proposal to comprehensively revise the entire set of hospital CoPs. The CoPs are the requirements that hospitals must meet to participate in the Medicare and Medicaid programs. The CoPs are intended to protect patient health and safety and to ensure that high quality care is provided to all patients.

Sections 1861(e)(1) through 1861(e)(8) of the Social Security Act (the Act) define the term ''hospital'' and list the requirements that a hospital must meet to be eligible for Medicare participation. Section 1861(e)(9) of the Act specifies that a hospital must also meet such other requirements as the Secretary of Health and Human Services (the Secretary) finds necessary in the interest of the health and safety of the hospital's patients. Under this authority, the Secretary has established in regulations, at Part 482, the requirements that a hospital must meet to participate in the Medicare program.

Compliance is determined by State survey agencies (SAs) or accreditation organizations. The SAs, in accordance with section 1864 of the Act, survey hospitals to assess compliance with the CoPs. The SAs conduct surveys using the State Operations Manual (SOM) (Centers for Medicare & Medicaid Services (CMS) Publication No. 7). The SOM contains the regulatory language of the CoPs as well as interpretive guidelines and survey procedures that give guidance on how to assess provider compliance. Under § 489.10(d), the SAs determine whether a hospital meets the CoPs and make corresponding recommendations to us about a hospital's certification, (that is, whether a hospital has met the standards required to provide Medicare and Medicaid services and receive Federal and State reimbursement).

Under section 1865 of the Act, hospitals that are accredited by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), the American Osteopathic Association (AOA), and other national accreditation programs approved by us are deemed to meet the requirements in the CoPs. All Medicare- and Medicaid-participating hospitals are required to be in compliance with our CoPs regardless of their accreditation status.

B. Finalizing Provisions of the December 19, 1997 Proposed Rule (62 FR 66726)

In the December 19, 1997 proposed rule (62 FR 66726), we proposed to revise all CoPs specified in Part 482. While our initial intention was to

finalize the December 19, 1997 proposed rule in its entirety, delays within CMS (then the Health Care Financing Administration (HCFA)) led us to re-evaluate this objective in light of concerns expressed by providers that we move forward with certain final rules in the interest of public health and safety. Our strategy to address CoPs considered of particular urgency by providers was to finalize or ''carve-out'' specific CoPs as separate final rules. To date, we have published the following hospital CoPs: Organ, Tissue and Eye Procurement CoP (see the June 22, 1998 final rule (63 FR 33856); Patients' Rights (see the July 2, 1999 interim final rule (64 FR 36069); Anesthesia Services-CRNA supervision (see the November 13, 2001 final rule (66 FR 56762); Fire Safety Requirements for Certain Health Care Facilities (see the January 10, 2003 final rule (68 FR 1374); and, Quality Assessment Performance Improvement (see the January 24, 2003 final rule (68 FR 3435).

Beginning in 2003, we began to develop a final rule to address public comments provided on the December 19, 1997 proposed rule for the following four requirements: (1) Completion of a history and physical examination in the medical staff and the medical record services CoPs; (2) authentication of verbal orders in the nursing service and the medical record services CoPs; (3) securing medications in the pharmaceutical services CoP; and (4) completion of the postanesthesia evaluation in the anesthesia services CoP.

Our decision to carve out these four requirements in this final rule has evolved in large measure as a result of our continuing dialogue with the health care community. Through various CMS-sponsored provider forums such as the Physicians' Regulatory Issues Team (PRIT) (a team of subject matter experts who work within the government to reduce the regulatory burden on Medicare participating physicians), our open door forums, and written correspondence by a variety of organizations and individuals, we were made aware that providers overwhelmingly believe that the existing regulations for these requirements no longer reflect current health care practice. In addition, public comments received on the December 19, 1997 proposed rule strongly supported the revisions we proposed for these selected CoPs.

C. Changes as a Result of the Enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)

On December 8, 2003, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) was enacted. Section 902(a) of the MMA specifies that the Secretary, in consultation with the Director of the Office of Management and Budget (OMB), is required to establish and publish a regular timeline for the publication of final regulations based on the previous publication of a proposed regulation or an interim final regulation. Section 902 further provides that the timeline may vary among different regulations, but shall not be longer than 3 years except under exceptional circumstances.

Although we do not believe that this law operates retroactively, out of an abundance of caution, we are applying the provisions of section 902(a) of the MMA to this rule since our publication of the December 19, 1997 rule was not finalized. Had section 902(a) of MMA not been enacted, the CoP provisions stipulated in the March 25, 2005 proposed rule would have been stipulated in a final regulation. However, with the passage of section 902 of the MMA, we believe it was in the spirit of the legislation to publish a new proposed regulation and subsequent final rule.

This final rule finalizes provisions set forth in the March 25, 2005 proposed rule (70 FR 15266 through 15274). In addition, this final rule has been published in the **Federal Register** within the 3-year time limit imposed by section 902 of the MMA. Therefore, we believe that this final rule is in accordance with the Congress' intent to ensure timely publication of final regulations.

II. Provisions of the Proposed Regulations

On March 25, 2005 we published a proposed rule (70 FR 15266) in the **Federal Register** entitled ''Medicare and Medicaid Programs; Hospital Conditions of Participation: Requirements for History and Physical Examinations; Authentication of Verbal Orders; Securing Medications; and Postanesthesia Evaluations.'' This proposed rule responded to the health care community's primary concern that the current regulations are contrary to current health care practice and unduly burdensome. In order to be consistent with current health care practice, reduce regulatory burden, and ensure patient safety and quality care, we proposed revising aspects of the current medical staff, nursing services, medical record services, pharmaceutical services, and anesthesia services CoPs. Below we summarize and discuss our proposed changes to these conditions and requirements.

As discussed in section I of the preamble to the proposed rule, we proposed the following changes:

A. Completion of the Medical History and Physical Examination

These proposed revisions would expand the timeframe for completion of the history and physical (H&P) examination to 30 days and expand the number of permissible categories of individuals who may perform the H&P. They address ongoing concerns expressed by the American Medical Association (AMA) and the American Podiatric Medical Association, Inc. (APMA), related to the timeframe for completion, as well as who is permitted to complete the history and physical examination. We proposed to revise the current medical staff requirement at § 482.22(c)(5) to specify that a medical history and physical examination must be completed no more than 30 days before or 24 hours after admission for each patient by a physician (as defined in section 1861(r) of the Act) or other qualified individual who has been granted these privileges by the medical staff in accordance with State law, and that the medical history and physical examination must be placed in the medical record within 24 hours after admission. We also proposed revising the current Medical Records CoP at § 482.24(c)(2)(i) to reflect that a medical history and physical examination must be completed no more than 30 days before or 24 hours after admission, and placed in the patient's medical record within 24 hours after admission. We also proposed revising § 482.22(c)(5) and § 482.24(c)(2)(i) to require that when a medical history and physical examination is completed within the 30 days before admission, the hospital must ensure that an updated medical record entry documenting an examination for any changes in the patient's current condition is completed. This updated examination must be completed and documented in the patient's medical record within 24 hours after admission.

B. Authentication of Verbal Orders

These proposed revisions broaden the category of practitioners who may authenticate orders. It responds to health care community concerns, reduces regulatory burden, and provides flexibility for hospitals in meeting the

requirements for authentication of verbal orders.

We proposed to retain and revise the current requirement for authentication of medical record entries at § 482.24(c)(1). This proposed provision stated that all patient record entries must be legible, complete, dated, timed, and authenticated in written or electronic form by the person responsible for providing or evaluating the service provided. Additionally, we proposed retaining the current requirement that all orders, including verbal orders, must be dated, timed, and authenticated promptly by the prescribing practitioner, with the exception being that from the effective date of the final rule, to 5 years following the effective date of the final rule, all orders, including verbal orders, must be dated, timed, and authenticated promptly by the prescribing practitioner or another practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law, even if the order did not originate with him or her.

We proposed revising § 482.23(c)(2)(ii) to require that all verbal orders must be authenticated based upon Federal and State law, and relocating it to § 482.24(c)(1)(iii). We further proposed that if there is no State law that designates a specific timeframe for authentication of verbal orders, verbal orders must be authenticated within 48 hours. We also proposed to revise related nursing service requirements at § 482.23(c)(2) that address documentation of orders for drugs and biologicals.

We proposed that with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment of contraindications, orders for drugs and biologicals must be documented and signed by a practitioner who is authorized to write orders by hospital policy in accordance with State law, and who is responsible for the care of the patient as specified under § 482.12(c).

We proposed retaining the current requirements at § 482.23(c)(2)(iii) that state that when verbal orders are used, they are to be used infrequently. We also proposed retaining the current requirement at § 482.23(c)(2)(i) that when verbal orders are used, they must only be accepted by persons that are authorized to do so by hospital policies and procedures consistent with State and Federal law.

C. Securing Medications

The proposed revision addresses health care community concerns, provides flexibility for hospitals in determining control of nonscheduled drugs and biologicals, and would be more patient-focused and outcome-oriented than the current requirement. We proposed to revise the provision at § 482.25(b)(2) to require that all drugs and biologicals be kept in a secure area, and locked when appropriate. We proposed that drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 must be kept locked within a secure area. We further proposed that only authorized personnel may have access to locked areas.

D. Completion of the Postanesthesia Evaluation

We proposed revising the requirement at § 482.52(b)(3) to permit an individual qualified to administer anesthesia to complete and document the postanesthesia evaluation for inpatients.

III. Analysis of and Responses to Public Comments and Final Decisions Made on the March 25, 2005 Proposed Rule

In response to the proposed rule published in the March 25, 2005 **Federal Register**, we received a total of 609 timely comments from individuals, providers, national and regional health care professional associations and advocacy groups, State and local health organizations, labor unions, health care law firms, and others. Summaries of the public comments received and our responses to those comments are set forth below under the appropriate subject headings.

We also received comments on issues outside the scope of this proposed rule. These comments will not be addressed in this final rule.

A. Medical History and Physical Examination

Condition of Participation: Medical Staff (§ 482.22)

In response to the industry's concern that timeframes for completion of the medical history and physical examination (H&P) are too stringent, we proposed revisions that broaden the timeframe for completion of the patient's medical history and physical examination and entry into the patient's medical record, and broaden whom may perform such an examination. In the March 25, 2005 proposed regulation, we expanded the timeframe to state that the medical history and physical examination must be completed no more than 30 days before or 24 hours after admission for each patient. We also proposed removing the reference to specific physicians who can perform the medical history and physical examination, and instead stated it must be performed by a physician (as defined in section 1861(r) of the Act), or other qualified individual who has been granted these privileges by the medical staff in accordance with State law. We also proposed that the medical history and physical examination must be placed in the patient's medical record within 24 hours after admission. We added that when the medical history and physical examination is completed within 30 days before admission, we proposed that the hospital must ensure that an updated medical record entry documenting an examination for any changes in the patient's condition is completed. Finally, we stated that this updated examination must be completed and documented in the patient's medical record within 24 hours after admission.

Comments and responses to these proposed changes are separated into four major categories: Medical staff, completion of the H&P, timeframes for completion of the H&P, and categories of providers permitted to perform the H&P.

Medical Staff

Comment: A significant number of commenters identified the granting of privileges to conduct an H&P as problematic in both rural and urban areas. Commenters stated that the H&P is frequently conducted by the patient's primary care provider who may not be credentialed and privileged to complete an H&P by the admitting hospital.

A commenter stated that the requirement for a pre-operative H&P to be completed only by a physician credentialed by the medical staff at a particular hospital is onerous and does not add value to the operative process for the patient. Instead, the commenter believes that a physician who is credentialed by a JCAHO-accredited hospital should be capable of performing this function.

Response: We understand that it is often the patient's primary care provider who completes the patient's H&P before an elective admission or procedure in both urban and rural areas. We also understand that this provider may or may not be credentialed and privileged by the admitting hospital. Based on public comments, in this final rule we have deleted the requirement that the H&P be completed by a practitioner credentialed and privileged by the admitting hospital.

If a patient's H&P is completed before admission to the hospital, an updated examination must be completed and documented in the patient's medical record within 24 hours after admission, but before a surgical procedure. This update to the H&P would be completed after the patient is admitted to the hospital by a physician, oromaxillofacial surgeon or other qualified individual who has been granted these privileges by the medical staff in accordance with State law. Therefore, if the H&P was completed by the patient's primary care provider, the H&P would be reviewed, the patient would be examined, and the H&P would be updated by an individual who has been credentialed and privileged by the medical staff to conduct an H&P. If upon review, the H&P done before admission is found to be incomplete, inaccurate, or otherwise unacceptable, the practitioner reviewing the H&P, examining the patient, and completing the update may disregard the existing H&P, and conduct and document a new H&P within 24 hours after admission, but before a surgical procedure. The practitioner completing the update is responsible for ensuring that the H&P documented in the medical record is complete and accurate.

Comment: A commenter requested that CMS clarify whether performance, documentation and authentication of the H&P can be split among qualified staff or must these functions be performed by a single individual. The commenter recommended that CMS clearly identify the individual who is ultimately responsible for the H&P documentation and integrity.

Response: We believe it is standard practice to perform the H&P before a planned admission. Thus, if the H&P is done before admission, an update note will be needed which we expect would be done by a practitioner qualified to do the H&P. The hospital would be held responsible for ensuring a complete and accurate H&P is documented in the patient's medical record in accordance with the required timeframes.

Additionally, more than one qualified practitioner can participate in performing, documenting, and authenticating the H&P for a single patient. However, we believe it is common practice that the practitioner who performs the H&P will proceed to document and authenticate the H&P as well. In those instances when performance, documentation, and authentication are split among qualified practitioners, the practitioner who authenticates the H&P, ultimately, will be responsible for the integrity of its contents.

Comment: One commenter asked that CMS continue to allow delegation of all or part of the H&P to other practitioners. This commenter also recommended that CMS confirm that the completed H&P can be authenticated by another practitioner responsible for the care of the patient. The commenter further stated that this is especially important when the H&P is dictated, but the author cannot authenticate between the time the H&P is physically placed on the medical record and the end of the 24 hours following admission. The commenter stated that a dictated medical record entry usually indicates the time dictated, transcribed, and signed. The commenter further asked if a practitioner would be required to indicate the time the undersigned H&P was physically placed in the medical record or whether the signature of the responsible practitioner serves as the time stamp.

Response: This requirement does not affect the physician's ability to delegate performance of the H&P to other qualified practitioners. The physician does not necessarily have to perform the H&P himself. However, the physician is responsible for ensuring that it is done, and complete. The completed H&P would be authenticated by the practitioner who conducted the H&P, and as applicable, the physician who delegated the performance of the H&P.

If the H&P is performed when the patient arrives at the hospital and the H&P is not placed on the medical record immediately following completion, we expect the practitioner who conducts the H&P to document in the patient's medical record that the H&P was completed and dictated within 24 hours following admission. Authentication includes dating and timing of a medical record entry. Therefore, it is not necessary to document the time the H&P was physically placed in the medical record.

Comment: One commenter requested that CMS align the physician and practitioner incentives to ensure timely and accurate completion of H&Ps. The commenter recommended that CMS address actions to be taken by the hospital staff if an H&P is not completed or received within the proposed standard timeframe. Additionally, the commenter stated that guidance to prohibit practitioners from billing for professional services rendered during an inpatient admission in the absence of a timely, accurate H&P would be helpful.

Other commenters thought it would be very difficult to enforce a timeframe for updating the H&P. Instead, these commenters stated that they see no reason to require documentation in the form of an update note if there has been no change in the patient's condition. Instead, they believe CMS should align its regulations regarding the update note with the JCAHO requirements for an update just prior to beginning a procedure only if there have been changes to the patient's condition since the H&P was done. One commenter further stated that this would maintain the update when necessary, but not require additional processing when nothing more is required or of benefit.

Another commenter stated that despite supporting the timeframe proposed for completion of the H&P, they were still concerned that hospitals are required to ensure that an updated medical record entry, documenting an examination for any changes in the patient's condition be completed within 24 hours after admission. The commenter asked how completely documented must a physical examination be in order to document a change in a patient's condition. The commenter also asked if a statement signed by the physician stating that ''no change'' has occurred in the patient's condition would be satisfactory. The commenter further stated that to provide safe patient care, but be less burdensome to those who perform H&Ps, it would be more appropriate to require a medical record entry documenting a re-examination of the patient and their condition.

Response: Payment issues are out of the scope of this regulation. Thus, we will not specifically address this commenter's payment related concerns. However, hospitals have the flexibility to implement incentives or other systems and processes necessary to ensure timely completion and documentation of an H&P and update examination. The hospital is responsible for ensuring compliance with hospital policies, as well as, State and Federal regulations.

We expect hospitals to evaluate the practitioner's performance regarding the requirements as well as hospital policies and procedures through mechanisms such as QAPI and peer review as part of the credentialing and privileging process. If a hospital is not in compliance with the H&P requirements, we expect the hospital to take the necessary corrective action to ensure compliance. Non-compliance could lead to termination from the Medicare & Medicaid programs.

Regarding timely performance, documentation, and authentication of the H&P and update note, a physician, oromaxillofacial surgeon, or other qualified individual is expected to review the H&P that was completed

before admission, see the patient, and conduct an assessment to determine if there have been any changes since the H&P was completed. If there are no changes to the H&P as written, the physician can simply document an update note stating that the H&P has been reviewed, that the patient has been examined, and that the physician concurs with the findings of the H&P completed on the specified date. If there are changes in the H&P examination, we would expect the changes to be documented in the patient's medical record as well. The update note could include language such as concurrence with the H&P conducted on the specified date ''with the following additions and/or exceptions.''

Comment: One commenter recommended that instead of requiring that an update be conducted ''within a maximum of 24 hours after admission'' if the H&P was completed within 30 days before admission, that CMS modify the language to state, ''at time of admit'' since surgery or a procedure could be done before the 24 hour timeframe.

Response: The current requirement at § 482.51(b)(1) states, ''There must be a complete history and physical work-up in the chart of every patient before surgery, except in emergencies. If this has been dictated, but not yet recorded in the patient's chart, there must be a statement to that effect and an admission note in the chart by the practitioner who admitted the patient.'' This current requirement has not changed and applies to all patients undergoing surgery or other procedures that require an H&P. We note that the update note could be done sooner than 24 hours after admission. We would expect hospital policies and procedures to address this issue.

Comment: Numerous commenters support all proposed changes and believe the revised requirements for admission H&Ps would provide flexibility to better meet patient needs.

Response: We thank them for their support.

Completion of the H&P

Comment: One commenter stated we need to clarify that the proposed H&P revisions apply to inpatient admissions only. The commenter recommends eliminating wording that limits H&P requirements to just ''patients admitted only for oromaxillofacial surgery'' and requests additional clarification explaining the extent to which the H&P applies to patient admissions regardless of the services or procedures performed. Additionally, the commenter recommended additional clarification regarding the term ''admission.'' Instead, the commenter suggests that CMS clarify in the final rule whether the requirement only applies to inpatient admissions, specific types of admissions, all admissions and/or outpatient surgery, and/or diagnostic and therapeutic procedures.

Response: For the purposes of this requirement, the term ''admission'' applies to any admission. An H&P is required for all admissions. An H&P is required prior to surgery as well as prior to other procedures that require an H&P based on current standards of practice and hospital policy regardless of whether care is being provided on an inpatient or outpatient basis.

Comment: One commenter agreed with the completion of the H&P no more than 30 days before or 24 hours after admission. However, the commenter suggests modifying placement of the H&P in the medical record from 24 hours to ''as soon as possible'' due to the transcription turn around time of 24 hours. In agreement with this commenter, another commenter stated that requiring the H&P to be placed on the medical record within 24 hours after admission would force hospitals to staff transcription services 7 days a week which would be extremely difficult to do in small rural hospitals. The commenter believes this would result in increased cost with no increase in reimbursement for these small rural hospitals.

Response: We expect that practitioners and hospitals will make every effort to meet this requirement through the timely performance of the H&P and by maintaining transcription services and other systems that support this effort. However, in current medical practice, it is fairly routine for an H&P to be performed prior to a planned admission or procedure. As a result, the number of dictated H&Ps should be small. However, when the H&P is performed and dictated within 24 hours after admission, we would expect an entry in the patient's medical record stating that the H&P was completed and dictated. Hospital policies and procedures should address the process and timeframes for transcription, authentication, and placement of a dictated H&P into the medical record. The hospital must ensure that these policies and procedures are being followed.

The 24 hour timeframe establishes a clear and measurable guideline. Stating ''as soon as possible'' would allow too much flexibility and possibly lead to the H&P being placed in the chart well after 24 hours which could potentially impact patient care. These revised standards are consistent with the JCAHO's requirements that have been in place for several years.

As the field of medical information technology advances to the common use of electronic medical records, it will be more probable that this reduced timeframe will become routine practice in hospital settings that may not be in compliance already. We believe there will be less need for transcription services replaced by more on-screen documentation.

Comment: A commenter requested further clarification as to what point between 30 days and the patient's admission does it become necessary to update the medical record regarding the patient's condition. The commenter requested that we reword the regulation to indicate that anything greater than ''X'' days prior to admission must be updated. The commenter further asked if the H&P is conducted 24 hours before admission, based on the proposed rule, would an update still be required.

Response: An update note is required when the H&P is conducted prior to admission. This update can be brief as long as the update adequately addresses any changes in the patient's medical condition since the H&P was conducted. It would be adequate for the physician to make an entry in the patient's medical record stating that the H&P was reviewed, the patient was examined, and that ''no change'' has occurred in the patient's condition since the H&P was completed.

Comment: An organization applauded CMS for proposing to codify the medical H&P requirements with guidance previously issued by CMS in a January 28, 2002 memorandum to the Associate Regional Administrators and the State Survey Agency Directors. The purpose of this memorandum was to clarify our policy with respect to the application of regulatory provisions for hospital admission and presurgical H&P requirements and guidance regarding the timing of the H&P for hospital admissions. They stated the proposed changes would also align the CoPs with standards used by the JCAHO, which, heretofore, has been an ongoing source of conflict for hospitals creating confusion, and needless additional work. However, the commenters seek clarification as to whether the requirement will remain a standard within the CoP at the proposed § 482.24(c) entitled ''Content of record.''

Response: We appreciate the commenter's support. Yes, the proposed 482.24(c) will continue to address the regulatory language regarding the requirements under the CoP: Medical record services.

Timeframe for Completion of H&P

Comment: Many commenters expressed support for the proposed H&P timeframe revisions.

Response: We appreciate this support.

Comment: A commenter supports the use of timeframes; however, the commenter stated this would result in a disconnect between the CMS's requirements and the JCAHO's existing 24 hour requirement. The commenter further expressed the concern that if the H&P is done within 30 days of admission and there is a need to update, this may lead to patient dissatisfaction due to the redundancy of the requirement for updating the H&P.

Response: We recognize there may be redundancy in the information that was gathered at the time of the initial assessment and the completion of an updated assessment. However, we believe this timeframe is necessary for patient safety to ensure that a procedure or admission is still appropriate based on the patient's current condition.

The JCAHO's standards must meet or exceed our requirements in accordance with section 1865(e)(9) of the Act. In this case, the JCAHO standards are more stringent than our requirements. JCAHO requires the H&P to be completed within no more than 24 hours of an inpatient admission. If the H&P was completed within 30 days before the patient was admitted or readmitted, updates on the patient's condition since the assessment(s) are recorded at the time of admission.

Additionally, in the event of there being patient dissatisfaction with the redundancy of performing an update procedure, we believe educating the patient regarding the necessity and importance of performing this update for their safety should help to reduce dissatisfaction expressed by the occasionally dissatisfied patient.

Comment: A commenter requested that CMS specifically address the updating requirements for obstetric H&Ps. The commenter requested CMS to define how and where this update should happen for obstetric H&Ps.

Response: The update requirement for obstetric patients would be no different than the update requirements for other medical services. However, for women who have had prenatal care, an H&P would be conducted on the first prenatal visit. An update note would then be documented at each subsequent prenatal care visit. The next update note would be documented at the onset of labor. For women who have not had prenatal care before the onset of labor, the H&P must be completed within 24 hours of admission.

Comment: A commenter opposed the proposed revisions stating the proposed requirements would create undue burden and expense for rural hospitals. The commenter stated that there is a shortage of physicians and other health care professionals in their rural state which challenges the providers in that area in delivering safe, quality patient care. The commenter further stated that many of the surgical patients are referred by their local family physician and come from more than sixty miles from the healthcare center. The commenter stated that many times the family physician provides an H&P that is done more than 24 hours in advance of the surgery. The commenter is concerned that, in those instances, when it is not possible to have a current H&P on the chart before surgery, the physician is responsible for performing an update to the H&P would charge additional costs to the patient and possibly ''resent'' that an update is requested.

Response: The requirement at § 482.22(c)(5) has been changed to remove reference to ''who has been granted these privileges by the medical staff.'' It is our desire that the expansion of who may perform the H&P would lessen the burden associated with meeting this requirement. Additionally, we would expect the hospital to address in its policies and procedures the practice of accepting the H&P completed by a practitioner who has not been granted these privileges by the hospital's medical staff.

Regarding the issue of an additional physician seeking reimbursement for performing the H&P, we would expect that the performance of an H&P would be provided if necessary Reimbursement issues are beyond the scope of this regulation.

Categories of Providers Permitted To Perform the H&P

The current medical history and physical examination requirements, including who is permitted to complete the history and physical examination, has continued to be a point of contention among various provider groups. Specifically, while podiatrists have expressed concern that doctors of podiatric medicine are currently not permitted to perform a history and physical examination, oromaxillofacial surgeons have been concerned that the lack of specific reference to oromaxillofacial surgeons in the regulation language could result in their loss of current privileges to perform the H&P.

We received 342 comments regarding the proposed revision to adopt the definition of ''physician'' at section 1861(r) of the Act and the removal of the specific reference to oromaxillofacial surgeons. Commenters were evenly split. Nearly 48 percent of the commenters supported the proposed change, while over 52 percent of commenters opposed the proposed change.

One group of commenters supported the definition of physician which includes doctors of medicine or osteopathy, doctors of dental surgery, or dental medicine, doctors of podiatric medicine, doctors of optometry, and chiropractors. These commenters believe that specific reference to these practitioners would result in increased access to care while protecting patient health and safety.

The other group of commenters stated that in the specific context of eligibility to perform a complete H&P, which should be based on documented education, training, and current competence, they believe the use of this definition may be misinterpreted by hospital medical staffs and governing bodies. As a result, commenters believe the hospital medical staffs around the country may feel compelled to change the bylaws to grant such privileges only to those ''commonly known'' to have requisite training in history and physical exam (that is, MD and DO—allopathic and osteopathic) medical doctors. The commenters further stated that limitations or withdrawal of privileges for H&P exam for oromaxillofacial surgeons would limit access for many maxillofacial trauma, head and neck pathology, and reconstruction patients who need the services of an oral surgeon. Instead, the commenters believe that specific reference to oromaxillofacial surgeons must be retained in the final regulation to ensure that they continue to be recognized by the medical staff as qualified to perform the H&P.

Many commenters who expressed opposition to the proposed revision stated the SSA definition might cause hospital medical staffs to exclude trained DMD or DDS. They suggest the definition be expanded to include other degreed professionals that are trained to perform H&Ps. Many commenters who opposed the revised language instead suggested the language read, ''a doctor of medicine or osteopathy, oral and maxillofacial surgeons, and those accredited to perform H&Ps''.

Podiatrists were in support of being permitted by regulation to perform H&Ps, stating that podiatric physicians are, by education and training, capable of performing a comprehensive H&P for any of their patients. These commenters

referenced their 4 year educational requirements for podiatric students and the Council on Podiatric Medical Examination (CPME) publication 120, Standards and Requirements for Accrediting Colleges of Podiatric Medicine (April 2000) and CPME publication 320, Standards (July 2003). Additionally, several commenters discussed how participation in the medicine and medical subspecialty training resources requires that podiatric residents perform a minimum number of comprehensive medical histories and physical examinations.

Response: It is not our intent for this revised change to lead to a reduction in the pool of professionals who are qualified to perform the H&P. Instead, in an effort to reduce burden, we are increasing the pool of individuals who can perform the H&P by allowing other qualified individuals who have been granted privileges by the medical staff in accordance with State law to perform the H&P. For clarification in this final rule, the specific reference to oromaxillofacial surgeons has been retained. However, based on hospital policy and State law, the pool of ''other qualified individuals'' can be restricted.

Comment: A commenter expressed concern stating that § 482.22 should read, ''nurse practitioners (NPs), licensed independent practitioners (LIPs), or other qualified individuals should be allowed to perform H&Ps independently of the MD.'' The commenter elaborated by stating that due to current work hour limitations on residents in acute hospitals, H&Ps are currently being performed by NPs. The commenter stated that H&Ps are frequently billed to Medicare under the ''shared care'' rules instead of under the NP's own Medicare provider number, thus, providing a great cost saving to Medicare. Instead, the commenter believes the proposed language is restrictive, in turn, creating barriers to care for Medicare beneficiaries and increased cost to Medicare.

Another commenter voiced a lack of support over the expansion of the proposed rule to allow ''other qualified individuals who have been granted these privileges by medical staff in accordance with State law.'' The commenter references and supports the AMA's beliefs that the best interests of hospitalized patients are served when admission history and physical exams are performed by a physician, recognizing the ''portions'' of the histories and physical exams may be delegated by the physician to others whose credentials are accepted by the medical staff.

Response: Again, it was not our intent to exclude practitioners who are believed to be appropriately trained and qualified to perform the H&P. We are aware that NPs, especially in rural settings have been an invaluable resource in performing H&Ps as a rule of practice. Thus, we want to provide the hospital the flexibility to determine if NPs are included in their lists of practitioners who are qualified to perform the H&P.

B. Authentication of Verbal Orders

Condition of Participation: Nursing Services (§ 482.23)

We proposed revisions to strengthen the requirement regarding the infrequent use of verbal orders. We proposed that with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment of contraindications, orders for drugs and biologicals must be documented and signed by a practitioner who is authorized to write orders by hospital policy and in accordance with State law, and who is responsible for the care of the patient as specified under § 482.12(c). In addition, we proposed that if verbal orders are used, they are to be used infrequently and must only be accepted by persons who are authorized to do so by hospital policy and procedures consistent with Federal and State law.

In the proposed rule, we stated that authentication requirements enhance patient safety and serve to protect practitioners carrying out verbal orders by preventing those giving the orders from later denying the order was given. We requested public comment on whether recurring problems exist with prescribing practitioners denying that they gave a verbal order after the verbal order was carried out. We also requested public comment on the perceived impact of this proposed rule on this potential issue.

Comment: Several commenters stated that ordering practitioners only occasionally or rarely deny giving a verbal order. One commenter stated that there are anecdotal reports that this problem continues to occur, especially if an incorrect or incomplete order appears to contribute to patient morbidity or mortality, and stated that it is problematic for nurses when a practitioner does deny giving a verbal order. One commenter stated that their State health department and hospital association conducted a comprehensive study and found no examples of prescribing practitioners denying that they gave a verbal order after the verbal order was carried out when the order was repeated back to them.

One commenter stated that these revisions address a recognized problem for RNs who frequently find that they are dealing with unsigned or denied verbal orders and clarifies when and how verbal orders are to be documented. The commenter stated that these revisions would support increased collaboration of the health care team and promote safe, effective patient care.

Response: Denial of verbal orders does not appear to be a frequently occurring problem for the commenters. We agree, however, that it is problematic any time a prescribing practitioner denies giving a verbal order, particularly after the verbal order has been carried out. A denial jeopardizes the trust necessary in collaborative relationships among members of the health care team and may jeopardize patient safety and quality care as well. Therefore, it is necessary that this final rule clarifies when and how verbal orders are to be documented and authenticated.

Comment: The majority of commenters supported the requirement that if verbal orders are used, they should be used infrequently. Commenters commended CMS for recognizing the critical importance of minimizing the use of verbal orders. One commenter stated that CMS should require hospitals and practitioners to take steps to limit the use of verbal orders, in the absence of electronic health record and computerized physician order entry technologies.

A few commenters did not support this requirement. One commenter stated that the use of verbal orders is a common practice and certainly not infrequent. The commenter recommended that this requirement be tested with practicing physicians in both rural and urban hospitals. The commenter stated that verbal orders can comprise 100 percent of orders received at night in rural areas as well as other times when the patient's condition warrants and the physician is not physically available or capable of secure electronic communication.

Another commenter stated that in order to provide more timely, appropriate, and patient-focused care, the use of verbal and/or telephone orders in the hospital has increased, and could be viewed as being used in circumstances that a regulatory agency may not consider ''urgent or emergent.'' The commenter further stated that patient lengths of stay have declined dramatically over the past decade and, therefore,require more frequent changes

in orders and more immediate response to patient's expressed needs while hospitalized. This commenter recommended that CMS broaden its interpretation of ''emergent or urgent'' to recognize that verbal orders are needed to ensure the provision of timely, appropriate and patient-focused care and that verbal orders are often necessary from a service delivery perspective for patients and families. The commenter further stated that it is often necessary to secure verbal orders in order to change diet or activity orders, secure changes to therapy orders to better meet the needs of the patient, and obtain medication orders in response to patient response or non-response to ordered medication regimens, particularly with respect to pain management.

Response: The use of verbal or telephone orders is cited as an error-prone process by the American Society of Health-System Pharmacists (ASHP) [1], the Institute of Safe Medication Practices (ISMP) [2], the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) [3], and the National Coordinating Council for Medication Error Reporting and Prevention (NCC MERP) [4]. These nationally recognized organizations recommend that the use of verbal orders be minimized as much as possible. In addition, minimizing the use of verbal or telephone orders was a key 2003 JCAHO National Patient Safety Goal.

The use of verbal orders poses an increased risk of miscommunication that could result in an adverse event, including a medication error, for the patient. The NCC MERP reports that confusion over the similarity of drug names accounts for approximately 25 percent of all medication errors.[5] The ISMP described safety issues related to the use of verbal orders in the January 24, 2001 issue of *Medication Safety Alert!* [6]

''Verbal orders offer more room for error than orders that are written or sent electronically. The interpretation of what someone else says is inherently problematic because of different accents, dialects, and pronunciations. Background noise, interruptions, and unfamiliar terminology often compound the problem. Once received, verbal orders must be transcribed as a written order, which adds complexity and risk to the ordering process. The only real record of the verbal order is in the memories of those involved. When the recipient records a verbal order, the prescriber assumes that the recipient understood correctly. No one except the prescriber, however, can verify that the recipient heard the message correctly. If a nurse receives a verbal order and subsequently calls it to the pharmacy, there is even more room for error. The pharmacist must rely on the accuracy of the nurse's written transcription of the order and the pronunciation when it is read to the pharmacist.

Sound-alike drug names also impact the accuracy of verbal orders. There are literally thousands of name pairs that can easily be misheard. For example, we have received scores of error reports where verbal orders for ''Celebrex 100 mg PO'' were misheard as ''Cerebyx 100 mg PO.'' Drug names are not the only information prone to misinterpretation. Numbers are also easily misheard. For example, an emergency room physician verbally ordered ''morphine 2 mg IV,'' but the nurse heard ''morphine 10 mg IV'' and the patient received a 10 mg injection and developed respiratory arrest. In another case, a physician called in an order for ''15 mg'' of hydralazine to be given IV every 2 hours. The nurse, thinking that he had said ''50 mg,'' administered an overdose to the patient who developed tachycardia and had a significant drop in blood pressure.''

If verbal orders are used, they must be used infrequently. This means that the use of verbal orders must not be a common practice. This is not a new requirement. The requirement for the infrequent use of verbal orders has been part of the hospital CoPs since 1986. We expect this requirement to be reflected in hospital policy as well as in actual practice. We expect hospitals to implement practices that minimize the use of verbal orders regardless of whether or not the hospital has implemented electronic health record and/or computerized physician order entry technologies. We do, however, strongly support the adoption and implementation of these technologies. If the use of verbal orders in a hospital is common practice, the hospital could be cited as being out of compliance with the Medicare hospital CoPs.

We recognize that there are occasional situations in a hospital, regardless of a rural or urban setting, when the use of a verbal order is necessary. We also recognize that a practitioner responsible for the care of the patient may not necessarily be available on site during the night or always have access to electronic communication to issue a written order. However, every effort should be made to minimize the use of verbal orders given the risks to patient safety when verbal orders are used. The use of verbal orders should be limited to those situations in which it is impossible or impractical for the prescriber to write the order or enter it into a computer. Verbal orders are not to be used for the convenience of the ordering practitioner.

We agree that ''timely, appropriate, and patient-focused care'' is important. We also recognize that patient length of stay has decreased and may necessitate more frequent order changes and more immediate response to patient needs. However, we do not agree that these factors necessarily translate into the need for the frequent use of verbal orders. We expect hospitals to have systems in place to enable staff to address patient needs on a timely basis without routinely resorting to the use of verbal orders. We do not specify in regulation that verbal orders must only be used in ''emergent or urgent'' situations. We require that if verbal orders are used, they must be used infrequently. We expect that hospital policy and practice would discourage the use of verbal orders as much as possible.

Comment: The majority of commenters cited and endorsed the 2003 JCAHO National Patient Safety Goal—''For verbal or telephone orders or for telephonic reporting of critical test results, verify the complete order or test result by having the person receiving the order or test result 'read-back' the complete order or test result.'' Commenters also cited the related JCAHO requirement that hospitals ''implement a process for taking verbal or telephone orders or receiving critical test results that require a verification ''read-back'' of the complete order or test result by the person receiving the order or test result'' (IM 6.50, EP 4) and recommended that CMS consider including this requirement in the CoPs. One commenter stated that a regulatory requirement would further enhance the ability of nurses to clarify verbal orders without seeming to be personally confrontational to physician and practitioner colleagues who issue such orders to nurses. One commenter stated that their State law requires that a verbal order be repeated back to the prescribing practitioner and verified.

[1] American Society of Hospital Pharmacists. ASHP guidelines on preventing medication errors in hospitals, Am J Hosp Pharm 1993; 50:305–14. *http://www.ashp.org/bestpractices/MedMis/MedMis_Gdl_Hosp.pdf.*

[2] Smetzer J, Cohen MR. Instilling a measure of safety into those ''whispering down the lane'' verbal orders,'' ISMP Medication Safety Alert! Acute Care Edition, 2001; 6:1–2. *http://www.ismp.org/Newsletters/acutecare/articles/20010124.asp.*

[3] 2003 JCAHO National Patient Safety Goals: practical strategies and helpful solutions for meeting these goals. Joint Commission Perspectives on Patient Safety. 2003; 3:1–11. *http://www.jcrinc.com/subscribers/patientsafety.asp?durki=3746#goal2.*

[4] National Coordinating Council for Medication Error Reporting and Prevention. Recommendations to reduce medication errors associated with verbal medication orders and prescriptions. February 20, 2001. *http://www.nccmerp.org/council/council2001–02–20.html.*

[5] Ibid, National Coordinating Council for Medication Error Reporting and Prevention.

[6] Ibid, Smetzer J, Cohen MR.

This commenter stated that this practice has reduced errors and has increased communication and patient safety.

One commenter stated that verbal orders have generally been instituted well before authentication of the order can occur and stated that the possibility exists that harm could occur to the patient before it is recognized through an authentication procedure. The commenter strongly recommended that CMS consider including JCAHO's National Patient Safety Goal that requires the ''read-back'' of the verbal order to ensure that the order is heard correctly to reduce the likelihood of patient harm. The commenter states that this intervention is real-time and more likely to ensure the safety of patients as opposed to the authentication of the verbal order well after the verbal order has already been implemented.

Response: We agree that the ''read-back'' verification process is a critical step in preventing medication errors and ensuring patient safety when verbal orders are used. We strongly support this practice as a national safety patient goal and expect hospitals to be actively working toward the achievement of this goal. However, ''read-back'' verification of a verbal order is just one critical measure designed to minimize errors and ensure patient safety. Authentication of verbal orders is another critical measure. Both of these important processes are supported by organizations such as the NCC MERP and ASHP. As part of a hospital's efforts to implement the JCAHO National Patient Safety Goals for Hospitals, as well as other nationally accepted guidelines and standards of practice, we would expect the hospital to implement a ''read-back'' verification process when using verbal orders. We expect hospitals to comply with nationally accepted guidelines and standards of practice, such as the ''read-back'' verification process, to ensure patient safety and minimize medical errors regardless of whether they are contained in the regulatory text of the CoPs. Therefore, we have not included the ''read-back'' verification process in the final regulation text.

Comment: One commenter stated that the proposed rule would benefit from adding the detail found in the ASHP ''Guidelines on Preventing Medication Errors in Hospitals''.

Response: We expect hospitals to follow standards of practice and nationally accepted guidelines, such as those published by ASHP. However, given the number of standards of practice and practice guidelines that exist nationally, it would be impossible to include and maintain a complete, up-to-date set of standards and practices in the regulatory text. Clinical practice continuously evolves based on research findings, technology developments, and the needs of specific patient populations. Just because a practice standard or guideline is not contained in the regulation text does not mean that CMS does not support it.

Several organizations, including ASHP, have published nationally accepted guidelines targeted at reducing medication errors and provide specific recommendations regarding the use of verbal orders. These guidelines serve as a strong foundation upon which hospitals can develop safe policies and practices. They include:

- ASHP, ''Guidelines on preventing medication errors in hospitals,'' 1993. *http://www.ashp.org/bestpractices/MedMis/MedMis_Gdl_Hosp.pdf*;
- ISMP, Medication Safety Alert! Acute Care: ''Reducing 'at-risk behaviors', October 7, 2004. *http://www.ismp.org/Newsletters/acutecare/articles/20041007.asp?ptr=y*
- ISMP, Medication Safety Alert! Acute Care, ''Instilling a measure of safety into those 'whispering down the lane' verbal orders,'' January 24, 2001. *http://www.ismp.org/MSAarticles/VerbalOrders.html*; and,
- NCC MERP, ''Recommendations to reduce medication errors associated with verbal medication orders and prescriptions,'' February 20, 2001. (*http://www.nccmerp.org/council/council2001–02–20.html*).

Authentication of Verbal Orders

We proposed revisions that would broaden the category of practitioners who could authenticate orders. We proposed that all orders, including verbal orders, must be authenticated promptly by the prescribing practitioner or another practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law for a period of 5 years following the effective date of this final rule.

Comment: The vast majority of commenters voiced strong support for these proposed changes. Commenters welcomed the flexibility represented in these changes, and agreed that an authentication requirement is necessary to protect the health and safety of patients and to ensure quality, accountability and overall integrity of medical services rendered. One commenter stated that authentication of any type of orders in the hospital setting serves three distinct purposes that should be included in policy consideration: (1) Authentication is used to document and hold accountable the prescribing physician/practitioner for the medical necessity of the services ordered; (2) authentication is used to validate that hospital staff received, transcribed and performed orders appropriately, and (3) authentication is used to document that practitioners reviewed the patient medical record, findings and other relative documents when making medical decisions and interpretations.

Another commenter stated strong agreement with CMS that this verbal order authentication requirement increases accountability for the service provided and verifies that the entry is complete and accurate. The commenter stated that the necessity for this requirement is evidenced by a JCAHO study indicating that most organizations (84 percent) cited a breakdown in communication, most often (67 percent) with or between physicians, as one of multiple root causes leading to a sentinel event, defined by JCAHO as ''an unexpected occurrence involving death or serious physical or psychological injury, or risk thereof.'' The commenter stated that by the very nature of clinical practice in an Emergency Department, verbal orders are an essential component of emergency care, especially when a patient's condition rapidly deteriorates. The commenter stated that authentication of verbal orders enhances patient safety and minimizes the risk of medical errors by ensuring that the interdisciplinary communication that naturally occurs between practitioners in a busy Emergency Department environment is correct, complete, and implemented as intended to ensure positive patient outcomes. The commenter stated that such orders also enhance personal accountability of practitioners who issue and receive verbal orders and further augment provider performance by revealing potential discrepancies before inadvertent miscommunications can cause harm to patients.

Commenters welcomed the proposed rule that would allow verbal orders to be dated, timed, and authenticated by the prescribing practitioner or another practitioner responsible for the care of the patient. One commenter stated that this approach reflects the needs of medical practice today and does not raise quality of care concerns. A commenter stated that the proposed changes at § 482.23(c)(2) and § 482.24 are both consistent with current hospital practices and help to clarify how hospitals and their staff must comply with the CoPs. The commenter further stated that in those cases when a practitioner gives an order, and then is

''off duty,'' it is appropriate that a practitioner other than the ordering practitioner be allowed to authenticate the order.

Response: We appreciate the support. We agree that the authentication of verbal orders is critical to patient safety and quality care.

Comment: One commenter did not agree that patient safety is compromised if a physician order is not authenticated and requested an example of such an occurrence. The commenter also asked how patient safety is enhanced by signing a verbal order the next day or the next week, and stated that the physician is responsible whether the verbal order is signed or not. Another commenter stated that he understands the perspective taken by CMS related to the importance of authentication of verbal orders from a provider accountability and hospital risk management standpoint; however, the commenter does not believe that authentication of verbal orders necessarily translates to improved patient safety and quality.

Response: We agree that the practitioner giving a verbal order is responsible for the order whether it is authenticated or not. However, incomplete or incorrectly transcribed verbal orders present a risk to the patient's health and well being. If a verbal order for a onetime medication is not documented completely and accurately, patient harm can occur. Prompt correction of this verbal order can identify the error and ensure that appropriate patient follow up occurs as soon as possible. It can also be used to identify and correct related practice issues. Therefore, even though a verbal order may be authenticated after the order has already been implemented, authentication is important. If a verbal order for an ongoing medication is not documented completely and accurately, an ongoing medication error could occur and compromise the patient's health and well being. Prompt authentication of this verbal order could avoid ongoing medication errors. In addition to identifying and correcting the error, any necessary patient follow up as a result of the error can be implemented as soon as possible. Therefore, we believe that the authentication of verbal orders impacts patient safety and quality of care.

Comment: One commenter stated that the proposed changes regarding verbal order authentication appears to place all the accountability and liability on the hospital personnel or facility-based professional who carry out the orders—including orders that the prescribing or ordering physician/practitioner may have issued unnecessarily or incorrectly. The commenter stated that he acknowledges that medical errors can occur due to documentation errors and has included in hospital bylaws safeguards requiring counter-signatures by the prescribing or ordering physician/practitioner within a defined time period. The commenter requested that CMS reconsider its position on eliminating the counter-signature by the prescribing or ordering physician/practitioner on verbal orders and recommends that CMS maintain requirements for the prescribing or ordering physicians/practitioners to authenticate their verbal orders to ensure their accountability for ordered services (for example, attestation to medical necessity), but provide for greater flexibility by allowing other physician group members or physician employed non-physician practitioners to countersign on behalf of the prescribing physician. The commenter stated that this maintains the appropriate ''accountability'' for the service by the prescribing or ordering physician/practitioner.

Response: This revised requirement does not, in any way, relieve the prescribing practitioner of his or her accountability and responsibility for the ordered service. The intent of the proposed revisions to the verbal order authentication requirements is to maximize the hospital's flexibility while maintaining patient safety and an appropriate level of accountability for both the hospital and prescribing practitioner for services rendered to the patient. We proposed that all orders, including verbal orders, must be dated, timed, and authenticated promptly by the prescribing practitioner or another practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law. Under this proposed rule, hospitals would no longer be burdened by the requirement that verbal orders must be signed by the practitioner who gave the order. Any practitioner responsible for the care of the patient who is authorized by hospital policy and permitted by State law to write a specific order would be permitted to authenticate a verbal order, even if the order did not originate with him or her. This could include permitting other physician group members or non-physician practitioners to countersign on behalf of the prescribing physician based on hospital policy as recommended by the commenter. A hospital has the flexibility to limit who may authenticate a verbal order and could authorize only the prescribing practitioner to authenticate a verbal order.

Comment: A commenter stated that many individuals are not comfortable signing another's orders and incurring the responsibility for the validity of the order. Another commenter expressed doubt that the proposed change to allow another provider caring for the patient to sign a verbal order for the prescribing provider would be held in high regard by the provider community. The commenter stated that they have multiple care providers with teaching services, and residents covering off-shifts, hence the utilization of telephone orders. The commenter stated that each provider may not necessarily see the patient in person. Finally, the commenter stated that the shorter length of stay also adds to the complexity of maintaining a signed hard-copy chart.

Response: The proposed provision provides hospitals and practitioners the flexibility of permitting a verbal order to be authenticated promptly by the prescribing practitioner or another practitioner responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law. However, this regulation does not require a practitioner responsible for the care of the patient to authenticate a verbal order that he or she did not give. Ultimately, the prescribing practitioner is responsible for authenticating the verbal order. A hospital has the flexibility to develop policies and practices to implement this regulation in a manner that makes sense for their hospital based on the needs of the patient population served. When a practitioner authenticates a verbal order that he or she did not give, the practitioner accepts responsibility for the order and is validating that the order is complete, accurate, and final based on the patient's condition. We expect a practitioner responsible for the care of the patient to have knowledge of the patient's hospital course, medical plan of care, condition and current status. A practitioner who does not possess this knowledge about a patient should not be authenticating verbal orders for this patient.

When verbal orders are used, they must be used infrequently regardless of the patient's length of stay. When multiple practitioners are responsible for the care of a patient, there should be even fewer instances when verbal orders are necessary. Orders should be documented directly in the medical record by the prescribing practitioner either in writing or electronically. The use of verbal orders should be limited

to those situations in which it is impossible or impractical to write the order or enter it into the computer. Verbal orders are not to be used for the convenience of the ordering practitioner.

Comment: One commenter stated that he does not support anyone other than the ordering practitioner authenticating verbal orders because it partially alleviates the ordering practitioner's accountability for the work he or she does. The commenter stated that only the ordering practitioner knows what their intentions were for a patient, not another practitioner.

Response: We do not agree that the ordering practitioner's accountability for a verbal order is in any way decreased if another practitioner authenticates the order. When a practitioner authenticates a verbal order that he or she did not give, the practitioner accepts responsibility for the order and is validating that the order is complete, accurate, and final based on the patient's condition. We also do not agree that only the ordering practitioner knows what their intentions were for the patient when giving the verbal order. We expect a practitioner responsible for the care of the patient to have knowledge of the patient's hospital course, medical plan of care, condition and current status. We believe that a practitioner with this knowledge can safely evaluate the completeness and accuracy of a verbal order. If a practitioner does not possess this knowledge about a patient, the practitioner should not be authenticating a verbal order for the patient. If the practitioner has questions or concerns about the order, we would expect them not to authenticate the order and contact the prescribing practitioner to resolve any questions or concerns as soon as possible.

Comment: One commenter requested clarification on what is meant by the requirement that verbal orders be legible, complete, dated and timed, and whether or not it is necessary for a physician to date and time the authentication of a verbal order.

Response: This final regulation requires that all orders, including verbal orders, be legible, complete, dated, timed, and authenticated. Therefore, it would be necessary for a physician or other practitioner to date and time the authentication of a verbal order. The receiver should clearly record the order directly onto an order sheet in the patient's medical record or enter it directly into the computer. The receiver should date, time, ''read back,'' and sign the verbal order according to hospital policy. The prescriber or another practitioner responsible for the care of the patient must then verify, sign, date and time the order as soon as possible in accordance with hospital policy, and State and Federal requirements.

Comment: One commenter requested clarification as to whether prescribing physicians/practitioners can use faxed or electronic signatures as a means to validate verbal orders.

Response: Faxed or electronic signatures could be used to authenticate a verbal order. Authentication of a verbal order may occur in writing or electronically. The hospital must have a method to establish the identity of the practitioner who has authenticated a verbal order. This would include verification of the author of faxed verbal orders or computer entries. We would expect that hospital policies would address author verification processes for both written and electronic signatures.

Comment: One commenter stated that discrepancies between the proposed rule and the current interpretive guidelines raise the question of whether hospitals which have recently effected policy and procedural changes to comply with the new interpretive guidelines would be required to make further changes in order to comply with new rules. The commenter also requested clarification regarding the temporary 5-year exception to one aspect of the authentication requirements and whether hospitals would need to make still further changes upon termination of the exemption period.

Response: Hospitals participating in the Medicare and Medicaid program are expected to comply with current CoPs. When a final rule is published, an effective date for the revised requirements is identified in the final rule. Upon the effective date, hospitals participating in the Medicare and Medicaid program are expected to comply with the new requirements. In addition, the interpretive guidelines will be revised based on the final rule.

If CMS does not make the exemption permanent, then the individual ordering practitioner must authenticate his own verbal order. Hospitals are free, however, to maintain the more stringent requirement that verbal orders must be authenticated promptly by the prescribing practitioner and not permit another practitioner responsible for the care of the patient to authenticate verbal orders.

Comment: One commenter stated that they are seeking to balance patient safety, ''common practice,'' and administrative problems associated with verbal orders. The commenter stated that from an administrative perspective, they appreciated the approach of allowing other qualified practitioners to sign an order and resolve some of the administrative barriers. However, the commenter stated concern that there are legal liabilities to such a practice that run contrary to the philosophy of patient safety, and that the proposed change may be illegal in some States. The commenter requested that if legality is not an issue that the requirement be modified to indicate that the qualified practitioners have some relationship to the patient's care, the medical service, or the medical practice. The commenter stated that to enhance patient safety, the practitioner should be more narrowly defined to ensure that he or she has the knowledge of the case, or service, to evaluate an order before signing it.

Response: State laws may be more stringent than Federal requirements. If State law requires that the prescribing practitioner authenticate verbal orders, a practitioner other than the prescribing practitioner would not be permitted to authenticate verbal orders in that State. As proposed, this final rule requires that verbal orders be signed by the prescribing practitioner or another practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law. We expect a practitioner responsible for the patient's care to have knowledge of the patient's hospital course, medical plan of care, condition and current status.

Comment: One commenter requested clarification as to whether a physician assistant or nurse practitioner who has prescriptive authority under State law is allowed to co-sign a physician's order.

Response: A physician assistant or nurse practitioner may only authenticate verbal orders written by a physician or other licensed independent practitioner that they have authority to write themselves as determined by hospital policy in accordance with state law. For example, some hospitals limit who may give orders for certain types of drugs or therapies. If a physician assistant or nurse practitioner is not permitted by hospital policy to order a specific drug or therapy, he or she would not be permitted to authenticate a verbal order for such a drug or therapy. Hospitals have the flexibility to limit who may authenticate verbal orders.

In addition, a physician assistant or nurse practitioner may only authenticate verbal orders for a patient for whom they have physician delegated responsibility. Like all practitioners responsible for the care of the patient, a physician assistant or nurse

practitioner would be expected to have knowledge of the patient's hospital course, medical plan of care, condition and current status. With this knowledge, a practitioner can safely evaluate the completeness and accuracy of a verbal order.

Comment: A commenter requested that in the proposed § 482.24(c)(1)(i) and § 482.24(c)(1)(ii), CMS replace the term ''prescribing'' practitioner with the term ''ordering'' practitioner in keeping with Federal and State laws on prescriptive authority, current hospital practice and CMS objectives.

Response: We agree. In this final rule, we are replacing the term ''prescribing'' with the term ''ordering'' at § 482.24(c)(i) and § 482.24(c)(1)(ii).

Sunset Provision

We proposed limiting the length of time that a practitioner other than the prescribing practitioner would be permitted to authenticate an order. We proposed that for the 5-year period following the effective date of the final rule, all orders, including verbal orders must be dated, timed, and authenticated promptly by the prescribing practitioner or another practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law.

Comment: Several commenters supported the 5-year sunset provision. One commenter stated that the 5-year timeframe is reasonable and should allow adequate time for evaluation. A few commenters stated that it will provide greater flexibility while health information technology continues to evolve to the point where the originating physician may authenticate his or her own orders in an efficient manner. Another commenter stated that the 5-year temporary provision provides hospitals with flexibility while maintaining an appropriate level of accountability. One commenter stated that the American Health Information Management Association is actively working with healthcare systems, vendors and others to promote the adoption of a standard electronic health record and the capability for all orders to be immediately authenticated, as they are dictated or written, electronically.

Response: We appreciate the support of these commenters and the work being done to promote the use of electronic medical record systems.

Comment: Several other commenters did not support the 5-year sunset provision. One commenter expressed concern that the proposed 5-year exception would expire prior to the technology actually being widely available and used. The commenter recommended replacing the 5-year sunset language with ''until such time as health information technology is sufficient to allow the originating physician to authenticate his or her own orders in an efficient and non cost-prohibitive manner.''

Another commenter shared the current administration's interest in implementing electronic medical records. However, the commenter stated that it is highly unlikely that all hospitals in any given State would be able to afford to implement health information technology fully within the next 5 years. This commenter strongly urged CMS to authorize the authentication of verbal orders by practitioners who meet the specified criteria without any time limitation. The commenter stated that CMS can then assess after 5 years whether the implementation of health information technology has occurred and revise regulations at that time if necessary. The commenter stated that, otherwise, hospitals unable to implement health information technology would experience undue administrative burden in 5 years.

A few commenters expressed concern about a potential gap between the expiration of the exception and the publication of new regulations. One commenter recommended revising the provision as follows: ''exception is 5 years from the effective date following the date of the final rule, or the publication of new requirements, whichever comes later.'' Another commenter emphasized the need to re-evaluate the 5-year ''temporary exception'' period in a systematic and timely manner. The commenter recommended that CMS begin planning this evaluation at least 12 months before the end of the 5-year period to allow for adequate time to assess the availability and capability of electronic health records and hospital information systems.

Response: We appreciate the health care community's support of health information technology. We understand that the implementation of this technology requires an investment of hospital resources and that the rate of health information technology adoption and full implementation in hospitals varies across the country. We agree that this provision may need to be revised in 5 years based on the level of health information technology adoption and implementation at that time. We also agree that a policy decision must be made within a timeframe that avoids a gap between the expiration of the exception and the publication of a new regulation, if necessary.

Timeframe for Authentication of Verbal Orders

We proposed revisions that would clarify the timeframe for authentication of verbal orders. We proposed that all verbal orders must be authenticated based upon Federal and State law. If there is no state law that designates a specific timeframe for the authentication of verbal orders, then verbal orders must be authenticated within 48 hours.

Comment: Many commenters supported the proposed rule as written. Other commenters stated that they support the proposed change that all verbal orders must be authenticated based upon Federal and State law, but did not support the proposed 48 hour timeframe for authentication of verbal orders in the absence of a State law that designates a specific timeframe for the authentication of verbal orders. One commenter stated that he was unable to identify any study to support the theory that the 48-hour rule has any significant impact on preventing patient harm. Another commenter stated that while they would still prefer to allow ''hospitals and their medical staffs to establish their own policies on authentication of verbal orders,'' they supported the application of the 48-hour timeframe only to those States that do not currently have a timeframe in place for the verification of such orders.

Another commenter stated that a timeframe for the authentication of verbal orders adds no value because if an order is issued and carried out promptly, as it should be, signing the order after the fact does nothing to reverse any misadventure that may have occurred due to an unsigned order. Several commenters stated that the 48-hour timeframe is burdensome for physicians, nurses and medical records staff.

Response: We appreciate the support we received from commenters. Although there is little in the literature regarding an appropriate timeframe for authentication of verbal orders, the use of verbal orders is cited as an error-prone process by the JCAHO, ISMP, NCC MERP and ASHP. Authentication of a verbal order is an opportunity to identify a transcription error and minimize risk to patient safety. The goal is to intercept an error as soon as possible. Prompt authentication of a verbal order enables early identification and correction of an error. Early identification and correction of an error enables the practitioners to minimize or eliminate the risk to patient safety posed

by incomplete or incorrectly transcribed verbal orders.

As discussed previously, verbal orders can be given for a variety of patient interventions, including medications and biologicals that direct staff to provide both onetime and ongoing patient care and treatments. If a verbal order for a onetime medication is not documented completely and accurately, patient harm can occur. Authentication of this onetime verbal order can identify the error and ensure that appropriate patient follow up occurs as soon as possible. Therefore, even though a verbal order may be authenticated after the order has already been implemented, authentication is important. If a verbal order for an ongoing medication is not documented completely and accurately, an ongoing medication error could occur and compromise the patient's safety and well being. Authentication of this verbal order could avert ongoing medication errors. In addition to identifying and correcting the error, any necessary patient follow up as a result of the error can be implemented as soon as possible. Therefore, we believe that the authentication of verbal orders impacts patient safety and quality of care.

We do not agree that the 48-hour timeframe is unnecessarily burdensome. If verbal orders are used, they must be used infrequently. Therefore, practitioners and other hospital staff should not need to expend a great deal of time and energy ensuring that verbal orders are authenticated within 48 hours. However, if a hospital is not in compliance with this requirement and the use of verbal orders is routine or commonplace, compliance with this 48-hour requirement could seem daunting.

We have also broadened the current requirement that states that verbal orders must be authenticated by the prescribing practitioner. This final rule provides hospitals flexibility by allowing a verbal order to be authenticated by the prescribing practitioner or another practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law for a period of 5 years. The next time the prescribing practitioner or another practitioner responsible for the care of the patient assesses the patient or documents information in the patient's medical record, a verbal order should be authenticated. In an acute care setting, opportunities exist throughout the course of 48 hours for a verbal order to be authenticated by one of these practitioners.

Comment: Many commenters stated that the ''repeat and verify'' process for verbal orders enhances patient safety more effectively than a timeframe for authentication of verbal orders after the service has been provided once or many times. Other commenters stated that if a verbal order is repeated and verified and considered acceptable by the ordering practitioner, the order need not be authenticated until the medical record is closed. Commenters further stated that if a verbal order is not repeated and verified, it should be authenticated within 48 hours. Several commenters stated that their State law permits verbal orders that follow the ''repeat and verify'' process to be signed within 30 days of discharge; if the ''repeat and verify'' process is not implemented, verbal orders must be authenticated within 48 hours. One commenter stated that their State law requires repetition and verification of verbal orders if a physician does not want to authenticate within 48 hours.

Response: We agree that the ''repeat and verify'' process for verbal orders enhances patient safety. We expect hospital policies and practices to implement this practice when verbal orders are used regardless of whether the physician wants to authenticate the order within 48 hours. Implementation of this nationally recognized safe practice should not be hampered by practitioner convenience or preference. However, the ''repeat and verify'' process is just one critical measure designed to minimize errors and ensure patient safety when verbal orders are used. Authentication of verbal orders is another critical measure. Both of these important processes are supported by organizations such as the NCC MERP and the AHSP. Implementation of the ''repeat and verify'' process does not negate the need for prompt authentication of verbal orders. Neither of these practices alone can ensure patient safety as effectively as both can when used together.

Comment: One commenter stated that their State law, which permits a 30-day timeframe for authentication of verbal orders if the ''repeat and verify'' process is followed, is acceptable and does not jeopardize patient care. A commenter requested clarification regarding whether a State law providing for a 30-day timeframe for the authentication of verbal orders if the order is ''repeated and verified'' is acceptable. A few commenters requested clarification of what is meant by the word ''promptly.''

Response: We are not aware of any data that would support the commenter's statement that a 30-day timeframe for authentication of verbal orders is acceptable and does not jeopardize patient care. We are also not aware of any data that define a specific timeframe for the authentication of verbal orders. Although authentication of verbal orders is supported by national organizations such as NCC MERP and ASHP, neither of these organizations specifies a timeframe for authentication of verbal orders.

The prompt authentication of all medical record entries, including verbal orders, has been a requirement for hospitals since 1986 (§ 482.24(c)(1)). The Merriam-Webster online dictionary [7] defines ''prompt'' as performed readily or immediately. A 30-day timeframe for authentication of verbal orders would not be consistent with this requirement. Authentication of a verbal order represents an opportunity to identify a transcription error and potential risk to patient safety. Prompt authentication of a verbal order enables early identification and correction of an error. Early identification and correction of an error enables the practitioners to minimize or eliminate the potential risk to patient safety. A 30-day timeframe for authentication is not consistent with the intent to intercept an error as soon as possible.

It is possible that some States misinterpreted the intent of the Medical Records CoP at § 482.24(c)(2)(viii). This provision requires final diagnosis with completion of medical records within 30 days following discharge. It was not our intent for this requirement to support authentication of verbal orders 30 days following the patient's discharge. This requirement addresses a specific issue and does not negate the requirement for prompt authentication of all medical record entries, including verbal orders, at § 482.24(c)(1) or other specific timeframe requirements found in other CoPs. For example, the H&P examination must be placed in the patient's medical record within 24 hours after admission. A hospital would be noncompliant if the H&P examination was not placed in the medical record until 30 days following discharge. Likewise, if the postanesthesia evaluation was not completed and documented within 48 hours of surgery, a hospital would be found noncompliant.

However, given the lack of data supporting a specific timeframe for authentication of verbal orders, the lack of consensus on a timeframe for authentication of verbal orders (as evidenced by the wide variability of timeframes specified in State law from

[7] The Merriam-Webster Online Dictionary. *http://www.merriamwebster.com/dictionary/promptly.*

24- to 48-hours up to 30 days after discharge), and many public comments stating support for deferring to State law on this issue, we have finalized this provision as proposed. We will continue to defer to State law on this issue. In the absence of a State law, verbal orders must be authenticated within 48 hours. As hospitals continue to adopt health information technologies, the prompt authentication of all medical record entries, including verbal orders, will become less burdensome for hospitals.

Comment: A few commenters stated that they support the current requirement that verbal orders for the administration of drugs or biologicals must be signed or initiated by the prescribing practitioner as soon as possible. Another commenter stated that current authentication requirements for prescribing practitioners may appear to be burdensome. However, the commenter stated that they do not believe the requirements are burdensome in their nature, but rather, are burdensome because the current requirement language, ''as soon as possible'' sets an arbitrary standard that cannot be operationalized or enforced. The commenter recommended that CMS define a ''reasonable'' timeframe for verbal orders to be documented, authenticated, and counter-signed in the patient medical record that is enforceable and can be incorporated into hospital policy and procedure. The commenter stated that since CMS is considering an H&P to be evident in the medical record within 24–48 hours, he recommended that CMS apply the same time standard for verbal orders.

Response: We appreciate the support for authentication of verbal orders as soon as possible. We agree that 48 hours is a reasonable and enforceable timeframe for authentication of verbal orders. It clarifies the current expectation of ''as soon as possible'' and supports patient safety. Therefore, we have finalized this provision as proposed. All verbal orders must be authenticated based upon Federal and State law. In the absence of a State law that designates a specific timeframe for the authentication of verbal orders, verbal orders must be authenticated within 48 hours.

We agree that current requirements are not necessarily burdensome. Hospital burden related to verbal order authentication can be minimized. Hospitals must evaluate current practices and policies, and implement measures that minimize the use of verbal orders. If a hospital permits the routine, frequent use of verbal orders, not only is the hospital out of compliance with the CoPs, but the hospital has created a tremendous authentication burden. The use of verbal orders should be limited to those situations in which it is impossible or impractical for the prescribing practitioner to write the order either manually or electronically. These situations should become even less frequent as hospitals implement electronic medical record and computerized physician order entry systems. As hospitals minimize the use of verbal orders, they will also minimize the burden associated with their authentication. In addition, when it is necessary to use a verbal order, this final rule gives hospitals more flexibility in terms of who may authenticate the verbal order.

Comment: A commenter stated that establishing a 48-hour requirement would not change the fact that some verbal orders would continue to be unsigned at discharge and health information management staff will continue to expend resources chasing physicians to sign orders. Instead, the commenter recommended that no verbal orders be allowed if CMS wants to put teeth in its rules. The commenter stated that patient safety would be improved by the physician actually writing the order, typing it into an email, faxing an order, or using a computerized order entry system.

Response: We acknowledge the fact that establishing a 48-hour requirement may not eliminate unsigned verbal orders. However, the use of verbal orders must not be commonplace. We agree that the use of technology such as computerized physician order entry, fax and email should be used to minimize the use of verbal orders whenever possible. However, we do not believe it is in the best interest of patient safety to disallow the use of verbal orders. Even when 100 percent of hospitals in the nation have completely implemented a computerized medical record and computerized physician order entry, there would still be those situations in which it is impossible or impractical for the prescriber to write the order or enter it in the computer (for example, in medical emergencies, or when the practitioner is scrubbed in the operating room). Thus, the need for verbal orders would continue to exist.

Comment: In contrast, another commenter recommended that CMS add further provisions that waive or delay the ''time'' element on verbal orders during a ''medical emergency'' when staff are not able to stop and document orders without jeopardizing the patient's health. A possible solution would be to allow for an independent scribe to document verbal orders in those instances and then have the physician/practitioners sign, date, and time once the patient is stabilized.

Response: We agree the use of verbal orders is often necessary during a medical emergency. We would expect the hospital to have policies and procedures that ensure that the necessary emergency care is provided to the patient without delay and appropriate documentation of emergency care. In an emergency situation, it is standard practice for verbal orders to be documented, dated and timed by someone other than the ordering practitioner, and then authenticated, dated and timed by the ordering practitioner once the patient has been stabilized. It is also standard practice in an emergency situation for the practitioner administering a medication to repeat the verbal order back to the ordering practitioner.

Comment: One commenter stated disagreement with the 48-hour authentication requirement due to the additional burden on physicians in residential facilities located in a psychiatric hospital. Current regulations require a patient to be seen by their attending physician as required by the condition of the patient. The medical staff is only expected to see their patients once or twice weekly. The requirement to sign verbal orders within 48 hours would negate the once to twice weekly expectation these physicians have scheduled themselves to for many years. The commenter stated that many residential facilities must be compliant with the CMS hospital regulations.

Response: Psychiatric hospitals participating in the Medicare and Medicaid programs must comply with the hospital CoPs. If a residential unit is considered a unit of a hospital, the unit must comply with the hospital CoPs. If verbal orders are used, they must be used infrequently. The final rule permits verbal orders to be authenticated by the prescribing practitioner or another practitioner who is responsible for the care of the patient.

The current regulation text cited by the commenter is contained in the specialty requirements for psychiatric hospitals at § 482.61. Section 482.61(d) states:

> ''Progress notes must be recorded by the doctor of medicine or osteopathy responsible for the care of the patient as specified in § 482.12(c), nurse, social worker and, when appropriate, others significantly involved in active treatment modalities. The frequency of progress notes is determined by the condition of the patient but must be recorded at least weekly for the first 2 months and at least once a month thereafter and must contain recommendations for revisions in the

treatment plan as indicated as well as precise assessment of the patient's progress in accordance with the original or revised treatment plan.''

This standard addresses the frequency of progress notes. It does not address the frequency of physician visits. Even if the attending physician does not see the patient on a daily basis, we would expect another practitioner responsible for the care of the patient to be in attendance in a hospital setting. How often the medical staff is required to see a patient is determined by the patient's condition and hospital policy. In the situation described by the commenter, hospital policy may need to be revised to ensure compliance with the CoPs and State law.

Comment: One commenter recommended that we consider specifying a calendar day timeframe for verbal order authentication instead of in hours.

Response: The revised regulations now include timing of verbal order authentication. This supports a requirement for a verbal order authentication timeframe in 48 hours versus two calendar days. A timeframe stated in calendar days could be ambiguous and unclear, and could vary from situation to situation and hospital to hospital. For example, a verbal order is documented on a Wednesday at 12 noon. A 48-hour timeframe for authentication would clearly require that the verbal order be authenticated by 12 noon on Friday. Conversely, calendar days are less clear. In the previous example, it would be less clear when the verbal order must be authenticated. The outside timeframe for two calendar days could be interpreted as 12 noon Friday, or as 12 midnight Friday. Our intent is to ensure consistency in the timeframe for authentication of verbal orders. Therefore, we have retained the 48-hour timeframe for authentication of verbal orders in the final rule.

Comment: A few commenters asserted that the 48 hour authentication requirement for verbal orders would place undue burden on the hospital and physician in both urban and rural areas. One commenter stated that members of the medical staff asserted that the 48 hour authentication requirement for verbal orders would cause significant ''bottle-necking'' at time of discharge and would increase length of stay. The commenter stated concern that any order not signed within 48 hours might become invalid and cause problems with insurance fraud. The commenter also stated that this would eliminate their ability to electronically complete this portion of the medical record. The commenter stated that a major concern is with the non-compliance with regard to ''verbal orders'' (telephone and verbal) today as measured using the expectation of 30 days. The commenter stated that compliance with the 48-hour limit would be extremely difficult, adding to their already high non-compliance rate. The commenter also stated that shorter lengths of stay add to the complexity of maintaining a signed hard-copy chart. Another commenter stated that while they understand the value of authentication of orders, the 48-hour time frame for authentication of verbal orders would be very difficult to meet in rural areas as they were working with limited resources and have a very small medical staff.

A few commenters stated that the 48-hour requirement would be burdensome in outpatient hospital physical therapy settings where there is less contact with and less supervision from the attending physician, and treatment is often begun with a verbal order. These commenters requested that this proposed requirement be limited to inpatient settings or that the current language requiring prompt authentication of verbal orders be maintained.

Response: The fundamental issue raised by these commenters is the apparent routine use of verbal orders. We agree that the routine use of verbal orders and their subsequent authentication could create a tremendous burden for both the hospital and practitioners regardless of an urban or rural setting. However, this is a costly burden created by the hospital and practitioners who tolerate the routine use of verbal orders in their daily practice and the resulting risk to patient safety.

The use of verbal orders is nationally recognized as an error prone process that poses an increased risk of miscommunication that could result in adverse effects, including medication errors, for patients. If verbal orders are used, they must be used infrequently. This means that the use of verbal orders must not be a common practice. This is not a new requirement. The requirement for the infrequent use of verbal orders has been part of the hospital CoPs since 1986. We expect that this requirement be reflected in hospital policy as well as in actual practice. If the use of verbal orders is common practice, the hospital is out of compliance with the CoPs. Current ordering practices in the hospital should be evaluated and measures implemented to minimize the use of verbal orders.

We recognize the challenges that a decreased patient length of stay presents and that more frequent order changes and more immediate response to patient needs may be necessary. However, we do not agree that these factors necessarily translate into the need for the frequent use of verbal orders. We expect hospitals to have systems in place to enable staff to address patient needs on a timely basis without routinely resorting to the use of verbal orders. A hospital's concern about potential insurance fraud issues is another reason for hospitals to minimize the use of verbal orders. We recognize that there are times when verbal orders are necessary, but their use must be infrequent. The use of verbal orders should be limited to those situations in which it is impossible or impractical for the prescriber to write the order or enter it into the computer. Verbal orders are not to be used for the convenience of the ordering practitioner. Hospital policy and practice should discourage the use of verbal orders as much as possible. When it is necessary to use a verbal order, this final rule gives hospitals more flexibility in terms of who may authenticate the verbal order.

We do not see why this requirement would eliminate a hospital's ability to complete this portion of the medical record electronically. In fact, this requirement could serve as an impetus for a hospital to adopt and implement information technology such as electronic medical record and computerized physician order entry systems.

Finally, the hospital CoPs apply to both inpatient and outpatient settings. It would not be in the best interest of patient health and safety to exempt any particular provider or patient care setting in a hospital from this requirement. Everyone providing patient care is accountable for safe care.

Comment: A few commenters stated that in the absence of State law, hospital policy should prevail, and recommended that CMS delete a specific time frame as to when hospitals must ensure authentication of verbal orders. One commenter stated that CMS should also require that hospital policies and procedures identify which types of orders, such as orders for high-alert medications, may warrant more timely authentication than orders that do not carry the same risk of patient harm.

Response: All verbal orders need to be authenticated to support continuity of care and patient safety. It is not logical to require authentication for only select ''high-alert'' medications. What is high risk for one patient may not be high risk for another patient. In addition, errors can be made in the documentation of a verbal order. A verbal order that is incorrectly documented may result in

the wrong medication being administered or the correct medication being administered via the wrong route or at the wrong dose. These errors pose a risk to a patient regardless of whether or not the medication is considered to be a ''high-alert'' medication.

Hospitals do, however, have the flexibility to develop policies that are more stringent. A hospital may decide that verbal orders cannot be given or accepted for certain types of high risk drugs. For example, many hospitals do not permit verbal orders for chemotherapeutic agents. Additionally, many hospitals already require that verbal orders be authenticated within 24 hours.

Comment: One commenter stated that in some States in which the law does not provide a specific timeframe, the law would have to be amended through a statutory or regulatory amendment process which takes time. In the meantime, hospitals would have to make changes to comply with the new 48-hour rule, and then change again to the timeframe designated in their new State rule. The constant changing of procedures is confusing to staff, and presents an unnecessarily burdensome challenge to hospitals.

Response: Whether or not a hospital needs to implement changes in policy and procedure as a result of this final rule will vary from hospital to hospital. It is not uncommon for current hospital policies to be more stringent and require that verbal orders be authenticated within 24 hours. In addition, individual States may or may not choose to amend their laws based on this final rule. If a State chooses to adopt a timeframe for the authentication of verbal orders that is longer than 48 hours, a hospital can choose to maintain a more stringent timeframe in their policy. Conversely, if a State chooses to adopt a more stringent timeframe, hospital policy may not be more lenient and policy changes would be necessary. Hospitals are expected to maintain compliance with State and Federal regulations as well as their own policies at all times.

Comment: One commenter stated that the language proposed under § 482.24(c)(1)(iii) should be corrected to read: ''All verbal orders must be authenticated based upon Federal or (not 'and') State law.'' The commenter stated that as currently written, it is not possible for hospitals to comply with both Federal and State law if State law is different than 48 hours.

Response: As a general rule, when Federal and State law are different, we expect a hospital to comply with the more stringent requirement. However, in this provision, the Federal requirement of 48 hours is only applicable in the absence of a State law that designates a specific timeframe for the authentication of verbal orders. Therefore, we have finalized the provision as proposed.

Comment: One commenter stated concern about current interpretive guidelines and urged CMS to cease implementation of the new interpretive guidelines related to the authentication of verbal orders.

Response: Current interpretive guideline revisions are beyond the scope of this rule. However, when these final regulations are effective, the interpretive guidelines will be revised accordingly to reflect the final regulations.

Section 482.24 Condition of Participation: Medical Record Services

We proposed adding ''timed'' to the existing medical records documentation requirements. We proposed that all patient medical record entries must be legible, complete, dated, timed, and authenticated in written or electronic form by the person responsible for providing or evaluating the service provided, consistent with hospital policies and procedures.

Comment: A few commenters objected to the requirement that all medical record entries be timed and requested that this requirement be deleted. Some commenters acknowledged that timing of all entries in the patient record is good practice, but not the current standard of practice for such things as progress notes by professionals other than nursing. One commenter stated that this requirement would be difficult for hospitals to comply with unless the medical record is computerized. A commenter who strongly objected to timing all medical record entries stated that currently, health care providers time only those medical record entries that require timing for clinical reasons, that is, blood draws. This commenter stated that there is no clinical need to time basic progress notes and that this requirement would also create an issue for nursing flow sheets with check boxes that are not timed. This commenter asserted that this requirement significantly increases administrative burden. Another commenter requested clarification of the preamble language in the March 25, 2005 proposed rule (71 FR 15270) regarding § 482.24(c)(1)(i). The commenter indicated that this proposed provision would require that all orders, including verbal orders, be dated, timed, and authenticated promptly by the prescribing practitioner, with few exceptions, and recommended that the word ''timed'' be deleted from the final rule or that it be clarified to state that the requirements to time the entry applies only to the authentication of verbal orders.

Response: The timing of medical record entries is crucial for patient safety and quality of care. Timing applies to all medical record entries, not just to the authentication of verbal orders. This would include orders, progress notes, procedure notes, patient assessments, H&Ps, etc. Timing establishes when an order was given, when an activity, intervention, treatment, or procedure occurred, or when an activity, intervention, treatment or procedure is to take place. Timing and dating of entries establishes a baseline for future actions or assessments and establishes a timeline of events. Many patient interventions or assessments are based on time intervals or time lines of various signs, symptoms, or events.

Authentication of Medical Record Entries

We proposed minor revisions that would clarify that all patient medical record entries must be legible, complete, dated, timed, and authenticated in written or electronic form.

Comment: One commenter requested that CMS move away from requiring that all entries be authenticated due to the burden it would impose. The commenter stated that the JCAHO requires authentication, at a minimum, for H&Ps, operative reports, consults, discharge summaries and other entries in accordance with law or regulation and hospital policy. The commenter stated that if CMS requires authentication for all entries, they support the 5-year exception to accommodate advancements in health information technology and the plan to re-evaluate these advances prior to the end of the 5-year period.

Response: The requirement that all medical record entries be authenticated is not a new requirement. This requirement has been in place since 1986. The proposed requirement that all medical record entries be timed is the only substantive proposed change to this particular provision. We do not believe that retaining this requirement adds additional burden as hospitals have been subject to this requirement for a significant period of time. Hospitals have incorporated the authentication of all medical record entries as part of standard operating procedures. As discussed throughout this preamble, authentication is a critical measure that supports patient safety. We expect authentication

requirements to become less of an issue as hospitals continue to implement health information technologies, including an electronic medical record.

We recognize that JCAHO authentication requirements differ from CMS standards. However, Medicare participating hospitals must comply with the Medicare hospital CoPs. JCAHO standard IM.6.10, element of performance number 4 does, in fact, refer to our regulations by stating that ''medical record entries are dated, the author identified and, when necessary, according to law, regulation or hospital policy, authenticated, either by written signature, electronic signature, or computer key or rubber stamp.''

C. Securing Medications

We proposed revisions to provide hospitals with greater flexibility in terms of storage of non-controlled substances. These proposed revisions are in response to concerns expressed by the medical community related to carts containing medications as well as medications kept at the patient's bedside. We proposed that all drugs and biologicals must be kept in a secure area, and locked when appropriate. We proposed that drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 must be kept locked within a secure area, and that only authorized personnel may have access to locked areas.

Comment: Anesthesia professionals as well as other commenters overwhelmingly supported these proposed revisions, particularly as it relates to anesthesia carts in the operating room and labor and delivery. Commenters stated that the proposed changes address concerns of the medical community, provides flexibility for hospitals in determining control of nonscheduled drugs and biologicals, and is more patient-focused and outcome-oriented than the current requirements. Commenters stated the proposed language would help to ameliorate patient safety and practical anesthesia practice concerns as well as help to ensure that medications are not accessible to those persons who might tamper with, abuse and/or distribute these medications. A commenter stated that this revision is consistent with the ''ASHP Technical Assistance Bulletin on Hospital Drug Distribution and Control'' [8] document which states, ''Storage is an important aspect of the total drug control system * * * Storage areas must be secure: Fixtures and equipment used to store drugs should be constructed so that drugs are accessible only to designated and authorized personnel.'' Commenters stated that the proposed changes will provide hospitals flexibility in determining which non-controlled drugs and biologicals need to be stored in locked areas versus which can be stored in secured and monitored areas that are only accessible to authorized hospital personnel.

Several commenters stated that the current regulation is too restrictive and has led to unnecessary and redundant security requirements for anesthesia personnel resulting in delays in care. Several commenters stated that there has never been any question that controlled drugs must be locked. However, the commenters stated that locking non-controlled medication on top of or in anesthesia carts between cases in a busy operating room is a threat to patient safety. Commenters stated that emergency carts and anesthesia carts need to be readily available in order to treat patients in imminent danger. The commenter stated that emergency carts should be sealed, for example, tamper-evident, but never locked. Commenters stated that delayed access to needed medications could be lethal. Commenters listed broken locks, lost keys, and forgotten combinations or security codes among the shortcomings of equipment used to lock anesthesia medications. One commenter stated that there is an inherent conflict between accessibility and security. One commenter stated that he supported the proposed revision in light of technology advances such as omnicells and pixus.

Response: We appreciate the strong support of commenters on these proposed revisions. We acknowledge that there can be a conflict between accessibility and security. We agree that it is critical for resuscitation drugs to be readily accessible and available when needed for patient care. We also recognize the need to set up anesthesia and other carts in advance preparation for use in the operative or labor and delivery suites. This practice is supported by the ASA. See the ASA Position Statement approved by the ASA Executive Committee, October 2003, entitled ''Security of Medications in the Operating Room,'' *http://www.asahq.org/clinical/LockedCartPolicyFinalOct2003.pdf.*

The intent of these revisions is to enhance patient safety and minimize delays in care. However, patient safety can also be at risk when drugs or biologicals are missing or not readily available for patient care. The security of drugs and biologicals is essential to patient safety. All controlled substances must be kept locked. Therefore, we expect hospitals to implement and maintain appropriate safety mechanisms to control drugs and biologicals to ensure the health and safety of its patients. We agree that technology, such as Omnicells and Pixus medication storage units, assists hospitals in controlling drugs and biologicals.

Comment: Several commenters requested clarification of the definition of ''authorized personnel.'' Commenters stated that the definition of ''authorized personnel'' needs to include ancillary support personnel such as engineering, housekeeping staff, orderlies and security when needed to perform their assigned duties. One commenter stated that hospitals should have the latitude to determine who authorized persons are based on State law and local conditions.

Response: This final rule provides hospitals with the flexibility to define which personnel have access to locked areas based on their own needs as well as State and local law. The definition of ''authorized personnel'' should be addressed in hospital policies and procedures. Hospitals may or may not choose to include the categories of staff mentioned by commenters in their definition of ''authorized personnel.''

Comment: Several commenters requested clarification of ''secure area.'' Commenters stated that they considered the operating room, delivery room, or similar critical care area to be secure locations when in use. One commenter agreed that areas restricted to authorized personnel would generally be considered ''secure'' under the proposed revisions. This commenter recommended that the regulations require that access to operating room suites be strictly limited to authorized persons. Another commenter supported the statement in the preamble of the proposed rule that secure areas would be those areas where ''patients and visitors are not allowed without the supervision or presence of a healthcare professional.''

Response: The goal of this provision is to provide hospitals flexibility in the storage of non-controlled drugs and biologicals when delivering patient care, and the safe guarding of drugs and biologicals to prevent tampering or diversion. An area in which staff are actively providing patient care or preparing to receive patients, that is, setting up for procedures before the arrival of a patient, would generally be considered a ''secure area.'' For example, the operating room suite

[8] American Society of Hospital Pharmacists. ASHP technical assistance bulletin on hospital drug distribution and control. Am J Hosp Pharm. 1980;37:1097–103. *http://www.ashp.org/bestpractices/drugdistribution/Distrib_TAB_Hosp.pdf.*

would be considered secure when the suite is staffed and staff are actively providing patient care. When the entire suite is not operational or otherwise not in use, for example, weekends, holidays, and after hours, the suite would not be considered secure. When the suite is closed or otherwise not in use, we would expect all drugs and biologicals to be locked. A hospital may choose to lock the entire suite, lock non-mobile carts containing drugs and biologicals, lock mobile carts containing drugs and biologicals within a locked room, or otherwise lock drugs and biologicals within a secure area. When individual operating rooms are closed or otherwise not in use, we would expect a hospital to lock non-mobile carts containing drugs and biologicals and lock mobile carts containing drugs and biologicals within a locked room. Generally, labor and delivery suites and critical care units are staffed and actively providing patient care around the clock, and would be considered secure areas. In addition, we expect hospital policies and procedures to ensure that these areas are secure with entry and exit limited to appropriate staff, patients, and visitors. All controlled substances would need to be locked within a secure area regardless of whether a patient care area is staffed or actively providing patient care.

A medication is considered secure if unauthorized persons are prevented from obtaining access. Medications should not be stored in areas that are readily accessible to unauthorized persons. For example, if medications are kept in a private office, or other area where patients and visitors are not allowed without the supervision or presence of a health care professional (for example, ambulatory infusion), they are considered secure. Areas restricted to authorized personnel only would generally be considered ''secure'' areas. If medication security becomes a problem, the hospital is expected to evaluate its current medication control policies and procedures and implement the necessary systems and processes to ensure that the problem is corrected, and that patient health and safety are maintained.

Comment: One commenter cited the current interpretive guidelines that if an anesthesia cart, nursing or other ''cart containing drugs or biologicals is in use and unlocked, someone with legal access to the drugs and biologicals in the cart must be close by and directly monitoring the cart.'' The commenter requested that CMS clearly state that the final rule does not require direct monitoring of an unlocked anesthesia cart in an operating suite that is in use. Another commenter stated that medication carts should remain locked or in line of sight of a licensed practitioner, but should not require additional security.

Response: This final rule does not address interpretive guidelines. The interpretive guidelines will be revised once this rule is finalized. This final rule requires that all drugs and biologicals be secure, and locked when appropriate. We expect hospital policies and procedures to address the security and monitoring of any carts, locked or unlocked, containing drugs and biologicals in all patient care areas to ensure their safe storage and to ensure patient safety.

Comment: Commenters agreed that a hospital must monitor issues related to medication security, and reassess and modify its systems and process as needed.

Response: We appreciate the support. We would expect hospitals to reevaluate their policies, procedures, systems and processes related to the safe storage of all drugs and biologicals periodically, regardless of whether there is evidence of tampering or diversion.

Comment: One commenter requested that CMS give more guidance as to what ''locked when appropriate'' means.

Response: All controlled substances must be locked. We expect all non-controlled substances to be locked when a patient care area is not staffed. Hospitals have the flexibility to determine the most effective way to safeguard non-controlled drugs and biologicals when they are not locked. We expect hospitals to develop, implement and evaluate policies, procedures and practices to keep medications and biologicals secure and to minimize the risk of tampering and diversion as much as possible. Hospitals may choose to keep all non-controlled drugs and biologicals locked at all times. Hospitals may choose to keep non-controlled drugs and biologicals secure when a patient care area is staffed. We expect that hospitals would tighten their security measures when there is evidence of tampering or diversion of any drugs or biologicals. We realize that the security of drugs and biologicals cannot be guaranteed. However, for the safety of patients and quality of care, hospitals need flexibility regarding the security of non-controlled substances.

Comment: Commenters strongly supported the proposed provision related to patient self-administration of medication at the bedside citing standard medical practice that allows urgently needed medications to be available at the patient's bedside. Commenters stated that the current requirements are burdensome and potentially harmful to patients when medications, such as nitroglycerine and inhalers cannot be accessed in a timely and effective manner. One commenter requested clarification of whether patients are considered ''authorized'' to keep non-controlled medications at the bedside.

One commenter stated that JCAHO defines self-administration as including instances when a patient independently uses a medication. The commenter stated that the JCAHO standards on self-administration outline the safe and accurate administration of medication including patient education on dosage, frequency, route of administration and monitoring of potential side effects. The commenter recommended that CMS revise the CoP to specifically address the acceptability of patient self-administration of drugs and biologicals.

Response: This final rule gives hospitals the flexibility to integrate patient self-administration of drugs and biologicals into their practice as appropriate. This final rule is consistent with the current practice of giving patients access to urgently needed medications, such as nitroglycerine tablets and inhalers, at the patient's bedside. It supports the current practice of placing selected nonprescription medications at the bedside for the patient's use, such as lotions and creams and rewetting eye drops. Finally, this final rule supports hospitals in the development of formal patient medication self administration programs for select populations of patients in collaboration with the medical staff, nursing, and pharmacy that include the development of the necessary hospital policies and procedures to ensure patient safety and security of medications.

We would expect hospital policies and procedures to address patient self-administration of medications. When a hospital allows a patient to self-administer medication, the hospital authorizes the patient to have access to these medications. We expect hospitals to implement measures to secure bedside medications. We agree that self-administration includes those instances where a patient independently uses a medication. Hospital policies and procedures should address competence of the patient to self-administer medications, patient education regarding self-administration of medications including elements outlined by JCAHO standards, as well as measures to secure medications at the bedside.

Comment: One commenter requested that sodium chloride solution in the form of saline flush and respiratory saline be exempt from the standards. The commenter stated that these items are completely innocuous, and are excipients, rather than medications.

Response: It is not in the best interest of patient safety to exempt any drug or biological from this requirement. Although a saline flush or respiratory saline may have an extremely low risk of diversion, the possibility of tampering exists. It may not be necessary to lock these items but they must be secured. We also acknowledge that it may be common practice for clinicians to carry items such as these on their person. Therefore, we would expect hospital policy to address the security of these items as well.

In summary, no changes were made to the proposed regulations based on public comment. The regulations have been finalized as proposed.

D. Completion of the Postanesthesia Evaluation

We proposed that, with respect to inpatients, a postanesthesia evaluation must be completed and documented by an individual qualified to administer anesthesia within 48 hours after surgery.

Comment: Anesthesia professionals as well as other commenters overwhelmingly supported this proposed revision. Commenters stated that implementation of the proposed change would give hospitals greater flexibility in meeting the needs of patients, ensure high quality patient care, and impose less burden than the current requirement. One commenter stated that this is a change that the ASA has been seeking for some time. Another commenter stated that this proposed revision ''gives hospitals and anesthesiology departments much needed flexibility to deploy anesthesiologist, anesthesiologist assistants and nurse anesthetists so as to ensure the highest quality and timeliness of postoperative anesthesia care.'' One commenter stated that the 48-hour timeframe is reasonable and allows hospitals to determine which patients need to be evaluated sooner due to risk factors such as age, co-morbid medical conditions, anticipated post-procedure length of stay, and the patient experience during the surgical or interventional procedure and immediately post-procedure.

Response: We appreciate the support of commenters. We agree that this change provides more flexibility and decreases burden for hospitals and anesthesia professionals while maintaining patient safety. The 48 hour timeframe for completion and documentation of the postanesthesia evaluation is an outside parameter. As commenters stated, individual patient risk factors may dictate that the postanesthesia evaluation be completed and documented sooner than 48 hours. This should be addressed by hospital policies and procedures.

Comment: One commenter recommended that the CoP be modified to state, ''within 48 hours or before discharge, whichever comes first.'' The commenter also recommended that consideration be given to determine if any non-surgical procedures may require a postanesthesia assessment.

Response: A postanesthesia evaluation is required any time general, regional or monitored (this would include deep sedation/analgesia) anesthesia has been administered to the patient. ASA guidelines define monitored anesthesia care as ''a specific anesthesia service for a diagnostic or therapeutic procedure. Indications for monitored anesthesia care include the nature of the procedure, the patient's clinical condition, and/or the potential need to convert to a general or regional anesthetic.'' [9] The type of procedure, surgical or non-surgical, is not necessarily the determining factor.

If the patient is discharged less than 48 hours after the procedure, completion and documentation of the postanesthesia evaluation is still required. This is the case regardless of whether the procedure is performed on an inpatient or outpatient basis or when the patient is discharged. There are many factors that may require that the postanesthesia evaluation be done in less than 24 hours post-procedure, such as an outpatient procedure, the patient's condition and length of stay. Obviously, the postanesthesia evaluation must be done before the patient is discharged. Hospital policies and procedures approved by the medical staff should address the completion and documentation of the postanesthesia evaluation. This is consistent with the current anesthesia services CoP at § 482.52(b)(4) which states ''with respect to outpatients, a postanesthesia evaluation for proper anesthesia recovery performed in accordance with policies and procedures approved by the medical staff'' must be provided for each patient.

Comment: One commenter stated that many patient-related anesthesia issues can best be handled by a pharmacist. The commenter recommended that CMS consider a pharmacist qualified to assist in completing postanesthesia evaluations.

Response: This standard requires that the postanesthesia evaluation be completed by an individual qualified to administer anesthesia as specified in § 482.52(a). A pharmacist is not generally qualified to administer anesthesia. However, if a patient experiences a problem with a medication, a pharmacist can be consulted. We expect individuals administering anesthesia to use the pharmacist as a clinical resource. We expect pharmacists to participate in the care of patients and assist in evaluating patients post-procedure as needed. However, a pharmacist's evaluation would not meet this requirement.

Comment: One commenter stated that he did not support anyone other than the professional who administered the anesthesia to complete the postanesthesia evaluation. The commenter stated that the anesthesiology professional who administered the anesthesia is most familiar with the patient and should be held accountable.

Response: We agree that the professional who administered anesthesia is most familiar with the patient. However, other practitioners qualified to administer anesthesia can safely perform a postanesthesia evaluation and determine the patient's response to and recovery from anesthesia. In addition to the practitioner's own anesthesia knowledge base and expertise, the practitioner also has access to all of the patient's medical records for information regarding the patient's pre-, intra-, and post-operative status.

Comment: One commenter supports the proposed change, but stated concern that it may create unnecessary confusion when applied to procedures requiring conscious sedation.

Response: A postanesthesia evaluation is required anytime general, regional or monitored (this would include deep sedation/analgesia anesthesia has been administered to the patient). ASA guidelines do not define moderate or conscious sedation as anesthesia.[10] The practitioner administering the conscious sedation may or may not be trained to administer

[9] American Society of Anesthesiologists. Position on monitored anesthesia care. (Approved by the House of Delegates on October 21, 1986, and last amended on October 25, 2005) *http://www.asahq.org/publicationsAndServices/standards/23.pdf.*

[10] American Society of Anesthesiologists. ''Continuum of depth of sedation, definition of general anesthesia and levels of sedation/analgesia,'' ASA Standards, Guidelines and Statements (Approved by ASA House of Delegates on October 13, 1999, and amended on October 27, 2004), *http://www.asahq.org/publicationsAndServices/standards/20.✖pdf.*

anesthesia. Certainly, current practice dictates that the patient receiving conscious sedation be monitored and evaluated before, during and after the procedure by trained practitioners. However, a postanesthesia evaluation would not be required when the administration of conscious sedation does not require a practitioner qualified to administer anesthesia.

Comment: One commenter stated that he supports broadening the standard for who can perform the postanesthesia evaluation but believes the proposed language does not go far enough. The commenter recommended that the language be broadened to allow physician delegation to a qualified provider to the extent permitted by State law. The commenter stated that this would allow anesthesiologists to delegate the postanesthesia evaluation and report to qualified physician assistants whom they supervised. The commenter stated that the proposed language and the parallel language regarding preanesthesia reports unnecessarily limit the ability of physicians to delegate to qualified physician assistants. The commenter cited the broad delegation authority afforded medical doctors and doctors of osteopathy at § 482.12(c)(1)(i):

''Every Medicare patient is under the care of: A doctor of medicine or osteopathy (This provision is not to be construed to limit the authority of a doctor of medicine or osteopathy to delegate tasks to other qualified health care personnel to the extent recognized under State law or a State's regulatory mechanism.);''

The commenter stated that when rules confer both a broad authority as found at § 482.12(c)(1)(i), and a more narrowly defined authority at § 482.52, it is often not clear which provision is meant to prevail.

Response: The commenter is correct in that the requirement at § 482.12(c)(1)(i) applies to all CoPs. However, individual CoPs often provide qualifiers that limit this authority, as is the case in this situation. The revision at § 482.52 states that the postanesthesia evaluation must be completed and documented by an individual qualified to administer anesthesia as specified in paragraph (a) of this section. A physician assistant is not specified in paragraph (a) as an individual qualified to administer anesthesia. A physician assistant does not have the required education, training and experience to administer anesthesia or to conduct a comprehensive evaluation of a patient recovering from anesthesia. Therefore, a physician is not permitted to delegate the completion and documentation of the postanesthesia evaluation to a physician assistant or any other individual not qualified to administer anesthesia.

IV. Provisions of the Final Regulations

This final rule responds to the health care community's primary concern that current regulations related to completion of the history and physical examination, authentication of verbal orders, storage of medications, and completion of the postanesthesia evaluation are contrary to current medical practice and unduly burdensome. In order to be consistent with current medical practice, reduce burden, and ensure patient safety, we are revising the current Medical staff, Nursing services, Medical record services, Pharmaceutical services, and Anesthesia services CoPs. These changes are made with respect to completion of the history and physical examination, authentication of verbal orders, securing medications, and completion of the postanesthesia evaluation. We believe that these issues are particularly burdensome to hospitals and it is in the best interest of patients and quality care for us to move forward with these changes.

For these reasons, we are codifying these changes within the current hospital CoPs at 42 CFR part 482. Any changes that have been made to clarify or strengthen the provisions that appeared in the March 25, 2005 proposed rule (70 FR 15266) are noted in the following description of the provisions.

Section 482.22 Condition of Participation: Medical Staff

Section 482.22(c)(5)

This requirement expands the timeframe for completion of the history and physical examination and broadens who may perform the history and physical examination. It requires that each patient receive a history and physical examination completed no more than 30 days before or 24 hours after admission and documentation be placed in the patient's medical record within 24 hours of admission. A physician (as defined in section 1861(r) of the Act), oromaxillofacial surgeon, or other qualified individual could complete the history and physical examination in accordance with State law and hospital policy. In addition, when a history and physical examination is recorded within the 30 days before admission, the hospital must ensure that an updated medical record entry documenting an examination for any changes in the patient's condition is completed and documented in the patient's medical record within 24 hours after admission.

Several revisions were made to this standard in this final rule. Based on public comments, the following changes were made at § 482.22(c)(5): (1) We retained the specific reference to oromaxillofacial surgeons; (2) we deleted the requirement that practitioners must be granted the privilege to conduct a medical history and physical examination by the medical staff; and, (3) in its place we added the language, ''in accordance with State law *and hospital policy*.'' The remainder of the standard is being finalized as proposed.

Section 482.23 Condition of Participation: Nursing Services

Section 482.23(c)(2)

This requirement clarifies that, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment of contraindications, orders for drugs and biologicals must be documented and signed by a practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy and in accordance with State law. This standard has not been revised and, therefore, is being finalized without change.

Section 482.23(c)(2)(i) and Section 482.23(c)(2)(ii)

These provisions reinforce current requirements that when verbal orders are used, they are to be used infrequently, and be accepted only by persons authorized by hospital policy and procedures consistent with Federal and State law. This standard has not been revised; and, therefore is being finalized without change.

Section 482.24 Condition of Participation: Medical Record Services

Section 482.24(c)(1)

This requirement maintains and reinforces the current regulation for authentication of all medical record entries. It requires that all patient medical record entries be legible, dated, timed, and authenticated in written or electronic form by the person responsible for providing or evaluating a service provided. This standard has not been revised and, therefore, is being finalized without change.

Section 482.24(c)(1)(i)

This provision requires that all orders, including verbal orders, be dated, timed,

and authenticated promptly by the ordering practitioner, except as noted in subsection (ii). One minor revision has been made in the final rule based on public comment. The word ''ordering'' has replaced the word ''prescribing.'' Otherwise, the standard is being finalized as proposed.

Section 482.24(c)(1)(ii)

This provision permits a temporary exception to the requirement that all orders, including verbal orders be dated, timed, and authenticated by the ordering practitioner. For a period of 5 years beginning with the effective date of this final rule, verbal orders will not need to be signed by the ordering practitioner, but could be authenticated by another practitioner responsible for the care of the patient. One minor revision has been made in this final rule based on public comment. The word ''ordering'' has replaced the word ''prescribing.'' Otherwise, the standard is being finalized as proposed.

Section 482.24(c)(1)(iii)

This provision specifies that all verbal orders must be authenticated based upon Federal and State law. If there is no State law that designates a specific timeframe for the authentication of verbal orders, then verbal orders must be authenticated within 48 hours. This standard has not been revised and, therefore, is being finalized without change.

Section 482.24(c)(2)(i) and Section 482.24(c)(2)(ii)

These requirements have been revised to be consistent with the changes in the Medical staff CoP. These regulations specify documentation requirements for history and physical examinations. The two provisions require evidence of either: (1) A medical history and physical examination completed within 30 days before or 24 hours after admission, and placed in the patient's medical record within 24 hours after admission; (2) an updated medical record entry documenting an examination for any changes in the patient's conditions when the medical history and physical examination was completed within 30 days before admission. This updated examination will need to be completed and documented in the patient's medical record within 24 hours of admission. These standards have not been revised and, therefore, are being finalized without change.

Section 482.25 Condition of Participation: Pharmaceutical Services

Section 482.25(b)(2)(i)

This provision specifies that all drugs and biologicals be kept in secure areas, and locked when appropriate. This standard has not been revised and, therefore, is being finalized without change.

Section 482.25(b)(2)(ii)

This provision requires that scheduled drugs (II, III, IV, and V), as outlined in the Comprehensive Drug Abuse Prevention and Control Act of 1970, must be locked within a secure area. This standard has not been revised and, therefore, is being finalized without change.

Section 482.25(b)(2)(iii)

This requirement states that only authorized personnel may have access to locked areas. This standard has not been revised and, therefore, is being finalized without change.

Section 482.52 Condition of Participation: Anesthesia Services

Section 482.52(b)(3)

This requirement permits the postanesthesia evaluation for inpatients to be completed and documented by any individual qualified to administer anesthesia. This standard has not been revised and, therefore, is being finalized without change.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 482.22 Condition of Participation: Medical Staff

Paragraph (c) requires that a hospital have bylaws that include specified information. This rule revises some of the contents required in the bylaws.

The burden associated with these requirements is the time spent in drafting the bylaws regarding performance of the H&P, the update examination, and documentation of both. We believe that this requirement reflects customary and usual business practice. Thus, the burden is not subject to the PRA in accordance with section 1320.3(b)(2). In addition, we estimate that there are fewer than 10 new hospitals per year that would have to comply, on a one-time basis, with this requirement; information collection requirements affecting fewer that 10 entities are exempt from the PRA.

Section 482.23 Condition of Participation: Nursing Services

Paragraph (c) of this section requires that with the exception of influenza and pneumococcal polysaccharide vaccines, which can be administered per physician-approved hospital policy after an assessment of contraindications, orders for drugs and biologicals be documented and signed by a practitioner who is authorized to write orders by hospital policy in accordance with State law, and who is responsible for the care of the patient as specified under § 482.23(c).

The burden associated with these requirements is the time spent by the practitioner in documenting and signing orders. We believe that these requirements reflect customary and usual business and medical practice. Thus, the burden is not subject to the PRA in accordance with § 1320.3(b)(2).

Section 482.24 Condition of Participation: Medical Record Services

Paragraph (c) of this section requires that all patient medical record entries must be legible, complete, dated, timed and authenticated in written or electronic form by the person responsible for providing or evaluating the service provided, consistent with hospital policies and procedures. All orders, including verbal orders, must be dated, timed and authenticated promptly by the ordering practitioner or another practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law. All verbal orders must be authenticated based

upon Federal and State law. If there is no State law that designates a specific timeframe for the authentication of verbal orders, then verbal orders must be authenticated within 48 hours. Records must include evidence of a medical history and physical examination completed no more than 30 days before or 24 hours after admission, and placed in the patient's medical record within 24 hours of admission.

The burden associated with these requirements is the time spent in signing and dating medical record entries and in placing evidence of a history and physical examination in the patient's records. We believe that these requirements reflect customary and usual business and medical practice. Thus, the burden is not subject to the PRA in accordance with § 1320.3(b)(2).

Section 482.52 Condition of Participation: Anesthesia Services

Under paragraph (b)(3) of this section, with respect to inpatients, a postanesthesia evaluation must be completed and documented by an individual qualified to administer anesthesia within 48 hours after surgery.

The burden associated with these requirements is the time spent in documenting the evaluation. We believe that these requirements reflect customary and usual medical practice. Thus, the burden is not subject to the PRA in accordance with § 1320.3(b)(2).

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to the Office of Management and Budget (OMB) for its review of these information collection requirements.

If you would like to comment on these information collection and recordkeeping requirements, please mail copies directly to the following: Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: Melissa Musotto, CMS–3122–F Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer, CMS–3122–F, *carolyn_lovett@omb.eop.gov.* Fax (202) 395–6974.

VI. Regulatory Impact

We have examined the impact of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in costs/savings any one year). This final rule would impose minimal additional costs on hospitals. In fact, hospitals may realize some minimal cost savings. We believe the cost of implementing these provisions borne by hospitals would be limited to a one time cost associated with completing minor revisions to portions of the medical staff bylaws, and policies and procedures related to the requirements for history and physical examinations, authentication of verbal orders, securing medications, and postanesthesia evaluations, as well as communicating these changes to affected staff. The changes contained within this final rule are consistent with current practice, would decrease existing burden, and would provide hospitals with more flexibility in meeting CoP requirements.

Although we believe that implementation of this final rule will result in greater efficiencies for hospitals, we do not believe that the final changes will result in significant savings near the $100 million threshold. We believe these benefits will offset the implementation costs that a hospital would incur, and, therefore, be budget neutral. Therefore, we have determined that it is not considered a major rule and no RIA is required. There are no final requirements for hospitals to initiate new processes of care, reporting, or increases in the amount of time spent providing or documenting patient care services. However, we lack data to quantify the effects of this final rule. We invited public comment on the impact on hospitals and practitioners. However, we did not receive any comments.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having receipts of $6 million to $29 million or less annually (65 FR 69432). For purposes of the RFA, all hospitals are considered to be small entities. However, the nature of this final rule is such that no additional regulatory burden will be placed upon hospitals. Instead, burden would be decreased for hospitals by this final regulation. Therefore, no regulatory relief options are considered.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We do not anticipate that the operations of a substantial number of small rural hospitals will be significantly impacted.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this final rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. However, we lack data to quantify the effects of this final rule on small entities or small rural hospitals. We invited public comment on the impact of the proposed rule on small entities and small rural hospitals. We did not receive any comments on the impacts presented, thus, we have finalized this rule as proposed. Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in aggregate, or by the private sector, that exceeds the inflation adjusted threshold of $110 million. This final rule would place no additional burden for implementation on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined this final rule and have determined that it would not have a negative impact on the rights, rules, and responsibilities of State, local or tribal governments. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this final rule.

List of Subjects in 42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, part 482 as set forth below:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

■ 1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302 and 1395hh).

■ 2. Section 482.22 is amended by—

■ A. Republishing paragraph (c) introductory text.

■ B. Revising paragraph (c)(5) to read as follows:

§ 482.22 Condition of participation: Medical staff.

* * * * *

(c) *Standard: Medical staff bylaws.* The medical staff must adopt and enforce bylaws to carry out its responsibilities. The bylaws must:

* * * * *

(5) Include a requirement that a medical history and physical examination be completed no more than 30 days before or 24 hours after admission for each patient by a physician (as defined in section 1861(r) of the Act), an oromaxillofacial surgeon, or other qualified individual in accordance with State law and hospital policy. The medical history and physical examination must be placed in the patient's medical record within 24 hours after admission. When the medical history and physical examination are completed within 30 days before admission, the hospital must ensure that an updated medical record entry documenting an examination for any changes in the patient's condition is completed. This updated examination must be completed and documented in the patient's medical record within 24 hours after admission.

* * * * *

■ 3. Section 482.23 is amended by—

■ A. Republishing paragraph (c) introductory text.

■ B. Revising paragraph (c)(2) to read as follows:

§ 482.23 Condition of participation: Nursing services.

* * * * *

(c) *Standard: Preparation and administration of drugs.* Drugs and biologicals must be prepared and administered in accordance with Federal and State laws, the orders of the practitioner or practitioners responsible for the patient's care as specified under § 482.12(c), and accepted standards of practice.

* * * * *

(2) With the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved hospital policy after an assessment of contraindications, orders for drugs and biologicals must be documented and signed by a practitioner who is authorized to write orders by hospital policy and in accordance with State law, and who is responsible for the care of the patient as specified under § 482.12(c).

(i) If verbal orders are used, they are to be used infrequently.

(ii) When verbal orders are used, they must only be accepted by persons who are authorized to do so by hospital policy and procedures consistent with Federal and State law.

* * * * *

■ 4. Section 482.24 is amended by—

■ A. Republishing paragraph (c) introductory text.

■ B. Revising paragraph (c)(1).

■ C. Republishing paragraph (c)(2) introductory text.

■ D. Revising paragraph (c)(2)(i).

The revisions read as follows:

§ 482.24 Condition of participation: Medical record services.

* * * * *

(c) *Standard: Content of record.* The medical record must contain information to justify admission and continued hospitalization, support the diagnosis, and describe the patient's progress and response to medications and services.

(1) All patient medical record entries must be legible, complete, dated, timed, and authenticated in written or electronic form by the person responsible for providing or evaluating the service provided, consistent with hospital policies and procedures.

(i) All orders, including verbal orders, must be dated, timed, and authenticated promptly by the ordering practitioner, except as noted in paragraph (c)(1)(ii) of this section.

(ii) For the 5 year period following January 26, 2007, all orders, including verbal orders, must be dated, timed, and authenticated by the ordering practitioner or another practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to write orders by hospital policy in accordance with State law.

(iii) All verbal orders must be authenticated based upon Federal and State law. If there is no State law that designates a specific timeframe for the authentication of verbal orders, verbal orders must be authenticated within 48 hours.

(2) All records must document the following, as appropriate:

(i) Evidence of—

(A) A medical history and physical examination completed no more than 30 days before or 24 hours after admission. The medical history and physical examination must be placed in the patient's medical record within 24 hours after admission.

(B) An updated medical record entry documenting an examination for any changes in the patient's condition when the medical history and physical examination are completed within 30 days before admission. This updated examination must be completed and documented in the patient's medical record within 24 hours after admission.

* * * * *

■ 5. Section 482.25 is amended by—

■ A. Republishing paragraph (b) introductory text.

■ B. Revising paragraph (b)(2) to read as follows:

§ 482.25 Condition of participation: Pharmaceutical services.

* * * * *

(b) *Standard: Delivery of services.* In order to provide patient safety, drugs and biologicals must be controlled and distributed in accordance with applicable standards of practice, consistent with Federal and State law.

* * * * *

(2)(i) All drugs and biologicals must be kept in a secure area, and locked when appropriate.

(ii) Drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 must be kept locked within a secure area.

(iii) Only authorized personnel may have access to locked areas.

* * * * *

■ 6. Section 482.52 is amended by—

■ A. Republishing paragraph (b) introductory text.

■ B. Revising paragraph (b)(3) to read as follows:

§ 482.52 Condition of participation: Anesthesia services.

* * * * *

(b) *Standard: Delivery of services.* Anesthesia services must be consistent with needs and resources. Policies on anesthesia procedures must include the delineation of preanesthesia and postanesthesia responsibilities. The policies must ensure that the following are provided for each patient:

* * * * *

(3) With respect to inpatients, a postanesthesia evaluation must be completed and documented by an individual qualified to administer anesthesia as specified in paragraph (a) of this section within 48 hours after surgery.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 27, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 11, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. E6–19957 Filed 11–24–06; 8:45 am]

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Federal Register

Monday,
November 27, 2006

Part III

Department of Education

Special Education and Rehabilitative Services—Individuals with Disabilities Education Improvement Act; Comment and Recommendations on the Proposed Comprehensive Plan for Part D; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services—Proposed Comprehensive Plan for National Activities under Subparts 2 and 3, Part D of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA)

AGENCY: Department of Education.

ACTION: Notice of request for comment and recommendations on the Proposed Comprehensive Plan for IDEA Part D National Activities.

SUMMARY: The Secretary of Education (Secretary) solicits comments and recommendations from the public prior to finalizing the comprehensive plan for national activities authorized under subparts 2 and 3, part D of IDEA (Comprehensive Plan or Plan). Pursuant to section 681(a) of IDEA, the Secretary is responsible for developing and implementing the Comprehensive Plan in order to enhance the provision of early intervention services, educational services, related services, and transitional services to children with disabilities under parts B and C of IDEA.

DATES: In order to be assured of consideration as we develop the final Comprehensive Plan, we must receive your comments on or before January 11, 2007.

ADDRESSES: Address all comments about the proposed Comprehensive Plan to the Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, room 4102, Washington, DC 20202–2641.

If you prefer to send your comments through the Internet, use the following address: *comments@ed.gov.*

You must use the term ''Comments on IDEA Part D National Activities Comprehensive Plan'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Sarah Kuiken. Telephone: (202) 245–7371.

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: We invite you to submit comments regarding any areas of the proposed Comprehensive Plan in which you believe changes are needed, either to clarify a provision or to facilitate its implementation. To ensure that your comments have maximum effect in developing the final Comprehensive Plan, we urge you to identify clearly the specific area of the Plan that each comment addresses and to arrange your comments in the same order as the proposed Plan.

We encourage you to make your comments as specific as possible regarding the nature and scope of the action necessary to provide the clarifications you are seeking. Please specify how your your change will clarify or help to improve the Comprehensive Plan.

Please also include the following with your comments and recommendations: A description of the area of your involvement in special education, regular education or early intervention, as well as your role, if any, in that area (*e.g.*, parent, teacher, student, service provider, administrator, or researcher).

During and after the comment period, you may inspect all public comments about the Comprehensive Plan at Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Comments

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Comprehensive Plan

The proposed Comprehensive Plan is published as an attachment to this notice.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 15, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

IDEA Part D National Activities Comprehensive Plan

Planning Requirements

The national activities authorized under subparts 2 and 3, part D of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) support States, school systems, and families in improving results for infants, toddlers, and children with disabilities. These improvements are achieved through a series of strategic investments in knowledge production and development, knowledge transfer and utilization, and knowledge implementation evaluation.

In section 681(a) of IDEA, Congress directed the Secretary to develop and implement a comprehensive plan (Comprehensive Plan or Plan) for the national activities authorized under subparts 2 and 3, part D of IDEA (IDEA Part D National Activities) in order to enhance the provision of early intervention services, educational services, related services, and transitional services to children with disabilities under parts B and C of IDEA. To the extent practicable, the Plan must be coordinated with the plan developed pursuant to section 178(c) of the Education Sciences Reform Act of 2002. The Plan will be used by the Department of Education (Department) to ensure that the activities funded under subparts 2 and 3, part D of IDEA (Subparts 2 and 3) further the long-term program goals of Subparts 2 and 3 and benefit children of all ages with the full range of disabilities. To the extent possible, the Plan must include mechanisms to address early intervention, educational, related service, and transitional needs identified by State educational agencies (SEAs) in applications submitted for State personnel development grants under subpart 1, part D of IDEA as well as grants under Subparts 2 and 3.

As the principal Federal agency administering IDEA, the Department's Office of Special Education Programs (OSEP) has been charged by the Secretary with coordinating the Plan's development and implementation. A

summary of OSEP's comprehensive planning process follows.

Planning Process

Building on the implementation of earlier plans developed by the Department in accordance with part D of IDEA and the Government Performance and Results Act of 1993 (GPRA), OSEP designed the IDEA part D Comprehensive Planning Process (Planning Process) to identify key issues that must be addressed to meet the critical needs of infants, toddlers, and children with disabilities and their families.

In 2005, OSEP solicited assistance from an outside contractor, The Study Group Inc., to facilitate the Planning Process. The Study Group began work with OSEP on the Planning Process by engaging the expertise of a national workgroup comprised of individuals within and outside the Department. The workgroup included 20 members who represented IDEA Part D stakeholder groups and a broad range of expertise including: experts in designing, implementing, and evaluating the types of national activities called for in Subparts 2 and 3; experts knowledgeable about the operation of SEAs, local educational agencies (LEAs), and IDEA Part C lead agencies (LAs); and experts familiar with the needs and priorities of teachers, parents, administrators, early intervention personnel, related services personnel, and transition personnel. In addition staff from both OSEP and the National Center for Special Education Research participated in the process.

The workgroup convened in Washington, DC, on October 3–4, 2005, to examine current and future efforts to improve results for children with disabilities across seven cross-cutting program outcomes that had been generated through prior IDEA and Department planning processes.

This proposed Comprehensive Plan was informed by the work of the workgroup, the Department's internal long range planning process, and a review of the following information sources:

- State Annual Performance Reports (APRs) for parts B and C of IDEA.
- Personnel development activities conducted by States through State Personnel Development Grants (subpart 1, part D of IDEA).
- Transitional needs identified by SEAs in applications submitted for State personnel development grants under subpart 1, part D of IDEA as well as grants under Subparts 2 and 3.
- Long-term program goals and performance measures developed by OSEP for programs authorized under part D of IDEA.
- Topics and issues identified during OSEP's prior part D Comprehensive Planning Process in 2002.
- GPRA indicators and targets.
- State-reported data under section 618 of IDEA.
- Studies and evaluations supported under IDEA on a wide range of issues related to IDEA and its impact on States, districts, schools, and children with disabilities and their families.

The Scope of the Plan: Programs Authorized Under Subparts 2 and 3

The purpose of the IDEA Part D National Activities is to improve early intervention, educational, related service, and transitional outcomes for children with disabilities. The Comprehensive Plan addresses the range of national programs authorized under Subparts 2 and 3, such as teacher training and personnel development, technology and media services, parent training and information, and technical assistance and dissemination. The program areas authorized under Subparts 2 and 3 are described in the following sections.[1]

- *Personnel Development to Improve Services and Results for Children with Disabilities.* (IDEA, section 662) The personnel development activities supported under section 662 of IDEA assist States in meeting their responsibility to ensure the availability of highly qualified personnel to serve infants, toddlers and children with disabilities. Part D of IDEA authorizes support for pre-service and in-service training targeting special educators, regular educators, administrators, and related services personnel. Personnel Development projects focus on supporting beginning special educators, training for the education of children with low-incidence disabilities, and leadership preparation.
- *Technical Assistance, Demonstration Projects, Dissemination of Information, and Implementation of Scientifically Based Research.* (IDEA, section 663) Technical assistance, model demonstrations, and dissemination are the primary vehicles under IDEA for putting up-to-date, scientifically based information into the hands of individuals and organizations serving children with disabilities. IDEA Part D funds support national centers and projects designed to improve services in such areas as: Addressing behavioral needs of students with disabilities; improving the alignment and development of valid and reliable assessments and alternate assessments; training personnel on how to address diverse student learning and performance characteristics; ensuring effective transitions between school and post-school settings for students with disabilities; and applying scientifically based research to the implementation of policy, procedures, practices, and training.
- *Parent Training and Information Centers and Community Parent Resource Centers.* (IDEA, sections 671 through 673) Parent Training and Information Centers and Community Parent Resource Centers provide information, technical assistance, and training to families of children with disabilities on child and parent rights under IDEA, the nature and needs of a child's disability, and effective communication with professionals serving children with disabilities.
- *Technology Development, Demonstration, and Utilization; Media Services; and Instructional Materials.* (IDEA, section 674) The technology and media-related activities supported under section 674 of IDEA promote the development, demonstration, and utilization of technology along with research on using technology to improve learning and provide access to the classroom for children with disabilities. Media services include captioning and video description that are appropriate for use in the classroom setting, for individuals who are hearing impaired, blind, or print disabled. Also funded under this authority is the National Instructional Materials Access Center (NIMAC), a new national center required by IDEA. The purpose of the NIMAC is to function as a national repository for National Instructional Materials Accessibility Standard (NIMAS) files.
- *Studies and Evaluation.* (IDEA, section 664) Part D of IDEA authorizes a comprehensive program of national studies and evaluations to provide information on a wide range of issues related to IDEA and its impact on States, districts, schools, and children with disabilities and their families. Section 664 of IDEA requires a national assessment of special education to determine the effectiveness of IDEA; to provide timely information to the President, Congress, States, LEAs, and the public on how to implement IDEA more effectively; and to provide the President and Congress information that

[1] Section 665 of IDEA, a new provision in the law, authorizes a program for Interim Alternative Educational Settings, Behavioral Supports, and Systemic School Interventions. Planning for this program, should Congress appropriate funds for it, is addressed under planning for the program outcomes and areas described in this Comprehensive Plan.

will be useful in developing legislation to achieve the purposes of IDEA more effectively.[2]

Overview

This proposed Comprehensive Plan is designed to ensure that the national activities funded under Subparts 2 and 3:

- Support the provisions of IDEA and benefit children of all ages with the full range of disabilities.
- Align with and support the full and successful implementation of the No Child Left Behind Act of 2001 (NCLB) and the Secretary's initiatives. For further information on the Secretary's initiatives, please refer to: *http://www.ed.gov/about/inits/ed/index.html*.
- Address the Department requirements for long range program planning and accountability by furthering the long-term program goals of Subparts 2 and 3.

The proposed Plan is organized around seven program outcomes that OSEP has identified as important for improving results for children with disabilities. These program outcomes also: connect to OSEP's IDEA program performance and accountability measures; relate to the needs of children of all ages and with all types of disabilities and are applicable to all programs authorized under Subparts 2 and 3; and relate to topics and issues that OSEP has supported through IDEA Part D National Activities in the past, but that require further investments. The seven program outcomes are:

- To the maximum extent appropriate, children with disabilities will receive high quality educational and early intervention services in natural settings with typically developing peers.
- Children with disabilities will be appropriately identified and served in a timely manner.
- Children with disabilities will demonstrate improved literacy, including early language, communication and numeracy skills.
- Children with disabilities will demonstrate improved social and behavioral skills.
- Students with disabilities will complete high school prepared for independent living and postsecondary education and/or competitive employment.
- All service providers, including special education teachers, paraprofessionals, related service personnel and early intervention personnel, will be qualified and possess the knowledge and skills to implement effective, research-based practices and interventions.
- Family capacity will be enhanced.

Program Outcomes

This section more fully describes each program outcome and the Department's proposed investment plans for the next 5 to 10 years for supporting, through the IDEA Part D National Activities, projects and activities that are designed to achieve these outcomes. Decisions regarding specific investments addressing these outcome areas will be made on an annual basis in accordance with the guidance and priorities of the Secretary. In addition, several outcome areas identified below in the context of improving results for children with disabilities are also addressed for all children under NCLB. Where appropriate, the funding and implementation of specific activities and projects will be coordinated with ongoing work in other offices throughout the Department that are addressing similar substantive areas for all students. Under each program outcome, we have included brief descriptions of possible approaches to achieve these outcomes.

Outcome 1: To the Maximum Extent Appropriate, Children With Disabilities Will Receive High Quality Educational and Early Intervention Services in Natural Settings With Typically Developing Peers

This outcome relates to two key requirements of IDEA— (1) That children with disabilities are provided a free appropriate public education (FAPE) in the least restrictive environment (LRE), and (2) that infants and toddlers receiving early intervention services are provided those services in ''natural environments'', which for very young children could be a home or community setting. The LRE for a child varies with each child's individual needs. Some children may make progress in a regular classroom setting while others may need alternatives to a regular classroom. High quality educational services are critical to providing access to the general education curriculum for children with disabilities such that they have opportunities similar to their non-disabled peers to participate and demonstrate progress in that curriculum. Also included in this outcome area is the interaction between children with disabilities and their non-disabled peers. The emphasis is not on placement but whether children are spending their day in activities with nondisabled children.

The Department intends to support IDEA Part D National Activities that address this outcome by supporting projects and activities that are designed to:

- *Enhance the capacity of regular and special education to provide differentiated instruction across all age, academic, and functional levels of students.* Differentiated instruction responds to the diversity present in today's regular education classrooms. It promotes a teacher's response to individual learner needs and is based on a student's readiness, interests, and learning profile (Tomlinson, 2001). Differentiated instruction also motivates and engages students in the general education curriculum.
- *Describe characteristics of successful interventions to optimize children's access to the general education curriculum or appropriate early childhood activities.* Research that traces back more than two decades indicates that instructional strategies, such as presenting lessons in multiple formats and linking lessons to students' prior knowledge, can promote students' access to new knowledge (Gersten, Fuchs, Williams, and Baker, 2001; Deshler *et al.*, 2001). Similarly, the use of other scientifically based practices, such as mnemonics and peer tutoring, has been shown to increase the amount of time students with disabilities spend engaged and learning. In the context of early childhood education, this outcome would focus on practices such as early literacy, motor skills, and social emotional development.
- *Assess the impact of participation in the general education curriculum on student academic performance and social and behavioral interactions.* NCLB and IDEA work together to ensure that schools, districts, and States are held accountable for improving the achievement of all groups of students, including students with disabilities, each year. It is important to gather and analyze data on the ways in which we support participation of children with disabilities in the general education curriculum and how the different

[2] IDEA delegates to the Director of the Institute of Education Sciences (IES) responsibility to carry out most of section 664 of IDEA (Studies and Evaluation), including two legally mandated research activities, the ''Assessment of National Activities'', and a ''Study on Ensuring Accountability for Students Who Are Held to Alternate Assessment Standards.'' Other activities supported under the Studies and Evaluations program include the National Longitudinal Transition Study-2, and the Pre-Elementary Education Longitudinal Study. This comprehensive plan includes those activities delegated to IES under section 664 of IDEA, and coordination between OSEP and IES is discussed in the following sections.

approaches support improved outcomes for students with disabilities.

• *Align student data collection, analysis, and reporting systems to be consistent with State accountability systems.* IDEA Part D stakeholders are using validated innovations in assessment to collect and analyze data on students with disabilities, such as curriculum-based measurement (CBM), which uses the frequent collection of data to help teachers make informed decisions about instruction. Aligning data that is collected at the classroom level with data collected for State accountability purposes will improve the quality of information that is available to assess the progress of students with disabilities at the individual, classroom, school, district and State levels.

• *Identify uses of technology to enhance and monitor student participation in the general education curriculum or appropriate early childhood practices.* The use of specially designed CBM technology, for example, has virtually eliminated the need for teachers to be involved in the mechanical and technical aspects of CBM assessment (Fuchs, Fuchs, McMaster, and Otalba 2003; Spicuzza *et al.*, 2001). In addition, the use of classroom instruction that employs computer-aided instruction allows students to receive immediate feedback, and provides multiple ways of interacting with content.

Outcome 2: Children With Disabilities Will Be Appropriately Identified and Served in a Timely Manner

This outcome focuses on the child find provisions in IDEA for all children across the age continuum, not only for very young children. The intent of this outcome is to improve early and appropriate identification of children with disabilities and the provision of timely and effective services to those children. The impact of inappropriate identification has resulted in disproportionate representation by race and ethnicity in some disability categories, and late and most likely under-identification of children in other categories (Klingner *et al.*, 2005; Donovan and Cross, 2002; Losen and Reschly, 1998; Garcia and Ortiz, 1988).

The Department intends to support IDEA Part D National Activities that address this outcome by supporting projects and activities that are designed to:

• *Ensure a flexible early intervention system that promotes timely referral, evaluation, identification, and service delivery from birth through age 21.* There is strong empirical evidence to suggest that early and timely intervention for the kindergarten through grade 3 population, with continuous progress monitoring, will result in improved learning outcomes for at-risk students, and may ultimately reduce inappropriate referrals to, and enrollment in, special education (Foorman *et al.*, 1998; Speece and Case 2001; Torgesen *et al.*, 2001; Vaughn, Linan-Thompson, and Hickman, 2003; Vellutino, Scanlon, and Lyon, 2000; Kozleski, Sobel, and Taylor, 2003). While emphasis has been placed on identification of at-risk students at the elementary level, the current identification, evaluation, and service delivery system must respond to the needs of *all* learners from birth through age 21. In particular, the system must provide flexibility to enter and exit special education and collaborating agency services across disability and age spectrums.

• *Disseminate evidence-based models of early identification and early intervening programs, including programs based on ''Response to Intervention'' (RTI).* Both IDEA and NCLB support the use of multi-tier systems of intervention options to provide high quality instruction and intervention that match children's needs. Dissemination of models of early intervention that are based on RTI, as well as other evidence-based models of intervention, is important because such dissemination will require researchers and technical assistance providers to identify core principles of the interventions and policy considerations, as well as the professional development needs across all systems of education (*e.g.*, SEA, LEA) and institutions of higher education.

• *Enhance the ability of regular education, special education, and early childhood programs to collect, analyze, and report progress data for continuous, data-based decision-making.* NCLB has focused attention on the importance of tracking student academic progress to assist in early identification of children with disabilities, inform instructional practice, and to demonstrate student progress. The delivery of technical assistance and dissemination of information is needed to assist regular educators, special educators, and early childhood personnel in differentiating the collection of and the analysis of data to inform instruction and improve early identification. Instructional and behavioral data need to be easily accessible to field practitioners. In order for data-driven decision-making to occur, data collection and reporting systems across agencies need to be compatible and comprehensible to both users and receivers of the information.

• *Implement personnel preparation programs for regular education, special education, and early childhood personnel with an emphasis on early intervention.* Pre-service and in-service professional development opportunities and programs that provide the philosophical foundation for early interventions, including RTI and other evidence-based systems of identification, evaluation, and service delivery, are needed. Field practitioners, both veteran and novice, require knowledge, skills, and technology to implement effective, research-based practices and interventions.

• *Address issues of inappropriate disproportionate representation of minority students in special education.* While many States have documented disproportionate representation of minorities in special education, to date, there are few models or strategies that have proven effective in reducing inappropriate identification (Artiles, Rueda, Salazar, and Higareda, 2002; Donovan and Cross, 2002; Klingner *et al.*, 2005; Oswald, Coutinho, Best, and Singh, 1999). Further exploration is needed to assist regular educators in differentiating instruction for all learners based on student need. Both regular and special educators need to become better skilled at using culturally free identification practices and interventions for students who are at-risk for school failure and, potentially, for being identified as needing special education.

Outcome 3: Children With Disabilities Will Demonstrate Improved Literacy, Including Early Language, Communication and Numeracy Skills

This outcome focuses on the development of literacy and numeracy skills by children with disabilities across all age groups. In both literacy and numeracy, the skill range should cover pre- and early learning skills to more advanced skills. The goal for students with disabilities, age 6 through 21, is to meet challenging standards as determined by State assessments, using accommodations, as appropriate. For young children, the goal is for functional outcomes to improve. The use of technology, media and instructional materials will be considered in each of the projects and activities described below.

The Department intends to support IDEA Part D National Activities that address this outcome by supporting projects and activities that are designed to:

• *Focus on improving middle and high school literacy.* At higher grade levels, literacy skills become increasingly important for accessing the general education curriculum. Students with disabilities who do not receive sufficient literacy instruction at younger ages risk falling even further behind as they grow older, both in their literacy skills and in their ability to master other academic content areas. Accordingly, there is a need for evidence-based literacy instruction, for students with disabilities, to be widely used across middle and high school grades.

• *Improve the quality and usefulness of student performance data measurement systems for students with disabilities.* Student performance data can help teachers, administrators, and parents appropriately monitor a student's progress in developing literacy skills. For example, these data can help pinpoint a student's strengths and weaknesses. High quality performance measurement data systems also can facilitate teachers' ability to modify instruction as needed to meet the needs of students with disabilities.

• *Disseminate and implement promising practices that promote literacy and numeracy across the school curriculum and across environments (e.g., early childhood settings, home, and community).* Literacy and numeracy are important basic skills that affect the ability of students to succeed in all content areas and all environments. Whether a child is learning history, mathematics, or other subjects, the child's literacy and numeracy are essential to ensuring the child's success in the classroom, in early childhood settings, at home, or in the community.

• *Encourage implementation of RTI as an instructional practice in regular education environments.* The most recent reauthorization of IDEA allows the use of RTI strategies to identify children with learning disabilities. The RTI model is based upon evidence that many of the problems that lead to special education referral (*e.g.,* lack of progress in literacy development) can best be addressed in regular education environments, prior to, and perhaps in lieu of, a special education referral. The RTI approach is intended to encourage practitioners to intervene early for all children who are considered academically at-risk.

Outcome 4: Children With Disabilities Will Demonstrate Improved Social and Behavioral Skills

Documentation of the nature of the relationship between improved social and behavioral skills and improved academic outcomes is emerging (Warren *et al.,* 2004; Brooks, Todd, Tofflemoyer, and Horner, 2003). All children require some level of social and behavioral support. While most children will respond to a systematic school-wide model that provides social and behavioral support, others will require more intensive levels of support and intervention to achieve improved educational outcomes.

The Department intends to support IDEA Part D National Activities that address this outcome by supporting projects and activities that are designed to:

• *Develop positive measures to assess social and emotional growth and development.* Positive behavioral interventions and supports have contributed to improvements in student behavior (Sugai *et al.,* 2000). While existing measures have emphasized behavioral difficulties, office discipline referral, suspensions, and expulsions, future measures should include assessments of pro-social behaviors, including students' social and emotional growth and development, social inclusion, and self-determination.

• *Implement early identification and intervention systems to promote positive social and emotional behaviors.* Research, training, technical assistance and technology projects and activities supported under the IDEA Part D National Activities have demonstrated the effectiveness of early intervention systems that promote school-wide use of positive behavioral interventions and supports (Stormont, Lewis, and Beckner, 2005). There is a need for continued work in these areas in order to support further implementation of proven practices for early intervention. In particular, there is a need to emphasize the implementation of early identification systems that focus on children ages birth through nine.

• *Design protocols to measure increased academic engagement resulting from improved social and behavioral skills.* Recent studies are demonstrating a positive relationship between improved behavior and improved academic achievement. Protocols must be designed to assess the relationship between student behavior, academic relevance and rigor, and increased academic engagement.

• *Increase the collaboration and interaction among schools, families, and social service agencies in the design and implementation of behavioral support systems.* Parent training and information centers funded under subpart 3 of part D of IDEA have facilitated the delivery of information on behavioral supports to parents. In order to maximize improved behavioral outcomes for children, additional work is needed for the design and implementation of behavioral support systems that benefit from effective collaboration and shared decision-making among schools, families, and social service agencies.

• *Support enhanced school leadership in the design and delivery of school-wide student behavioral support systems.* School leadership is a key factor in school-wide change and the effective implementation of school-wide behavioral supports (OSEP Center on Positive Behavioral Interventions and Supports, University of Oregon, 2002). While nearly half of the States currently require elementary principals to have knowledge in behavioral supports in order to be certified, there is a need for projects that support leadership development and provide school leaders with the necessary knowledge and skills to design and deliver school-wide behavioral supports.

Outcome 5: Students With Disabilities Will Complete High School Prepared for Independent Living and Postsecondary Education and/or Competitive Employment

For some years, OSEP has attempted to ensure that secondary school students with disabilities complete high school prepared for independent living and postsecondary education and/or competitive employment. OSEP has monitored this outcome by reviewing changes in the graduation rate and the dropout rate of students with disabilities. While trends for both of these indicators have demonstrated movement in the right direction, there is a need for more work in this area (Lehr *et al.,* 2004; Thurlow, Sinclair, and Johnson, 2002; Wagner, Newman, Cameto, and Levine, 2005).

The Department intends to support IDEA Part D National Activities that address this outcome by supporting projects and activities that are designed to:

• *Develop a broad range of performance measures to assess student transition outcomes.* The measures typically used to assess outcomes for transition-aged students are graduation and dropout rates. These data alone do not provide a complete picture of successful transition outcomes. It is important to continue to identify and collect longitudinal information that describes the status of individuals with disabilities after they exit school. Expanded performance measures include participation in postsecondary education, employment, wages and benefits, and independent living status.

• *Support and disseminate model programs of evidence-based success in meeting the needs of transition-aged students and their families.* The knowledge base about successful transition of students with disabilities from secondary school to postsecondary environments has grown considerably over the past two decades. Research confirms the value of well-designed, well-coordinated transition activities involving schools, students, families, and community and adult service agencies while also documenting the constant need for further improvement in transition services and supports (Lehr *et al.,* 2004; National Center on Secondary Education and Transition, 2005). Improved transition services and student outcomes are dependent upon the identification and dissemination of effective strategies, models, and information that will assist parents and professionals in the transition decision-making process.

• *Promote programs that include both academic achievement skills attainment (graduation/school completion) and, as needed, the skills necessary to participate in employment and community living.* With an emphasis on academic achievement and high stakes testing, schools are finding it difficult to provide students with disabilities with programs and services that support employment and career development as well as other skills that enhance independence and community living and participation (National Longitudinal Study, 1993; Bremer, Kachgal, and Schoeller, 2003; Johnson, Thurlow, Cosio, and Bremer, 2005; National Center on Secondary Education and Transition, February, 2004). Programs that support academic and community and employment skills are especially important for students with more significant cognitive disabilities because these students typically need formal training and skill development at the secondary level in order to attain employment and live more independently.

• *Increase collaboration among stakeholder agencies for long-term postsecondary success, including continuing education, employment, independent living, and community participation.* Research on evidence-based practices confirms that effective transition planning and services for students with disabilities exiting high school depend on cooperative linkages between schools and other human service and community agencies (Johnson *et al.,* 2002; Crane and Mooney, 2005). Successful interagency agreements for transition planning and services require clear descriptions of the responsibilities of, and strategies and methods used by, schools and other agencies that support transition activities and promote success in postsecondary environments.

• *Promote early student and family involvement in transition planning with an emphasis on self-determination.* Too many students and families report that a ''lack of information'' about postsecondary opportunities, including continuing education and community and adult services, restricts meaningful involvement in the transition planning for post-school opportunities, as required by IDEA (National Center on Secondary Education and Transition, January, 2004; Hasazi *et al.,* 2005). Providing students and families with vital information early in the transition planning process supports informed decision-making and promotes self-determination and self-advocacy.

Outcome 6: All Service Providers Including Special Education Teachers, Paraprofessionals, Related Service Personnel and Early Intervention Personnel Will Be Qualified, and Possess the Knowledge and Skills to Implement Effective, Research-Based Practices and Interventions

This outcome is intended to focus on ensuring that the individuals who are responsible for serving children with disabilities and implementing IDEA are appropriately and adequately trained and have the necessary content knowledge and skills. Under the highly qualified requirements contained in IDEA, all special education teachers must be fully certified as special education teachers. Additionally, special education teachers who teach core academic subjects are required to meet the requirements for highly qualified teachers under NCLB, except as provided under IDEA. These requirements do not apply to IDEA Part C providers. OSEP has a long history of supporting evidence-based training programs for special education, early intervention, and related service personnel. Historically, Federal investments in training programs have been targeted in two key areas: (1) Addressing critical, on-going shortages in the supply of qualified personnel; and (2) addressing the need for high quality training programs that are capable of training personnel who are knowledgeable and skilled in evidence-based practices to improve results for children with disabilities.

The Department intends to support IDEA Part D National Activities that address this outcome by supporting projects and activities that are designed to:

• *Develop and disseminate model programs that enhance the knowledge and skills of special education, related service and early intervention providers across disabilities and age, grade, and content areas.* Model strategies, such as programs involving nationally disseminated evidence-based training modules and beginning teacher mentor and induction models, have been linked to improvements in the preparation of special education teachers. Institutions of higher education responsible for preparing teachers need resources and information on the best available evidence and strategies that are linked to improved outcomes for children with disabilities. These types of model programs and strategies would also be beneficial to regular education training programs in assisting those teachers in meeting their instructional responsibility for children with disabilities.

• *Identify the characteristics of quality pre-service programs that prepare special and regular education teachers and early childhood providers to best serve students with disabilities.* Pre-service programs must recognize that special and regular education teachers and early childhood providers are responsible for the instruction of individuals with diverse needs, backgrounds, and learning styles. Continued improvement in the pre-service preparation of teachers requires identification of program characteristics that promote instructional and behavioral skills consistent with the requirements for highly qualified teachers.

• *Investigate and validate alternative routes to teacher certification.* The increased demand for teachers, and particularly special education teachers, has renewed interest in alternative certification mechanisms. On-line instruction and other innovative approaches are providing opportunities for students from non-traditional backgrounds to seek teacher certification. While alternative certification programs may be necessary to help States address existing shortages in the supply of qualified personnel, it is essential to establish and maintain rigorous outcome standards for the graduates of these programs.

• *Develop an effective infrastructure that responds to the changing needs of teachers and school leaders, including the provision of technical assistance, innovative pre-service programs, and the use of technology to address professional development needs.* The professional preparation and development of instructional and leadership personnel serving students

with disabilities must be considered ongoing rather than terminal. Continuing high quality, evidence-based technical assistance and professional development programs and supports enable instructional and leadership personnel to meet the changing needs of students and families and to take full advantage of new technologies that may enable them to serve students with disabilities more effectively.

• *Enhance recruitment and retention practices to ensure a qualified work force.* School districts list a shortage of qualified applicants as the greatest barrier to obtaining qualified special education teachers (Billingsley and McLeskey, 2004; Billingsley, 2004; McLeskey, Tyler, and Flippin, 2004; Carlson *et al.*, 2002). Effective recruitment and retention practices are critical to securing and maintaining a qualified workforce. More than one-third of special education teachers are either undecided about how long they are likely to remain in teaching, or do not plan to continue teaching in special education until they retire (Carlson *et al.*, 2002). Accordingly, more work must be done to identify the factors that attract individuals to the field of special education as well as the rewards and incentives that will enable school districts to retain skilled teachers, related service personnel, and school leaders.

Outcome 7: Family Capacity will be Enhanced

This outcome focuses on enhancing family capacity in areas such as: Knowing their rights under IDEA and how to advocate for their children; understanding their children's strengths, abilities, and special needs; helping their children develop and learn; having access to support systems; and having access to desired services, programs, and activities in their communities.

The Department intends to support IDEA Part D National Activities that address this outcome by supporting projects and activities that are designed to:

• *Ensure that parents and families across the socio-economic and cultural spectrum have access to and understand information that will support their involvement in all decisions about their child.* Outreach is necessary to ensure that all families are aware of and have access to usable and timely resources to inform and empower decision-making about their child. Targeted outreach is needed to ensure the inclusion of underserved families as defined in IDEA, including low income parents, parents of limited English proficient children, and parents with disabilities.

• *Assist parents and families in becoming better consumers of supports and services.* Families play a critical role in the education of their children. Children benefit when their parents and other family members are informed and actively engaged consumers of the educational supports and services provided to children with disabilities. With additional information and training, more parents can more fully participate in the education of their children.

• *Enhance the capacity of underserved parents and families to become decision-makers in their child's current and future educational, home and community environments.* There is a need to enhance the capacity of underserved families to become active decision-makers regarding their child's education. For example, underserved families need support in readily accessing information about proven practices relating to their child's education. These families also need support in determining which evidence-based educational and early intervention practices are most appropriate for their child.

• *Promote the development of school leadership that emphasizes the creation and maintenance of positive school environments that welcome and support diversity.* School leadership is a key factor in school-wide change. Leadership development should, therefore, emphasize the creation of positive school environments that welcome diversity.

• *Promote partnerships between parent organizations and OSEP's Research-to-Practice initiatives.* OSEP has facilitated partnerships between parent organizations and projects supported under part D of IDEA. Such partnerships should continue to be facilitated, including by providing support for products and programs developed for parents, enabling them to more fully participate in improving their child's early intervention and educational experiences. Ongoing efforts will ensure scientifically based practices and other resources are timely and available to families in a usable format.

Comprehensive Plan Implementation

OSEP, as the principal Federal agency administering IDEA, will implement the Comprehensive Plan by pursuing long-term research-to-practice efforts for each program authorized under Subparts 2 and 3. Funded projects and activities will take full advantage of the more than 25 years of Federal support for research and innovation, demonstrations, personnel preparation, technology and media, and technical assistance and dissemination that has built an important knowledge base for improving results for children with disabilities.

OSEP will capitalize and extend the accomplishments of the projects it has supported in the past by supporting new projects that organize and transfer knowledge to practice using one or a combination of the programs authorized under part D of IDEA. Given resource limitations and the current state of knowledge relevant to any investment direction, OSEP will identify specific projects and activities that:

• Take advantage of the Department's current activities targeted toward specific outcomes.

• Optimally combine activities authorized under several types of IDEA Part D programs, including technical assistance, dissemination, personnel preparation, technology and media, and parent training and information.

• Reflect the Department's internal planning efforts and immediate needs of States and other IDEA stakeholders.

• Leverage OSEP's ability to draw attention to the substantive area addressed by the project or activity from other Federal, State, local, and private agencies and organizations.

• Have the greatest potential to contribute to improved results for children with disabilities in the next decade.

Coordination With the National Center for Special Education Research

OSEP has coordinated during the planning and preparation of this Plan and will continue to coordinate, as directed by section 681(a)(1) of IDEA, the implementation of this Plan with the National Center for Special Education Research (NCSER) in the Institute of Education Sciences (IES).

In addition, with the award of a design contract, NCSER has launched an independent assessment to ascertain what progress has been made in the implementation of IDEA. This review will permit the NCSER to take inventory of the national studies conducted previously, the data sources, and the research questions addressed, and prepare an informed set of research questions and proposed study designs for further studies and evaluations authorized by section 664 of IDEA.

IES also will continue to support existing studies, including child-based longitudinal research, and initiate new studies designed to evaluate and support the implementation of IDEA. As such, IES will continue to fund rigorous

evaluations of policy and practice under IDEA, including an examination of the quality of States' monitoring practices, a study of States' implementation of alternate assessments and their use and effectiveness in appropriately measuring student progress, an impact evaluation of the State Pilot Projects for Multi-Year IEPs and Paperwork Reduction authorized under IDEA, and an evaluation of the IDEA Personnel Development program.

Commitment to Quality Implementation

OSEP will continue to seek the opinions of consumers and research, training, technology, and technical assistance experts on the Department's progress in implementing the Comprehensive Plan. Also, as part of its annual GPRA responsibilities, OSEP will evaluate the quality of activities supported under the Comprehensive Plan. OSEP has developed a set of long-range goals and annual objectives and indicators that it will use to monitor and ensure quality implementation of the Plan. These goals, objectives and indicators are available can be viewed at: *http://www.ed.gov/about/reports/annual/index.html?src=pn.*

Next Steps

After OSEP completes its review of the comments received in response to the notice in the **Federal Register** requesting comments and recommendations on the proposed Comprehensive Plan, OSEP will finalize the Comprehensive Plan and provide outreach to inform IDEA Part D stakeholders about the final Plan.

References

Artiles, A.J., Rueda, R., Salazar, J. & Higareda, I. (2002). Within-group diversity in minority disproportionate representation: English language learners in urban school districts. *Exceptional Children*, 71, 283–300.

Billingsley, B.S. (2004). Special education teacher retention and attrition: A critical analysis of the research literature. *Journal of Special Education*, 38(1), 39–55.

Billingsley, B.S., & McLeskey, J. (2004). Critical issues in special education teacher supply and demand: Overview. *Journal of Special Education*, 38(1), 2–5.

Bremer, C.D., Kachgal, M., & Schoeller, K. (2003). *Self-determination: Supporting successful transition.* (NCSET Research to Practice Brief. Vol. 2 No. 1.) Minneapolis, MN: University of Minnesota, National Center on Secondary Education and Transition. Retrieved March 1, 2006, from *http://www.ncset.org/publications/viewdesc.asp?id=962.*

Brooks, A., Todd, A.W., Tofflemoyer, S., & Horner, R.H. (2003). Use of functional assessment and a self-management system to increase academic engagement and work completion. *Journal of Positive Behavior Intervention*, 5, 144–152.

Carlson, E., Brauen, M., Klein, S., Schroll, K., & Willig, S. (2002). *Study of personnel needs in special education (SPeNCE): Recruiting and Retaining High Quality Teachers.* Rockville, MD: Westat.

Crane, K., & Mooney, M. (2005). *Essential tools: Community resource mapping.* Minneapolis, MN: University of Minnesota, National Center on Secondary Education and Transition. Retrieved March 1, 2006, from *http://www.ncset.org/publications/essentialtools/mapping/default.asp.*

Deshler, D.D., Shumaker, J.B., Bulgren, J.A., Lenz, B.K., Carnine, D., Grossen, B., & Jantzen, J.E. (2001). Teaching students with LD how to master difficult content by anchoring it to what they know. *Teaching Exceptional Children*, 33(4), 82–86.

Donovan, S., & Cross, C. (2002). *Minority students in special and gifted education.* Washington, DC: National Academy Press.

Foorman, B.R., Francis, D.J., Fletcher, J.M., Schatschneider, C., & Mehta, P. (1998). The role of instruction in learning to read: Preventing reading failure in at-risk children. *Journal of Educational Psychology*, 90, 37–55.

Fuchs, D., Fuchs, L.S., McMaster, K.N., & Al Otalba, S. (2003). Identifying children at risk for reading failure: Curriculum-based measurement and the dual-discrepancy approach. In H.L. Swanson, K.R. Harris & S. Graham (Eds.), *Handbook of learning disabilities* (pp. 431–449). New York.

Garcia, S.B., & Ortiz, A.A. (1988, June). Preventing inappropriate referrals of language minority students to special education. *FOCUS/NCBE*, 5, 1–17.

Gersten, R., Fuchs, L.S., Williams, J.P., & Baker, S. (2001). Teaching reading comprehension strategies to students with learning disabilities: A review of research. *Review of Educational Research*, 71(2), 279–320.

Hasazi, S., Johnson, D., Thurlow, M., Cobb, B., Trach, J., Stodden, B., Leuchovius, D., Hart, D., Benz, M., DeStefano, L., & Grossi, T. (2005). Transitions from home and school to roles and supports of adulthood. In K.C. Lakin, & A. Turnbull (Eds.), *National goals and research for persons with intellectual and developmental disabilities* (pp. 65–92). Washington, DC: American Association on Mental Retardation and The Arc of the United States.

Johnson, D.R., Stodden, R.A., Emanuel, E.J., Luecking, R. & Mack, M. (2002). Current challenges facing secondary education and transition services: What research tells us. *Exceptional Children*, 68(4), 519–531.

Johnson, D.R., Thurlow, M., Cosio, A., & Bremer, C.D. (2005). *Diploma options for students with disabilities.* Minneapolis, MN: University of Minnesota, National Center on Secondary Education and Transition. Retrieved March 1, 2006, from *http://www.ncset.org/publications/viewdesc.asp?id=1928.*

Klingner, J.K., Artiles, A.J., Kozleski, E., Harry, B., Zion, S., Tate, W., Durán, G.Z., & Riley, D. (2005, September 8). Addressing the disproportionate representation of culturally and linguistically diverse students in special education through culturally responsive educational systems. *Education Policy Analysis Archives*, 13(38).

Kozleski, E.B., Sobel, D., & Taylor, S. (2003). Addressing issues of disproportionality: Embracing and building culturally responsive practices. *Multiple Voices for Diverse Exceptional Learners*, 6, 73–87.

Lehr, C.A., Johnson, D.R., Bremer, C.D., Cosio, A., & Thompson, M. (2004). *Essential tools: Increasing rates of school completion: Moving from policy and research to practice.* Minneapolis, MN: University of Minnesota, National Center on Secondary Education and Transition. Retrieved March 1, 2006 from *http://www.ncset.org/publications/essentialtools/ dropout/default.asp.*

Losen, D.J., & Reschly, D.L. (1998). *Racial inequality in special education.* Cambridge, MA: Harvard University Press.

McLeskey, J., Tyler, N.C., & Flippin, S.S. (2004). The supply of and demand for special education teachers: A review of research regarding the chronic shortage of special education teachers. *Journal of Special Education*, 38(1), 5–21).

National Center on Secondary Education and Transition (January 2004). *Current challenges facing the future of secondary education and transition services for youth with disabilities in the United States* (NCSET Discussion Paper). Minneapolis, MN: University of Minnesota. Retrieved March 1, 2006, from *http://www.ncset.org/publications/discussionpaper/default.asp.*

National Center on Secondary Education and Transition (February 2004). *Person-centered planning: a tool for transition* (NCSET Parent Brief). Minneapolis, MN: University of Minnesota. Retrieved March 1, 2006, from *http://www.ncset.org/publications/viewdesc.asp?id=1431.*

National Center on Secondary Education and Transition (2005). *National standards for secondary education and transition for all youth.* Minneapolis, MN: University of Minnesota. Retrieved March 1, 2006, from *http://www.ncset.org/teleconferences/docs/NASETFramework.doc.*

The National Longitudinal Study (NLTS) (1993). *The National Longitudinal Study: A summary of findings.* Washington, DC: U.S. Department of Education, Office of Special Education Programs.

OSEP Center on Positive Behavioral Interventions and Supports, University of Oregon (2002). *School-wide Positive Behavior Support: Implementer's Blueprint and Self-Assessment.* Washington, DC: U.S. Department of Education, Office of Special Education Programs.

Oswald, D.P., Coutinho, M.J., Best, A.M., & Singh, N.N. (1999). Ethnic representation

in special education: The influence of school-related economic and demographic variables. *Journal of Special Education*, 32, 194–206.

Speece, D.L., & Case, L.P. (2001). Classification in context: An alternative approach to identifying early reading disability. *Journal of Educational Psychology*, 93, 735–749.

Spicuzza, R., Ysseldyke, J., Lemkuil, A., Koscioleck, S., Boys, C., & Teelucksingh, E. (2001). Effects of using a curriculum-based monitoring system on the classroom instructional environment and math achievement. *Journal of Educational Psychology*, 39(6), 521–542.

Stormont, M., Lewis, T.J., & Beckner, R. (2005). Positive behavioral support systems: Applying key features in preschool settings. *Teaching Exceptional Children*, 37(6), 42–49.

Sugai, G., Horner, R.H., Dunlap, G., Hieneman, M., Lewis, T.J., Nelson, C.M., Scott, T., Liaupsin, C., Sailor, W., Turnbull, A.P., Turnbull, H.R., III, Wickham, D., Reuf, M., & Wilcox, B. (2000). Applying positive behavioral support and functional behavioral assessment in schools. *Journal of Positive Behavioral Interventions*, 2, 131–143.

Thurlow, M.L., Sinclair, M.F., & Johnson, D.R. (2002). *Students with disabilities who drop out of school: Implications for policy and practice* (NCSET Issue Brief Vol. 1 No. 2). Minneapolis, MN: University of Minnesota, National Center on Secondary Education and Transition. Retrieved March 1, 2006, from *http://www.ncset.org/publications/viewdesc.asp?id=425*.

Tomlinson, C.A. (2001). *How to differentiate instruction in mixed-ability classrooms* (2nd ed.) Alexandria, VA: Association of Supervision and Curriculum Development.

Torgesen, J.K., Alexander, A.W., Wagner, R.K., Rashotte, C.A., Voeller, K.K.S., & Conway, T. (2001). Intensive remedial instruction for children with severe reading disabilities: Immediate and long-term outcomes from two instructional approaches. *Journal of Learning Disabilities*, 34(1), 33–58, 78.

Vaughn, S., Linan-Thompson, S., & Hickman, P. (2003). Response to instruction as a means of identifying students with reading/learning disabilities. *Exceptional Children*, 69(4), 391–409.

Vellutino, F.R., Scanlon, D.M., & Lyon, G.R. (2000). Differentiating between difficult-to-remediate and readily remediated poor readers. *Journal of Learning Disabilities*, 33, 223–238.

Wagner, M., Newman, L., Cameto, R., & Levine, P. (2005). Changes over time in the early postschool outcomes of youth with disabilities. A report of findings from the National Longitudinal Transition Study (NLTS) and the National Longitudinal Transition Study-2 (NLTS2). Menlo Park, CA: S RI International. Retrieved March 1, 2006, from *http://www.nlts2.org/pdfs/str6_completereport.pdf*.

Warren, J.S., Edmonsen, H.M., Griggs, P., Lassen, S.R., McCart, A., Turnbull, A.P., & Sailor, W. (2004). Urban applications of schoolwide positive behavior support: Critical issues and lessons learned. In Bambara, L., Dunlap, G. & Wchwartz, E. (Eds.), *Positive behavior support: Critical Articles on improving practice for individuals with severe disabilities* (pp. 376–387). Pro-Ed and TASH.

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Federal Register

Monday,
November 27, 2006

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 412, 422, and 489

Medicare Program; Notification of Hospital Discharge Appeal Rights; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 412, 422, 489

[CMS–4105–F]

RIN 0938-AO41

Medicare Program; Notification of Hospital Discharge Appeal Rights

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule sets forth requirements for how hospitals must notify Medicare beneficiaries who are hospital inpatients about their hospital discharge rights. Notice is required both for original Medicare beneficiaries and for beneficiaries enrolled in Medicare Advantage (MA) plans and other Medicare health plans subject to the MA regulations. (For purposes of this preamble, these entities will collectively be known as ''Medicare health plans''). Hospitals will use a revised version of the Important Message from Medicare (IM), an existing statutorily required notice, to explain the discharge rights. Hospitals must issue the IM within 2 days of admission, and must obtain the signature of the beneficiary or his or her representative. Hospitals will also deliver a copy of the signed notice prior to discharge, but not more than 2 days before the discharge. For beneficiaries who request an appeal, the hospital will deliver a more detailed notice.

EFFECTIVE DATE: These regulations are effective on July 1, 2007.

FOR FURTHER INFORMATION CONTACT:

Eileen Zerhusen, (410) 786–7803, (For issues related to Original Medicare).

Tim Roe, (410) 786–2006, (For issues related to Medicare Advantage).

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, we have published several rules regarding hospital discharge notice policy, as well as rules regarding required notices in other provider settings when Medicare services are terminated. (See our proposed rule published April 5, 2006 in the **Federal Register** (71 FR 17052) for a description of these rules.) In accordance with section 1866 of the Social Security Act (the Act), hospitals currently must deliver, at or about the time of admission, the ''Important Message from Medicare'' (IM) to all hospital inpatients with Medicare to explain their rights as a hospital patient, including their appeal rights at discharge. In addition, a hospital must provide a Hospital-Issued Notice of Noncoverage (HINN) to any beneficiary in original Medicare that expresses dissatisfaction with an impending hospital discharge. Similarly, Medicare health plans are required to provide enrollees with a notice of noncoverage, known as the Notice of Discharge and Medicare Appeal Rights (NODMAR), when an enrollee disagrees with the discharge decision (or when the individual is not being discharged, but the Medicare health plan no longer intends to cover the inpatient stay). See section III of this preamble for more information about the HINN and NODMAR, under ''Existing Notices.''

On April 5, 2006, CMS published a proposed rule in the **Federal Register** (71 FR 17052) proposing revised discharge notice requirements for hospital inpatients who have Medicare. The provisions of that proposed rule, the related public comments and our responses, and the final regulations in this regard are set forth below.

Requirements for Issuance of Regulations

Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1871(a) of the Act and requires the Secretary, in consultation with the Director of the Office of Management and Budget, to establish and publish timelines for the publication of Medicare final regulations based on the previous publication of a Medicare proposed or interim final regulation. Section 902 of the MMA also states that the timelines for these regulations may vary but shall not exceed 3 years after publication of the preceding proposed or interim final regulation except under exceptional circumstances.

This final rule responds to comments on the April 5, 2006 proposed rule. In addition, this final rule has been published within the 3-year time limit imposed by section 902 of the MMA. Therefore, we believe that the final rule is in accordance with the Congress's intent to ensure timely publication of final regulations.

II. Provisions of the Proposed Regulations

As noted above, on April 5, 2006, we published a proposed rule regarding hospital discharge notice requirements under both the original Medicare and the Medicare Advantage program. The proposed rule set forth a two-step notice process for hospital discharges similar to the process in effect for Medicare service terminations in home health agencies (HHAs), skilled nursing facilities (SNFs), swing beds, comprehensive outpatient rehabilitation facilities (CORFs), and hospices. In general, we proposed to require hospitals to deliver, prior to discharge, a standardized, largely generic notice of non-coverage to each Medicare beneficiary whose physician concurs with the discharge decision. Hospitals or Medicare health plans, as applicable, would also deliver a more detailed discharge notice to beneficiaries who exercised their right to appeal the discharge. The specific details of the proposal are set forth below.

Proposed § 405.1205

We proposed to add a new § 405.1205, to require hospitals to deliver a standardized, largely generic discharge notice to original Medicare beneficiaries.

We proposed in § 405.1205 that hospitals would be required to deliver a standardized notice of non-coverage to beneficiaries on the day before the planned discharge from an inpatient hospital stay. The notice would include: (1) The date that coverage of inpatient hospital services ends; (2) the beneficiary's right to request an expedited determination including a description of the expedited determination process as specified in § 405.1206, and the availability of other appeal procedures if the beneficiary fails to meet the deadline for an expedited determination; (3) the beneficiary's right to receive more information as provided in § 405.1206(e); (4) the date that financial liability for continued services begins; and (5) any other information required by CMS.

Proposed § 405.1206

We proposed to replace existing § 405.1206 with a new provision similar to the notice requirement associated with the expedited review process for home health, hospice, skilled nursing, swing bed, and CORF settings set forth in § 405.1202. Proposed section 405.1206 set forth the responsibilities of the hospitals, Quality Improvement Organizations (QIOs), and beneficiaries relative to the expedited determination process. Most notably, we proposed in § 405.1206 that hospitals would be required to deliver a detailed notice to beneficiaries if beneficiaries exercise their right to request an expedited determination. The hospital would be required to deliver the detailed notice by the close of business of the day of the QIO's notification of the beneficiary's request for an expedited determination.

The detailed notice would include: (1) A detailed explanation why services are either no longer reasonable and necessary or are otherwise no longer covered; (2) a description of any applicable Medicare coverage rule, instruction, or other Medicare policy, including citations to the applicable Medicare policy rules or information about how the beneficiary may obtain a copy of the Medicare policy; (3) facts specific to the beneficiary and relevant to the coverage determination that are sufficient to advise the beneficiary of the applicability of the coverage rule or policy to the beneficiary's case; and (4) any other information required by CMS.

Proposed § 422.620 and § 422.622

In these two sections, we proposed to replace the existing NODMAR notice and review regulations for Medicare health plan enrollees with notice requirements that largely parallel those proposed for beneficiaries in original Medicare. That is, proposed § 422.620 would require the hospitals to deliver the standardized, largely generic notice to all enrollees who are hospital inpatients, on the day before a planned discharge. The content of the notice would be essentially the same as under original Medicare. Similarly, § 422.622 would require the Medicare health plan to deliver a detailed notice to those enrollees who request an immediate QIO review of the discharge decision. Again, the timing and content requirements paralleled those in proposed § 405.1206.

Section 422.622 also specified the procedural responsibilities of Medicare health plans, hospitals, and QIOs as well as any possible liability for hospitals and Medicare health plans during the immediate QIO review process.

Conforming Changes Proposed to § 489.27 and § 412.42

Finally, we proposed to make conforming changes to two related existing regulatory provisions. First, we proposed to amend the provider agreement requirements in § 489.27(b) to cross-reference the proposed notice requirements. Thus, proposed § 489.27(b) would specify that delivery of the hospital discharge notices consistent with proposed § 405.1205 and § 422.620 is required as part of the Medicare provider agreement. The other conforming change would affect § 412.42(c), which involves limitations on charges to beneficiaries in hospitals operating under the prospective payment system.

As revised, proposed § 412.42(c)(3) would simply include a cross-reference to the notice and appeal provisions set forth in § 405.1205 and § 405.1206. This change would clearly establish that the provision of the appropriate expedited review notices would be one of the prerequisites before a hospital could charge a beneficiary for continued hospital services.

III. Analysis of and Responses to Public Comments

We received approximately 500 public comments on the proposed rule from healthcare professionals and professional associations, hospitals, State and national hospital associations, beneficiary advocacy groups, and managed care organizations.

Comments centered on the details of the proposed notice procedures and the relationship between those procedures and the current hospital discharge and notification processes, including the IM. In general, healthcare professionals, hospitals, and hospital associations strongly opposed the proposed notification process. Patient advocacy groups generally supported the rule as proposed. Managed care organizations also opposed the notice process and pointed out MA-specific issues with the rule. Summaries of the public comments received on the proposed provisions and our responses to those comments are set forth below.

The Proposed Notice Process

Comment: The overwhelming majority of commenters strongly opposed the hospital discharge notification procedures set forth in the April 5, 2006 proposed rule. Only a few commenters supported the process.

Those commenters supporting the proposed process stated that it would provide Medicare beneficiaries with a timely notice of the right to challenge a discharge decision that may be premature and harmful to that beneficiary's health. They believe that the proposed changes would serve as a check against existing financial incentives for hospitals and health plans to discharge beneficiaries too early. These commenters supported the proposed requirement that the generic notice be delivered on the day before discharge, stating that it gives beneficiaries the information they need to initiate an appeal at the time they need it, and allows beneficiaries enough time to consider their right to appeal and obtain the help of representatives, if needed. Several of these commenters suggested the generic notice be given 2 days in advance of discharge or even earlier when possible.

As noted, however, the vast majority of commenters opposed the proposed process. These commenters focused their objections on two key issues—the overall need for the new notice and the timing of its delivery.

Need for Notice Process

Many commenters noted that, because hospitals are already required to deliver the Important Message from Medicare (IM) to all Medicare inpatients, the proposal actually constituted a 3-step notice process that adds unnecessary burden to hospitals and managed care plans. Many commenters stated that the current notice process—delivery of the IM at or near admission, and a Hospital Issued Notice of Noncoverage (HINN) if the beneficiary disputes the discharge decision—adequately informs beneficiaries of their appeal rights. They saw no compelling reason to warrant the implementation of the proposed notice process. Other commenters noted that there are problems with the current notice delivery process that CMS should address before deciding to add another notice. These commenters agreed with many others that CMS should strengthen the current notice delivery process, rather than adding an additional notice at discharge. Specifically, some commenters stated that the IM is often handed to the beneficiary at admission without any explanation, along with many other papers. Thus, more often than not, the IM ends up unread. Additionally, several commenters noted that the current process is not enforced by CMS and recommended that CMS sanction hospitals that are not complying with notice delivery requirements.

Many commenters made recommendations for improving the current notice delivery process including revising the IM to be a more complete notice of discharge appeal rights (similar to the proposed generic notice), or replacing the IM with the proposed generic notice and providing it at or near admission. Several commenters suggested we allow the generic notice to be given at admission or during the course of the hospital stay, and some commenters recommended that the hospital review the information with the beneficiary and that the beneficiary sign the notice.

Timing of the Generic Notice

Commenters also strongly objected to the requirement that hospitals provide the proposed generic notice on the day before discharge, as proposed in § 405.1205 and § 422.620. They indicated that, given the rapidly changing conditions of most hospital patients, it is often difficult or impossible to predict the exact date of

discharge a day in advance. Commenters pointed out that physicians often make discharge decisions and write the discharge order on the day of discharge. Several commenters stated that they cannot assume physician concurrence until the discharge order is written.

Many commenters pointed out that although hospitals begin the discharge planning process at admission, hospital staff, physicians (and health plans, if applicable) must wait for the results of blood work and other diagnostic tests and are constantly monitoring patients for signs of clinical progress before the discharge decision can be made. Commenters offered many clinical examples in support of this contention, including the following: Surgical patients' diets are gradually progressed from liquids to solids based on their tolerance, which varies from patient to patient; patients on oxygen therapy must be evaluated frequently to determine if it is appropriate to wean and later to determine if home oxygen is appropriate; patients receiving medications such as narcotics or steroids must be weaned from these medications and observed for complications, and patients cannot be expected to respond in a predictable manner.

In addition, many commenters pointed out that giving a notice on the day before discharge to a beneficiary experiencing a short stay (1 or 2 day stay) would in practice necessitate that the discharge notice be given at admission, when the course of treatment may not be known. Others stated that many of these beneficiaries also are waiting for test results and the discharge decision will depend on the results of those tests.

Other commenters stated that predicting the discharge date a day or more in advance would be particularly difficult for beneficiaries with complicated cases, since many of these beneficiaries are under the care of more than one physician while in the hospital, requiring coordination among specialists regarding the discharge decision.

For beneficiaries who need to be placed in facilities such as a SNF or psychiatric facility, discharge will depend on that facility's acceptance of the beneficiary, and the hospital may not know about placement 24 hours in advance in order to give a notice. In addition, commenters noted that it is not unusual for a physician to discharge a patient earlier than anticipated because of that individual's progress, making notice delivery on the day before discharge impossible.

Commenters also stated that it often takes time to reach the representative of a beneficiary who is incompetent or unable to make informed decisions. Some commenters said representatives are often more available near the time of admission than on the day before discharge.

Response: We have carefully considered the numerous comments regarding the extent to which a new notice is needed and the timing of such a notice. We recognize that the proposed generic notice clearly contains nearly the same information as IM, which is already delivered at or near admission as required by Section 1866(a)(1)(M) of the Social Security Act (the Act). Moreover, we fully appreciate, as many commenters pointed out, the difficulties inherent in predicting the precise date of discharge in advance in the hospital setting. At the same time, we are committed to ensuring that all Medicare beneficiaries are made aware of their hospital discharge rights in an effective manner.

As the comments made clear, a hospital's frequent inability to predict a discharge in advance in acute care settings constitutes the fundamental obstacle to the 24-hour advance notice proposal. This problem is particularly pronounced for patients with complicated medical concerns, those under the care of more than one physician, and those requiring subsequent placement in other facilities. Clearly, discharge decisions are normally made by physicians, and physicians generally depend on test results, other outcome-related indicators, and observations gained from patient rounds in making these decisions. Many of these indicators may not become evident or available sufficiently early to permit 24-hour advance notice on a routine basis.

Thus, we considered other alternatives to the proposed ''24-hour notice'' requirement that could still ensure that beneficiaries are made aware of their discharge appeals rights in time to exercise them, without adversely affecting the hospital discharge process or the availability of hospital beds. This is consistent with our commitment in the proposed rule to consider comments on all aspects of hospital notice procedures. One option that we considered carefully was to establish the 24-hour advance notice requirement as a general rule, but allow for exceptions when this requirement was impractical, such as the situations described above where a beneficiary's discharge date could not reliably be predicted in advance. We concluded, however, that such a standard would be highly subjective and difficult to administer, given the variety of reasons why a discharge decision could be made on the day of discharge, while still potentially leaving a large proportion of hospital patients unaware of their discharge rights until they would have little or no time to exercise them.

Moreover, we also had to take into account the high percentage of short stays in the hospital setting. (The most recent available CMS data—2003 data from the 2005 CMS Statistical Supplement—regarding acute inpatient hospital admissions show that over 43 percent of hospitals stays are 3 days or less in duration, and nearly 30 percent are 2 days or less.) In those situations, given the statutory requirement that hospitals deliver an IM to each patient at or about the time of admission, requiring a generic discharge notice as well would be of questionable value because they would be given at about the same time. As many commenters pointed out, the proposed generic notice contains much of the same information as the IM. Thus, requiring hospitals to deliver both notices at roughly the same time would place an administrative burden on hospitals without any apparent benefit to patients.

Based on all these considerations, we decided not to adopt an exception-based standard. Instead, we considered additional alternatives for meeting our goal of designing hospital notice procedures that balance a beneficiary's need to be informed about his or her appeal rights in an appropriate manner and at an appropriate time, and take into account the statutory requirements associated with the IM, but do not impose impractical requirements on hospitals, or interfere with appropriate discharge decision-making practices. As many commenters recommended, we concluded that the most viable approach would be to build on the existing requirement that hospitals deliver the IM to all beneficiaries, which already takes into account hospital discharge processes. Accordingly, under § 405.1205(b)(§ 422.620(b) for MA enrollees), this final rule establishes a revised version of the IM as the advance written notice of hospital discharge rights.

As revised, the IM will contain virtually all of the elements that would have been included in the proposed standardized generic notice, with the exception of the discharge date. Thus, the revised IM will continue to meet the requirements of section 1866(a)(1)(M) of the Act, including a statement of patients' rights, information about when a beneficiary will and will not be liable for charges for a continued stay in a

hospital, as well as a more detailed description of the QIO appeal rights that corresponds to the content of the proposed generic notice. We have revised requirements for notice content at § 405.1205(b) and § 422.620(b) to reflect these changes. Proposed § 489.27 has also been revised accordingly. However, similar to the generic notice, the revised IM must be signed by the beneficiary (or representative, if applicable) to indicate that he or she has received the notice and comprehends its contents. The hospital must provide the original, signed notice to the beneficiary and retain a copy of the signed notice. As with the proposed generic notice, we anticipate that the revised IM will also include language stressing the importance of discussing discharge planning issues with physicians, plans, or hospital personnel to try to minimize the potential for disputes. The precise language of the revised IM will be subjected to public review and comment through the Office of Management and Budget's Paperwork Reduction Act process.

Sections 405.1205(b) and 422.620(b) also establish the time frames for notice delivery. Specifically, hospitals must deliver the advance written notice at or near admission, but no later than 2 calendar days after the beneficiary's admission to the hospital. We believe that requiring this revised IM be delivered and signed at or near the time of admission gives the hospital flexibility in developing processes to deliver the notice in a timely manner and makes the IM a more meaningful notice for beneficiaries and representatives, allowing them ample time to consider acting on those rights.

At the same though, we continue to believe that it is important for beneficiaries to receive information about their discharge rights at or near the time of discharge when they may need to act on this information. Therefore, § 405.1205(c), and § 422.620(c) for Medicare health plan enrollees also requires that hospitals deliver a copy of the signed IM to each beneficiary before discharge. The notice should be given as far in advance of discharge as possible, although not more than 2 calendar days before the day of discharge. This time frame would be consistent with the suggestions of several commenters who advocated for delivery of discharge rights notices 2 days before discharge.

This follow-up notice would serve as a reminder of the earlier notification about the beneficiary's discharge rights. It would not be required if the initial delivery and signing of the IM took place within 2 days of discharge. This means that hospitals will have some flexibility to tailor their notice delivery practices to meet their own needs, with the possibility of eliminating the need to deliver a copy of the notice for stays of up to 5 days. (We note that the average hospital length of stay in an acute care setting for a Medicare beneficiary is approximately 5 days and, again, large numbers of beneficiaries experience stays ranging from overnight to 2 or 3 day stays.) Although the follow-up notice often would not be needed in short-stay situations, it would serve as an important reminder of beneficiary rights in longer stay cases. Thus, all individuals will receive the original notice at or near admission, in addition to receiving a copy of the signed notice if the original notice is delivered more than 2 days before discharge.

Section 405.1206(b)(1) and § 422.622(b)(1), will allow beneficiaries to request an expedited determination at any time up through the day of discharge, either in writing or by telephone. However, we believe that the better alternative will be for beneficiaries to be aware of their rights as early as possible and then communicate with their physicians, plans and appropriate hospital staff to reach a consensus on their appropriate discharge date.

Given that there is no longer a noon deadline for a beneficiary to request an expedited QIO determination, we recognize that such requests could be made near or after the close of the business day. Thus, we have revised the appropriate sections to specify that the subsequent deadline for the hospital or plan to provide beneficiaries with detailed notices as soon as possible but no later than noon of the day after the QIO notifies the hospital or plan that the beneficiary has requested QIO review. We have also specified that the hospital or plan must submit necessary information to the QIO as soon as possible, but no later than noon of the day after the QIO notifies the hospital or plan of the request. We note that a beneficiary's liability protection would continue throughout this process.

In summary, we believe that the revised notification process being set forth in this final rule will offer several advantages over the proposed approach, while still containing many similar elements and achieving the same goals. The process is consistent with the existing IM requirements—while also establishing much greater hospital accountability (and enforceability) for delivering the IM—promotes beneficiary understanding of their discharge rights, and gives hospitals appropriate discretion in notice delivery practices and, more importantly, in discharge decision-making, rather than letting notice delivery rules dictate when patients are discharged.

Consequences of the 24-Hour Notice Requirement

Many commenters believed that if hospitals were not able to deliver the generic notice on the day before discharge, that patients would be entitled to stay an additional day in order to meet the 24-hour requirement. We received many comments regarding what commenters believed would be the consequences of this additional day.

Comment: Many commenters addressed the perceived consequences of their belief that, in most cases, hospitals would not be able to give the notice until the actual day of discharge. In general, commenters indicated that beneficiaries would then be entitled to stay another day in order to decide if they want to appeal. Commenters contended that delaying discharge an additional day to allow hospitals to satisfy the notice requirement conflicted with the discharge planning process set forth at section 1861(ee)(2) of the Act, which directs the Secretary to develop guidelines to ensure a smooth and timely discharge to the most appropriate setting. Several commenters pointed to the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) requirements at LD.3.15 that require hospital leadership to mitigate impediments to efficient patient flow throughout the hospital. Other commenters stated that the Hospital Conditions of Participation (COP) for patients' rights at § 482.13 already makes clear that a patient has the right to make informed decisions, and has the right to a process for submitting grievances, including concerns about quality of care and premature discharge.

Many commenters feared that the proposed process and the possibility of an additional day would severely impact the hospital's bed capacity, ability to move patients within and outside of the hospital, and costs. Many commenters believed that this requirement would cause unnecessary delays in a patient's discharge or transfer to a more appropriate level of care.

Several commenters gave the example of the Medicare beneficiary who has secured a bed in another facility such as a skilled nursing facility (SNF). If the hospital were not able to provide the generic notice until the day of discharge, and Medicare beneficiaries were able to stay an additional day to ensure they received the notice at least 24 hours in advance of discharge,

commenters said, this beneficiary would risk losing that bed and finding another bed could take several more days. Commenters believed that hospitals would then be required to provide additional notices to this beneficiary and work within new timeframes.

Response: We agree with the commenters that to the extent that hospitals are not able to deliver the generic notice until the day beneficiaries are ready to be discharged, the proposed 24-hour notice requirement could potentially affect the hospital's compliance with the requirement for a smooth and timely discharge to a more appropriate setting. As noted above, we find persuasive comments regarding the fluidity of the discharge process. Thus, as explained in detail above, we have modified the proposed notification procedures to attempt to mitigate the potential for disruption of the discharge planning process.

Existing Notices

Comment: Hospitals asked whether the existing HINN and NODMAR would continue to be necessary.

Response: Currently, hospitals or plans issue a HINN or NODMAR at discharge only when the patient disagrees with the discharge decision. In this context, the HINN and NODMAR are used to tell a patient why a hospital or plan believes their stay will no longer be covered, to provide information about the QIO review process, and to describe the patient's potential liability. Under the process set forth in this final rule, *ALL* individuals will be provided with information upon admission about the QIO review process and associated liability, and individuals who disagree with the discharge decision will receive detailed information about why the hospital or plan believes their stay will no longer be covered. Thus, with this new process, the HINN and NODMAR will no longer be used to notify patients of their right to a QIO review of a stay. In the vast majority of cases, a beneficiary will agree to the discharge decision. In almost all other cases, beneficiaries who disagree with the discharge decision will initiate a QIO review, so that their stay can continue without liability until the QIO confirms the discharge decision or determines that the stay should continue. Only in the extremely rare instance where patients decide to remain in the hospital past the ordered discharge date and do not choose to initiate a review would they be notified of liability via a traditional liability notice akin to the existing HINN. (Note that the term ''HINN'' actually refers to several different notices, used under various circumstances, to inform patients under original Medicare that all or part of a hospital stay may not be covered by Medicare. For example, a HINN is also used in pre-admission situations. This final rule addresses only HINNs now used at the end of a hospital stay when a patient disputes a discharge decision. Under these circumstances, the HINN is no longer needed.) The NODMAR will be discontinued.

Aligning Hospital Discharge Notice Processes With Those of Other Settings

We received multiple comments on our proposal to align hospital discharge notice processes with those used in other settings such as HHAs, SNFs, and CORFs.

Comment: Many commenters indicated that it was unrealistic and of little value to achieve consistency between hospital discharge notice processes and those of other providers such as SNFs and HHAs. Commenters stated that hospitals are fundamentally different from these non-hospital settings because of hospitals' focus on the provision of acute medical care. The commenters stated that hospital lengths of stay are generally shorter, the conditions of acutely ill patients are more unpredictable, there is a greater volume of discharges per day, and they contended that discharge decisions are generally made on the day of discharge often based on the availability of diagnostic tests results. Conversely, commenters stated that SNFs and other settings have more predictable patient outcomes and longer lengths of stay that allow advance notice of discharge under most circumstances. Moreover, they pointed out that in the non-hospital setting, beneficiaries could be liable for additional days if they request a review; conversely, in the hospital setting, beneficiaries may stay without additional liability while the QIO's decision is pending. Finally, unlike hospitals, other providers are not required to provide the IM that already includes an explanation of the discharge appeal rights. Thus, they urged that CMS reconsider its proposed hospital notice approach.

A few commenters did support aligning the provider notice procedures. These commenters believe that uniformity among appeals notice process in all settings would increase public understanding and utilization of the QIO appeal process. The commenters noted that protections against premature discharge are even more necessary in the hospital setting than in other settings because of the vulnerability and acute care needs of hospital patients. Further, they argued, inpatient hospital providers are at least as capable of complying with these requirements, as are SNFs and other outpatient providers.

Response: We agree that there are notable differences between the hospital setting and the other provider settings where an expedited determination notice process is in effect. As commenters pointed out, the critical differences for purposes of this rule are the presence of the IM in the hospital setting, the shorter and less predictable lengths of stay, and the statutory liability protections afforded to hospital inpatients in accordance with section 1869(c)(3)(C)(iii)(III) of the Act. We found the comments on these issues to be especially persuasive. Thus, in developing this final rule, we have attempted to set forth a process that better takes into account the unique circumstances of the hospital setting.

Discharge Planning Process

Many commenters stated that the hospital notice requirements needed to take into consideration the discharge planning requirements in the Conditions of Participation (COPs).

Comment: A number of commenters stated that the existing discharge planning process carried out by hospitals already informs beneficiaries of discharge plans and facilitates smooth transitions to post-hospital settings. The commenters stated that the discharge planning COP at § 482.43 addresses the development of a discharge plan and requires that the patient and representative be involved in the discharge planning process. Commenters also stated that discharge decisions are made by physicians, not hospitals.

Commenters noted that discharge planners are very effective at developing individualized discharge plans, making arrangements for post-hospital care, and preparing patients and caregivers for discharge. Commenters also pointed out that because discharge planners are involved in arranging patients' post-hospital care, they are able to identify patients early on who will have special needs at discharge and work with them (or their representatives) to address their issues. Thus, many commenters questioned the need for written discharge notices, given the extensive discharge planning process already required in hospitals. Alternatively, several commenters suggested that we add language to the notice that informs beneficiaries of the discharge planning process.

Response: We recognize the important work of hospital discharge planners in

the development of individualized discharge plans and preparing patients for post-hospital care, and we agree that any process to notify beneficiaries of their appeal rights must be consistent with the discharge planning process required by section 1861(ee)(2) of the Act and the COPs at § 482.43. However, we note that while hospitals must have in effect discharge planning procedures that apply to all patients, discharge planning generally focuses on identifying individuals who are likely to have special or ongoing needs following discharge. Obviously, not all hospital inpatients will require post-hospital care, therefore some patients will have very limited involvement with the discharge planning process. Thus, we are not convinced that it is appropriate to rely on the discharge planning process as the mechanism for ensuring all patients receive timely notification of discharge rights under the Medicare program. Instead, we believe that the Medicare discharge notice should be able to stand alone, or complement discharge planning.

To reflect the importance of discharge planning, we intend to incorporate language into the revised IM about planning for discharge and encouraging beneficiaries to talk to their physician or other hospital staff if they have a concern about being discharged. If beneficiaries are still not satisfied with their discharge decision, they can request a QIO review.

Liability

Many commenters were concerned about the prospect of hospitals being financially liable for additional patient care days during the QIO process.

Comment: Many commenters asked that CMS clarify who would be liable for the extended days during the appeal. They stated that because the beneficiary will have no liability, Medicare should pay the hospital for the additional days or the additional days should be incorporated into the DRG payment. A few commenters stated that the liability protections set forth in section 1879(a)(2) of the Act should relieve the hospital of any liability because the hospital would not have known that payment would not be made for hospital services beyond the planned day of discharge.

Response: This rule has no effect on existing policy with respect to liability during a QIO review. All operating costs incurred during the beneficiary's inpatient stay are considered part of the overall DRG payments.

Impact on Number of Appeals

Many commenters believe that this notification process would increase in the number of appeals to the QIO.

Comment: Many commenters believe that once beneficiaries become aware of their right to a review without liability, there will be a large increase in the number of beneficiaries appealing and staying additional days during the review. Many commenters stated these extra days could seriously affect hospital processes, have a significant effect on hospital costs. Longer lengths of stay, they contended, would hinder the hospital's ability to move patients through the system, seriously affecting bed capacity. Hospitals would not be able to accept new admissions, would experience backups in already crowded emergency rooms, and would not be able to move patients out of post-anesthesia care units or intensive care units. Most importantly, commenters said, the longer Medicare beneficiaries remain in the hospital, the greater their risk of hospital-acquired infections, falls and other negative outcomes.

Several commenters said CMS should assess whether the 1 to 2 percent estimate of the number of beneficiaries who currently request QIO reviews in the nursing home or home health settings would hold up in the hospital setting where liability is not an issue for beneficiaries while their appeal to the QIO is pending.

Response: The right to a QIO review without beneficiary liability is a longstanding statutory feature of the Medicare inpatient hospital prospective payment system. To the extent that commenters are correct that beneficiaries are not aware of the existing QIO review right, there could be an increased use of the process under the new notice rules. However, we view this contention as evidence of the need for a more effective notice process, as opposed to an argument against notification.

At the same time, however, we have historically believed, based on the limited evidence available, that hospital beneficiaries who are notified of their discharge rights are not significantly more likely to exercise them. For example, as discussed in previous rulemaking, the proportion of Medicare health plan enrollees that disputed their discharge historically has been no higher than that of original Medicare beneficiaries, despite the more stringent notice requirements under the Medicare + Choice program (68 FR 16664). Moreover, several commenters noted, and we agree that the vast majority of inpatients welcome their discharge. Therefore, we believe that the revised notice process will not increase the number of requests for a QIO review nor have a significant impact on hospital bed capacity, patient access, or hospital revenue.

Impact on Beneficiaries

Many commenters were concerned about the impact of the proposed notice process on beneficiaries, and the possibility that some beneficiaries would use the process to game the system. Some commenters offered suggestions on how to better educate beneficiaries about their rights.

Comment: Many commenters were concerned that the notices in the proposed process would confuse beneficiaries and increase their anxiety level during an already stressful time. Many commenters stated that beneficiaries are under an inordinate amount of stress during a hospital stay and that issuing a notice regarding potential financial liability would only serve to alarm them. Several other commenters stated that the notices as written would be difficult for many frail elderly Medicare beneficiaries to understand. Other commenters stated that beneficiaries are already overwhelmed by the number of notices they receive and that an additional notice would exacerbate the problem. Still other commenters stated that many beneficiaries these days are cautious about signing forms.

Conversely, some commenters felt that Medicare beneficiaries generally are not aware of their right to appeal a discharge and that the current process for communicating the information to them is not effective.

Response: We believe that it is important for Medicare beneficiaries to understand their discharge appeal rights and be able to act on them. Moreover, based on the often conflicting comments received on the proposed rule, we believe that not all beneficiaries are made aware of these rights uniformly under the current process. We recognize that liability issues in particular can be difficult for beneficiaries to understand, and we intend to make sure the revised IM is as clear as possible in this regard. We also intend to consumer test the notices prior to requesting OMB approval. Finally, it is important to keep in mind that hospitals will be expected to review the notices with beneficiaries (or representatives when appropriate), answer any questions and, if necessary, help them to initiate the QIO review process. We believe these efforts will serve to reduce confusion and enhance beneficiaries' understanding of their rights and their ability to act on them.

Comment: Many commenters stated that this proposed process would encourage beneficiaries who do not want to leave the hospital to ''game'' the system in order to stay for reasons other than medical necessity. These commenters said that some beneficiaries might want to remain in the hospital, either for reasons of convenience, because the hospital offers a more secure and comfortable environment, or because a bed is not available in a setting of their choice. Additionally, a few commenters pointed out that beneficiaries who do not meet the 3-day qualifying stay for a nursing facility might use the appeal process to get the extra day(s) in order to qualify.

Response: We understand that hospitalized beneficiaries and their family members may be anxious about discharge for many reasons. Nevertheless, we expect the vast majority of beneficiaries who exercise their statutory right to a QIO review to do so for legitimate purposes. As discussed above, we also recognize the benefits of an effective discharge planning process in identifying those beneficiaries who may have concerns about their discharge and in working with these patients early on in order to facilitate a smooth discharge.

Finally, in accordance with § 409.30, a 3-day qualifying stay must be for medically necessary hospital or inpatient CAH care. Therefore, if a patient has not met the 3-day qualifying stay and requests a review, the QIO will determine whether the decision to discharge was the correct one.

Thus, we do not expect significant numbers of individuals to use this process to ''game'' the system, although we note that opportunity has always existed. Again, we believe that patients should be informed of their statutory rights.

Comment: Some commenters recommended that, instead of adding to the number of notices that hospitals are required to deliver, we educate consumers about their discharge rights through other methods. Several commenters recommended specific measures such as educational campaigns, mailings, or printing appeal rights on the back of the Medicare card. Comments were mixed as to whether Medicare beneficiaries are knowledgeable about their rights or are confused by the complexity of the program and the large number of notices they already receive.

Response: The IM is a statutorily required notice that hospitals are required to deliver at or about the time of an individual's admission as an inpatient to the hospital. Neither educational campaigns nor mailings can meet that requirement. We do agree with commenters, however, that it is necessary to educate beneficiaries about their discharge appeal rights using other means. Currently, information about these rights is in the ''Medicare and You Handbook'' and the Medicare health plans' ''Evidence of Coverage'' (EOC), and we will work with hospitals, beneficiary advocates, and other partners to help educate beneficiaries about their rights.

Burden

We received a large number of comments on the burden estimates for both the proposed generic and detailed notices.

Comment: The vast majority of commenters believed that the 5-minute time estimate by CMS for the delivery of the generic notice was much too low, and did not acknowledge the time necessary to complete the notice, explain it to the beneficiary, answer questions, or contact a representative, particularly in cases where the beneficiary's competency is at issue or there is a language barrier. Generally, commenters offered a range of 10 to 30 minutes to complete the notice, deliver and explain the notice and obtain a signature, with more time required when interpreters or representatives were involved.

In addition, some commenters thought the time required to complete the detailed notice would be comparable to the current notification process that utilizes the HINN and NODMAR. A few commenters stated that the detailed notice could take from 120 to 180 minutes to fill out, accounting for additional tasks such as calling the QIO, or providing evidence to the QIO for its review in their estimate. Also included in this estimate was the burden associated with having to research specific Medicare coverage rules and citations.

Response: Although this final rule no longer requires issuance of the separate generic notice, as specified in the proposed rule, we have taken these comments into consideration in estimating the time required for delivery of a revised, signed IM. Thus, we now estimate the average time for IM delivery at 12 minutes—which represents an 11 minute increase over the estimated time for delivery of the current IM. We note that this estimate reflects an ''average'' amount of time needed to deliver the notice; some beneficiaries will be able to read the notice easily and others will need more time and assistance. Further, we estimate that delivery of the signed copy of the IM that may be required for longer hospital stays should only take an average of 3 minutes to deliver to the beneficiary or representative because it is essentially a review of information received at or near admission and questions regarding the process can also be referred to the QIO.

Regarding the detailed notice, in response to suggestions that it would be especially difficult for hospital staff to research and list specific citations to applicable Medicare policy rules, we no longer require the notice to list specific citations to the applicable Medicare policy rules. We have, however, maintained the requirements that the detailed notice explain why services are no longer necessary and describe relevant Medicare coverage rules, instruction or other policy. Commenters recognized that the detailed notice essentially replaces the HINN and NODMAR processes when beneficiaries and enrollees do not agree with the discharge. Therefore, we believe that the detailed notice will not constitute a new burden, but will essentially replace the time associated with filling out and delivering the HINN and NODMAR. We believe that, in addition to the time it currently takes to complete the HINN and NODMAR, an extra 60 minutes is sufficient for filling out and delivering the detailed notice. We intend to permit, in guidance, that hospitals and plans may use predetermined language regarding medical necessity and other Medicare policy. Both the IM and the detailed notice will be published for public comment through the OMB Paperwork Reduction Act process. Therefore, we welcome further input on the form and content of the detailed notice through the OMB approval process.

QIOs

Several commenters noted that the current QIO schedule for hospital reviews could delay the appeal process.

Comment: Several commenters stated that QIOs do not currently review hospital stays on weekends, which could cause additional delay in the processing of these appeals.

Response: QIO reviews of disputed hospital discharges are a long-standing feature of the Medicare program. However, we will work closely with the QIOs to ameliorate any difficulties associated with the notice procedures. We note that the QIO review process for other providers requires QIO involvement 7 days a week.

Information Technology (IT)

Some commenters were concerned that the notice process would affect their IT systems.

Comment: A few commenters stated that hospitals, especially larger centers, would have to develop or change their IT process to, for example, track ''next day'' discharges, based on the proposed rule. Several commenters stated that the proposed rule was contrary to the movement toward electronic medical records.

Response: As described above, based on the comments, we have revised the requirement for delivery of the notice so that it may be delivered up to 2 days prior to discharge. We believe this added flexibility will relieve hospitals of any burden of developing an IT process to track ''next day'' discharges. We also agree that the movement toward electronic medical records is an important advancement. However, given that section 1866(a)(1)(M) of the Act requires a written statement of rights, there is still a need for a hard copy delivery of the IM. Hospitals may choose to store the signed copy of the notice electronically.

Delivery to a Representative

Several commenters asked that we allow hospitals to provide notification to representatives via a telephone call.

Comment: Several commenters requested that CMS clarify what ''valid delivery'' means if a beneficiary is incompetent and a representative must be contacted. Other commenters suggested that we allow telephone notification to beneficiary representatives.

Response: We intend to provide guidance regarding how hospitals and health plans may deliver the appropriate notice in cases where a beneficiary's representative may not be immediately available.

Managed Care

Several commenters noted there were specific issues with regulation in terms of managed care and also commented on the scope of the regulation and coordination issues among hospitals, plans and the QIO.

Comment: Several commenters pointed out coordination issues among Medicare health plans, hospitals, and QIOs, regarding the proposed process. Several commenters specifically described issues of coordination regarding delivery of the proposed detailed notice. One commenter stated that an MA private-fee-for-service (PFFS) plan may not have knowledge of the hospital stay to comply with these rules. Another commenter stated that plans may not have a contract with the treating hospital in order to delegate responsibility for the detailed notice delivery. Other commenters stated that plans are too far removed from the hospital setting to have the information to fill out and deliver a meaningful detailed notice in a timely manner. Some stated that it would be unworkable for the plan to provide the detailed notice by close of business of the day the beneficiary contacts the QIO. In this case, commenters suggested requiring plans to provide written explanation of the discharge decision to the enrollee by the close of business on the day following notification of the plan by the QIO. Some commenters pointed out difficulties hospitals have following two different sets of regulations, one for original Medicare and one for MA.

Response: We believe, consistent with the immediate QIO review process in the non-hospital settings at § 422.622, that Medicare health plans are in the best position to deliver the detailed notices regarding their specific policies and the criteria that they applied in evaluating an enrollee for discharge. Moreover, in view of the fact that Medicare health plans are responsible for making coverage determinations for their enrollees, we believe it is appropriate that plans be responsible for preparing and delivering the detailed notice in a timely manner. Therefore, we are maintaining the requirement that the plan be responsible for delivery of the detailed notice. Although we expect that the plans will deliver the detailed notice as soon as possible, we have revised the timeframe for delivery of the detailed notice as well as any information the QIO needs to complete the review, to noon of the day following the QIO's notification of the enrollee's request, as discussed previously.

We recognize that the PFFS model presents unique challenges to plans in terms of notice delivery requirements. We believe hospitals, as part of their daily business practices, should be informing all plans, including PFFS plans, of an enrollee's admission as soon as possible, and have a financial interest in doing so. Therefore, we are maintaining requirements that plans participate in the discharge process and deliver the detailed notice to their enrollees when appropriate.

In addition, we have attempted to create a consistent notification and appeal process by aligning the regulations for original Medicare and the MA program. Thus, we have reordered the requirements at § 422.620 and § 422.622 to parallel those at § 405.1205 and § 405.1206. For example, QIO requirements at § 422.622 have been revised to parallel those at § 405.1206, and requirements that hospitals provide information needed for the QIO review at § 422.622 now parallel those at § 405.1206. We believe this will strengthen beneficiary rights regarding hospital discharges and make the QIO review process easier to understand and administer.

Comment: Some commenters asked if these rules apply to Medicare Cost Plans.

Response: In accordance with 42 CFR 417.600(b), Medicare Cost Plans are subject to the regulations at 42 CFR part 422, Subpart M. Therefore, these rules apply to them to the same extent that they apply to all other Medicare health plans.

Comment: Some commenters expressed concern that MA organizations might be responsible for additional costs if hospitals fail to provide a timely generic notice on the day before discharge and the enrollee needed to stay an extra day to request an appeal.

Response: As discussed in detail above, we have removed the 24-hour requirement for delivery of the generic notice and replaced the generic notice with a signed IM given at or near admission. Under this revised approach, a patient will not need to stay in a hospital an extra day merely to request an appeal. We believe our revised approach addresses the commenters' concern.

Definition of Discharge

We received a few comments on the definition of discharge provided in proposed § 405.1205 and § 422.620.

Comment: Some commenters asked that we clarify the definition of discharge. Specifically, they asked that we clarify that a transfer to another hospital does not constitute a discharge. Commenters suggested that, for purposes of the proposed notice process, the definition of discharge should not include beneficiaries who exhaust Part A benefits.

Response: In response to these comments, we have revised the definition of discharge in both § 405.1205 and § 422.620 to state that a discharge is the formal release of a beneficiary or enrollee from an inpatient hospital. This definition is consistent with the definition at § 412.4 for hospitals paid under the prospective payment system. We removed the term ''complete cessation of coverage'' from the proposed definition in order to reduce confusion about beneficiaries who exhaust Part A days. We believe

that the number of beneficiaries who exhaust Part A days during a hospital stay is low. However, if this were to occur, hospitals would not be required to issue a follow up copy of the signed IM. Current guidance states that the HINN may be used voluntarily by hospitals to notify beneficiaries who exhaust Part A days (See Transmittal 594, Section V) and Medicare health plans would give the Notice of Denial of Medical Coverage. Under this new process, hospitals would use a liability notice akin to the HINN for this purpose. Hospitals will be required to deliver the IM at or near admission, thus all beneficiaries and enrollees will receive information on their right to a QIO review.

Content of Notices

We received many comments that the wording of the generic notice does not reflect hospital processes and is not beneficiary friendly.

Comment: Many commenters stated that the generic notice was alarmist and focused too much on termination of Medicare payment and financial liability and not enough on the fact that the discharge decision was made based on whether the beneficiary could safely go home or could safely receive care in another setting. For example, they believed that the use of the words such as ''liability,'' ''noncoverage'' and ''immediate review'' might upset some beneficiaries who are facing discharge. In the commenters opinion, hospitals must give beneficiaries the confidence they need to transition to a different level of care and the wording of the notice would cause beneficiaries to doubt the discharge decision unnecessarily.

Response: As discussed above, the process set forth in this final rule no longer entails a new, generic notice. However, we have taken these comments into consideration as we have developed the revised IM. For example, as discussed above, we intend to include information about discharge planning in the IM.

Please note that the precise wording and content of the notices is generally not subject to the rulemaking process, but instead is subject to OMB's Paperwork Reduction Act process. Thus, we intend to republish these notices through that process, providing an additional opportunity for public input prior to implementation.

Other Recommendations

Many commenters made other recommendations for how CMS could get feedback on the proposed notification process.

Comment: Some commenters recommended that CMS pilot the proposed process and notices. Others said that the notices themselves should be tested with beneficiaries. Other commenters recommended that CMS convene a national workgroup to review the hospital notices and recommend changes.

Response: The process set forth here builds on existing hospital notice requirements regarding a patient's right to a QIO review of a discharge decision. Thus, we do not believe that a pilot of either the proposed process or the proposed notices is appropriate or necessary. However, as noted above, there will be ample opportunity for public input on the notices through the PRA process. We also intend to carry out consumer testing of the notices prior to implementation of the new process.

Scope

Several commenters asked for clarification on issues related to the scope of the rule.

Comment: Several commenters asked if the notification process would be applicable to observation stays.

Response: The notice requirements set forth in this rule apply only to inpatient hospital stays.

Comment: Several commenters stated that Medicare beneficiaries who are transferred from an acute hospital to another hospital should not receive the generic notice because they are still using their hospital Medicare benefit days. Other commenters recommended that no notice be required in the following situations: when a beneficiary is moved to the same level of care or to a hospital that provides more complex medical/surgical care, when there is an emergency transfer from a psychiatric hospital to an acute care hospital for an acute problem, when a beneficiary is discharged to a rehabilitation hospital, psychiatric hospital or skilled nursing facility when the hospital has been waiting for a bed in one of those facilities. Another commenter requested that CMS distinguish between inter-hospital transfers and intra-hospital transfers.

Response: Although this comment was made in response to the proposed generic notice that is required to be given prior to discharge, we believe that it is important to restate that, in the context of the final rule, hospitals are required to deliver the IM at or near admission to all beneficiaries and enrollees with a copy at or near discharge except in short stay situations. For purposes of this rule, and consistent with the revised definition of discharge at § 405.1205 and § 422.620, any patient who is formally released from a hospital, whether that patient is going to another inpatient hospital, to a lower level of care such as a SNF (even a swing bed within the hospital), or to home, is considered discharged from that hospital.

Comment: A few commenters said that the proposed notice process conflicted with other federal regulations that prohibit Medicare beneficiaries from being treated differently from other hospital patients. These commenters stated that the notice requirements give Medicare beneficiaries rights to which other patients are not entitled. None of these commenters cited a specific rule.

Response: Although the hospital conditions of participation do establish standards that hospitals must meet for all patients, these final notice requirements stem directly from sections 1866(a)(1)(M) and section 1869(c)(3)(C)(iii)(III) of the Act and are only applicable to Medicare beneficiaries. However, without further specifics on which federal regulations the commenters are talking about, we are unable to address these comments.

IV. Provisions of the Final Regulations

The key provisions of this final rule are as follows:

- Section 405.1205(a) defines the scope of this rule for original Medicare and, as stated above, includes a revised definition of discharge consistent with § 412.4.
- Section 405.1205(b) states that hospitals must deliver valid, written notice of hospital discharge rights using a standardized notice specified by CMS.

As discussed earlier, this section has been revised to reflect the substitution of the IM for the generic notice and describes the revised notice delivery timeframes, the required content of the notice, and valid delivery requirements, including beneficiary signature, as stated above.

- Section 405.1205(c) outlines the requirements for the follow-up copy of the signed notice, as previously described, including timeframes for delivery of the copy.
- Section 405.1206(a) describes a beneficiary's right to request an expedited determination.
- Section 405.1206(b) explains the process for requesting an expedited determination by a QIO including the timeframes for requesting such an appeal, which as discussed in earlier sections, has been amended to require that a beneficiary must submit a request for a QIO review no later than the day of discharge.

This paragraph also explains the conditions for financial liability

protections including when the beneficiary makes an untimely request for a QIO review.

• Section 405.1206(c) states that the burden of proof lies with the hospital to demonstrate that discharge is the appropriate decision, and § 405.1206(d) describes the procedures that the QIO must follow in reviewing a discharge, including notification requirements for timely and untimely requests.

• Section 405.1206(e) explains the responsibilities of hospitals in the expedited determination process, including the delivery and content requirements of the detailed notice. Although a description of the applicable Medicare coverage rules or other Medicare policy is still required, as discussed above, we have removed the requirement that the notice must list specific citations to the applicable Medicare policy rules.

• Section 405.1206(f) describes the specific financial liability protections and limitations, including the beneficiary's right to pursue a reconsideration or appeal through the general claims appeals process.

• Section 405.1208 describes the process for when a hospital requests a QIO review because the physician does not concur with the hospital's determination that inpatient hospital care should end. We have made one technical change in this paragraph by adding a cross reference to § 405.1206(f)(4), in order to clarify beneficiary liability when the QIO concurs with the hospital's determination.

• Section 412.42(c)(3) includes a cross-reference to the notice and appeal provisions set forth in § 405.1205 and § 405.1206 and clearly establishes that the provision of the appropriate expedited review notices would be one of the prerequisites before a hospital could charge a beneficiary for continued hospital services.

• Section 422.620(a) defines the scope of this rule for MA enrollees and, as indicated above, includes a revised definition of discharge consistent with § 412.4.

• Section 422.620(b) requires hospitals to deliver valid, written notice of hospital discharge rights using a standardized notice specified by CMS. This section describes the revised provisions regarding notice delivery timeframes, the content of the notice, and valid delivery requirements, including enrollee signature.

• Section 422.620(c) outlines the requirements for the follow-up copy of the signed notice previously discussed, including timeframes for delivery of the copy.

• Section 422.622(a) describes an enrollee's right to request an immediate review by a QIO.

• Section 422.622(b) explains the process for requesting an immediate review including the timeframes for requesting such an appeal and the conditions for financial liability protections, including when the enrollee makes an untimely request for a QIO review.

• Section 422.622(b)(1), as described above, states that an enrollee must submit a request for a QIO review no later than the day of discharge.

• Section 422.622(c) states that the burden of proof lies with the MA organization to demonstrate that discharge is the appropriate decision, and § 422.622(d) describes the procedures that the QIO must follow, including notification requirements for timely and untimely requests.

• Section 422.622(e) explains the responsibilities of the MA organizations and hospitals in the immediate review process, including the delivery and content requirements of the detailed notice. Although a description of the applicable Medicare coverage rules or other Medicare policy is still required, as stated above, we have removed the requirement that the notice must list specific citations to the applicable Medicare policy rules.

• Section 422.622(f) describes the specific financial liability protections and limitations, including the enrollee's right to pursue a reconsideration or appeal through the standard appeal process.

• Section 489.27(a) has been revised to state that hospitals must furnish each Medicare beneficiary or enrollee the notice of discharge rights under section 1866(a)(1)(M) of the Act in accordance with § 405.1205 and § 422.620. We have also made two technical changes to § 489.27(b) to add cross references to requirements for other notices associated with expedited or immediate QIO reviews in both the hospital and non-hospital settings.

First, current § 489.27 contains a cross reference to § 405.1202. We inadvertently omitted this reference from the proposed rule, so we are adding it back in this final rule. Second, we are adding a reference to § 405.1206, the detailed notice in this rule. Therefore, § 489.27(b) states that hospitals and other providers participating in the Medicare program must provide the applicable notices in advance of discharge or termination, as required under § 405.1200, § 405.1202, § 405.1206, and § 422.624.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

• The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The information collection requirement associated with administering the hospital discharge notice is subject to the PRA.

Several commenters addressed the burden associated with the proposed notice provisions, and these comments are discussed in detail above in section III of this final rule. As discussed there, this final rule contains changes to these provisions based on public comments. Our estimates of the revised information collection requirements are set forth below, and we welcome further comments on these issues during the Paperwork Reduction Act approval process.

Section 405.1205 Notifying Beneficiaries of Hospital Discharge Appeal Rights

As discussed in detail in section III of this preamble, this final rule does not include the proposed requirements with respect to delivering a separate, standardized generic notice. Instead, we have modified the existing IM in order to provide the information about discharge appeal rights. The IM is currently approved under OMB # 0938–0692 and will be revised to reflect any additional burden and the following PRA requirements associated with this final rule.

The hospital must provide, explain, and obtain the beneficiary signature (or that of his or her representative) on the IM within 2 calendar days of admission, followed by delivery of a copy of the signed IM no more than 2 calendar days before discharge, in accordance with the requirements and procedures set forth

in this rule. If the date the signed IM is delivered falls within 2 calendar days of discharge, no additional copy is given.

Since the IM is already required by statute to be provided to all Medicare beneficiaries who are admitted to the hospital (at an estimated delivery time of 1 minute per notice) and the notice would be disseminated during the normal course of related business activities, we estimate that, to explain the form and obtain a signature, it would take hospitals an extra 11 minutes on average to explain and provide a signed IM. We thus use an average of 12 minutes, meaning that some beneficiaries will be able to read and understand the notice in less time, and some beneficiaries will need more time and assistance reading and understanding the notice. In 2003, there were approximately 11.3 million fee-for-service Medicare inpatient hospital discharges. The total annual burden associated with this requirement is 2,071,667 hours. We estimate that approximately 60 percent of the beneficiaries will receive a copy of the signed IM in order to meet the requirements that a copy of the IM also be delivered no more than 2 days before discharge. We estimate that it will take 3 minutes to deliver a copy of the signed IM to the roughly 6.78 million beneficiaries. We estimate that the total annual burden associated with the requirement will be 339,000 hours.

Section 405.1206 Expedited Determination Procedures for Inpatient Hospital Care

Section 405.1206(b) requires any beneficiary wishing to exercise the right to an expedited determination to submit a request, in writing or by telephone, to the QIO that has an agreement with the hospital. We project that 1 percent of the 11.3 million fee-for-service beneficiaries who are discharged from inpatient hospital settings, (that is, 113,000 beneficiaries) will request an expedited determination. This estimate is based on our experience with the non-hospital expedited determination process in both original Medicare and MA, where approximately 1 percent of patients request an expedited review. However, we believe that this estimate may be high, given previous use of a standard discharge notice, the NODMAR in managed care settings showed an appeal rate of less than .5 percent.

The burden associated with this requirement is the time and effort it would take for the beneficiary to either write or call the QIO to request an expedited determination. We estimate it would take 5 minutes (average) per request. Therefore, the total estimated burden hours associated with this requirement is 9,417 hours.

Section 405.1206(e) requires hospitals to deliver a detailed notice of discharge to the beneficiary and to make available to the QIO (and to the beneficiary upon request) a copy of that notice and any necessary supporting documentation. Hospitals are presently responsible for providing the Hospital Issued Notice of Non-Coverage (HINN) when a beneficiary disagrees with the discharge. Therefore, we believe that the detailed notice will not constitute a new burden, but will essentially replace the time associated with filling out and delivering the HINN. We believe that, in addition to the time it currently takes to complete the HINN, an extra 60 minutes is sufficient for filling out and delivering the detailed notice.

Therefore, for these 113,000 cases, we estimate that it would take providers an average of 60 extra minutes to prepare the detailed termination notice and to prepare a case file for the QIO. Based on 113,000 cases, the total annual burden associated with this proposed requirement is approximately 113,000 hours.

Section 422.620 Notifying Enrollees of Hospital Discharge Appeal Rights

The hospital must provide, explain, and obtain the enrollee's signature (or that of the representative) on the IM within 2 days of admission, followed by delivery of a copy of the signed IM no more than 2 calendar days before discharge in accordance with the requirements and procedures set forth in this rule. If the date the signed IM is delivered falls within 2 calendar days of discharge, no additional copy is given.

Again, we estimate that it would take hospitals an average of 11 extra minutes to explain and provide a signed IM. In 2003, there were approximately 1.7 million Medicare health plan inpatient hospital discharges. The total annual burden associated with this proposed requirement is 311,667 hours.

As mentioned above, we estimate that it will take 3 minutes (average) to deliver a copy of the signed IM to approximately 60 percent of the 1.7 million inpatient enrollees. We estimate that the total annual burden associated with delivering a copy to 1.02 million enrollees will be 51,000 hours.

Section 422.622 Requesting Immediate QIO Review of Decision To Discharge From Inpatient Hospital Care

This section states that an enrollee who wishes to appeal a determination by a Medicare health plan or hospital that inpatient care is no longer necessary, may request QIO review of the determination. On the date the QIO receives the enrollee's request, it must notify the plan that the enrollee has filed a request for immediate review. The plan in turn must deliver a detailed notice to the enrollee.

Again, we project that 1 percent of affected enrollees that is, 17,000 enrollees, will request an immediate review. We estimate that it will take 5 minutes (average) for an enrollee who chooses to exercise his or her right to an immediate review to contact the QIO. For these 17,000 cases, the total estimated burden is 1,417 hours.

As specified in § 422.622(c) and (d), Medicare health plans would be required under this rule to deliver a detailed notice to the enrollee and to make a copy of that notice and any necessary supporting documentation available to the QIO (and to the enrollee upon request). Plans are presently responsible for providing the NODMAR when an enrollee disagrees with the discharge or he or she is being moved to a lower level of care. Therefore, we believe that the detailed notice will not constitute a new burden, but will essentially replace the time associated with filling out and delivering the NODMAR. We believe that, in addition to the time it currently takes to complete the NODMAR, an extra 60 minutes is sufficient for filling out and delivering the detailed notice.

Therefore, we estimate that it would take plans an extra 60 minutes to prepare the detailed notice and to prepare a case file for the QIO. Based on 17,000 cases, the total annual burden associated with this requirement is approximately 17,000 hours.

The information above is summarized in the table below:

AGGREGATE HOURLY BURDEN FOR THIS REQUIREMENT

Notices	Time per delivery (minutes)	Fee-for-service beneficiaries	Managed care enrollees	Annual burden hours
First IM	11	11.3 million	1.7 million	2,383,334
Copy of IM	3	6.78 million	1.02 million	390,000
Detailed Notice	60	113,000	17,000	140,834
Total Burden				2,914.168

The aggregate new hourly burden estimate associated with this final rule is 2,914,168 hours per year. The burden increase is mainly due to the extra 11 minutes on average to explain and provide a signed IM. As discussed above, the estimate of the hourly burden associated with the new IM does not include the burden associated with current OMB #0938–0962, which is now estimated at 1 minute per delivery. There are no current burden estimates for delivery of the HINN or the NODMAR. As noted above, the actual burden will be developed through the PRA process.

If you comment on these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attn.: Melissa Musotto, CMS–4105–F, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer, CMS–4105–F, *carolyn_lovett@omb.eop.gov.* Fax (202) 395–6974.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule will not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of this RFA, all providers affected by this regulation are considered to be small entities.

We did not prepare analyses for either the RFA or section 1102(b) of the Act because we have determined that this final rule will not have a significant economic impact on a substantial number of small entities. (We estimate a total cost of approximately $15,200 per provider as discussed below.) Although a regulatory impact analysis is not mandatory for this final rule, we believe it is appropriate to discuss the possible impacts of the new discharge notice on beneficiaries, enrollees, and hospitals, regardless of the monetary threshold of that impact. Therefore, a brief voluntary discussion of the anticipated impact of this final rule is presented below.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We do not expect these entities to be significantly impacted.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This final rule did not require an assessment under the Unfunded Mandates Reform Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation will not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

B. Overview of the Changes

This final rule sets forth new requirements for hospital discharge notices for all Medicare inpatient hospital discharges. This final rule specifies that hospitals must provide, explain, and have signed by the beneficiary (or his or her representative) the modified Important Message for Medicare (IM) within 2 calendar days of admission, followed by delivery of a copy of the signed IM no later than 2 calendar days prior to discharge (if 2 or more days have passed since the original IM was signed). Additionally, a detailed notice must be delivered if the beneficiary requests a QIO review of the decision. As discussed above, these notices would replace existing notice requirements under which only those beneficiaries who express dissatisfaction with a hospital's (or Medicare health plan's, if applicable) discharge determination or whose level of care is being lowered in the same facility, receive a notice of describing the right to a QIO review in detail. In general, we believe that these changes will enhance the rights of all Medicare beneficiaries who are hospital inpatients without imposing undue paperwork or

financial burdens on hospitals or Medicare health plans.

C. Notifying Beneficiaries and Enrollees of Hospital Discharge Appeal Rights (§ 405.1205 and § 422.620)

We project that providers will be responsible for explaining and delivering (and obtaining the beneficiary's or representative's signature) the IM to approximately 13 million Medicare beneficiaries per year. This includes about 11.3 million fee-for-service beneficiaries and 1.7 million MA enrollees. The IM is already required by statute to be provided to all Medicare beneficiaries at an estimated time of 1 minute per notice. Therefore, as discussed above, we estimate that it will take approximately 11 extra minutes on average to explain and deliver a signed IM, at a cost of approximately $5.50 (based on no more than $30 per hour rate if the notice is delivered by health care personnel). Based on an estimated 13 million notices annually, we estimate the cost of delivering these new notices to be roughly $71.5 million. We estimate that it will take 3 minutes to deliver a copy of the IM to 7.8 million beneficiaries (we assume that 60 percent of inpatient stays will involve delivering a signed copy of the IM since, for short stays, hospitals may only need to deliver the IM once). We estimate that the cost of delivering these copies will be $11.7 million. Since there are roughly 6,000 affected hospitals, the total average costs associated with this provision would be roughly $13,900 per provider. We believe that this impact is significantly outweighed by the benefits of establishing a clear, consistent, accountable process for ensuring that all Medicare beneficiaries are made aware of their statutory discharge rights on a timely basis, without interfering with the hospital discharge process.

D. Providing Beneficiaries and Enrollees With a Detailed Explanation of the Discharge Decision (§ 405.1206 and § 422.622)

As discussed in section V of this final rule (Information Collection section), we project that providers will be responsible for delivering detailed notices to approximately 1 percent of the 13 million Medicare beneficiaries per year, or 130,000 beneficiaries and enrollees. The detailed notice will provide a detailed explanation of why services are either no longer reasonable and necessary or are otherwise no longer covered; a description of any relevant Medicare (and Medicare health plan as applicable) coverage rule, instruction, or other Medicare policy, and information about how the beneficiary may obtain a copy of the Medicare policy, facts specific to the beneficiary and relevant to the coverage determination that are sufficient to advise the beneficiary of the applicability of the coverage rule or policy to his or her case; and any other information required by CMS. Hospitals and plans are presently responsible for providing the HINN or the NODMAR when a beneficiary disagrees with the discharge or he or she is being moved to a lower level of care. As discussed earlier, the detailed notice will essentially replace the HINN and NODMAR. Therefore, we believe that, in addition to the time it currently takes to complete the HINN and NODMAR, an extra 60 minutes is sufficient for filling out and delivering the detailed notice. We estimate the per-notice cost will average $30, based on a $30 per hour rate if the notice is prepared and delivered by health care personnel. Based on an estimated 130,000 notices annually, we estimate the aggregate cost of delivering these notices to be roughly $3.9 million. Since there are roughly 6000 affected hospitals, the average costs associated with this provision would be about $650 per provider.

We do not anticipate that the provisions of this final rule will have a significant financial impact on individual hospitals. We note that the actual discharge notices must be approved through OMB's Paperwork Reduction Act process and are also subject to public comment.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and record keeping requirements.

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare Advantage, Penalties, Privacy, Provider-sponsored organizations (PSO), Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1866, 1869, 1871, 1874, 1881 and 1886(k) of the Social Security Act (42 U.S.C. 1302, 1395cc, 1395ff, 1395x, 1395y(a), 1395hh, 1395kk, 1395rr and 1395ww(k)), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

Subpart J—Expedited Determinations and Reconsiderations of Provider Service Terminations, and Procedures for Inpatient Hospital Discharges

■ 2. Section 405.1205 is added to read as follows:

§ 405.1205 Notifying beneficiaries of hospital discharge appeal rights.

(a) *Applicability and scope.* (1) For purposes of § 405.1204, § 405.1205, § 405.1206, and § 405.1208, the term ''hospital'' is defined as any facility providing care at the inpatient hospital level, whether that care is short term or long term, acute or non acute, paid through a prospective payment system or other reimbursement basis, limited to specialty care or providing a broader spectrum of services. This definition includes critical access hospitals.

(2) For purposes of § 405.1204, § 405.1205, § 405.1206, and § 405.1208, a discharge is a formal release of a beneficiary from an inpatient hospital.

(b) *Advance written notice of hospital discharge rights.* For all Medicare beneficiaries, hospitals must deliver valid, written notice of a beneficiary's rights as a hospital inpatient, including discharge appeal rights. The hospital must use a standardized notice, as specified by CMS, in accordance with the following procedures:

(1) *Timing of notice.* The hospital must provide the notice at or near admission, but no later than 2 calendar days following the beneficiary's admission to the hospital.

(2) *Content of the notice.* The notice must include the following information:

(i) The beneficiary's rights as a hospital inpatient including the right to benefits for inpatient services and for post-hospital services in accordance with 1866(a)(1)(M) of the Act.

(ii) The beneficiary's right to request an expedited determination of the

discharge decision including a description of the process under § 405.1206, and the availability of other appeals processes if the beneficiary fails to meet the deadline for an expedited determination.

(iii) The circumstances under which a beneficiary will or will not be liable for charges for continued stay in the hospital in accordance with 1866(a)(1)(M) of the Act.

(iv) A beneficiary's right to receive additional detailed information in accordance with § 405.1206(e).

(v) Any other information required by CMS.

(3) *When delivery of the notice is valid.* Delivery of the written notice of rights described in this section is valid if—

(i) The beneficiary (or the beneficiary's representative) has signed and dated the notice to indicate that he or she has received the notice and can comprehend its contents, except as provided in paragraph (b)(4) of this section; and

(ii) The notice is delivered in accordance with paragraph (b)(1) of this section and contains all the elements described in paragraph (b)(2) of this section.

(4) *If a beneficiary refuses to sign the notice.* The hospital may annotate its notice to indicate the refusal, and the date of refusal is considered the date of receipt of the notice.

(c) *Follow up notification.* (1) The hospital must present a copy of the signed notice described in paragraph (b)(2) of this section to the beneficiary (or beneficiary's representative) prior to discharge. The notice should be given as far in advance of discharge as possible, but not more than 2 calendar days before discharge.

(2) Follow up notification is not required if the notice required under § 405.1205(b) is delivered within 2 calendar days of discharge.

■ 3. Section § 405.1206 is revised to read as follows:

§ 405.1206 Expedited determination procedures for inpatient hospital care.

(a) *Beneficiary's right to an expedited determination by the QIO.* A beneficiary has a right to request an expedited determination by the QIO when a hospital (acting directly or through its utilization review committee), with physician concurrence, determines that inpatient care is no longer necessary.

(b) *Requesting an expedited determination.* (1) A beneficiary who wishes to exercise the right to an expedited determination must submit a request to the QIO that has an agreement with the hospital as specified in § 476.78 of this chapter. The request must be made no later than the day of discharge and may be in writing or by telephone.

(2) The beneficiary, or his or her representative, upon request by the QIO, must be available to discuss the case.

(3) The beneficiary may, but is not required to, submit written evidence to be considered by a QIO in making its decision.

(4) A beneficiary who makes a timely request for an expedited QIO review in accordance with paragraph (b)(1) of this section is subject to the financial liability protections under paragraphs (f)(1) and (f)(2) of this section, as applicable.

(5) A beneficiary who fails to make a timely request for an expedited determination by a QIO, as described in paragraph (b)(1) of this section, and remains in the hospital without coverage, still may request an expedited QIO determination at any time during the hospitalization. The QIO will issue a decision in accordance with paragraph (d)(6)(ii) of this section, however, the financial liability protection under paragraphs (f)(1) and (f)(2) of this section does not apply.

(6) A beneficiary who fails to make a timely request for an expedited determination in accordance with paragraph (b)(1) of this section, and who is no longer an inpatient in the hospital, may request QIO review within 30 calendar days after the date of discharge, or at any time for good cause. The QIO will issue a decision in accordance with paragraph (d)(6)(iii) of this section; however, the financial liability protection under paragraphs (f)(1) and (f)(2) of this section does not apply.

(c) *Burden of proof.* When a beneficiary (or his or her representative, if applicable) requests an expedited determination by a QIO, the burden of proof rests with the hospital to demonstrate that discharge is the correct decision, either on the basis of medical necessity, or based on other Medicare coverage policies. Consistent with paragraph (e)(2) of this section, the hospital should supply any and all information that a QIO requires to sustain the hospital's discharge determination.

(d) *Procedures the QIO must follow.* (1) When the QIO receives the request for an expedited determination under paragraph (b)(1) of this section, it must immediately notify the hospital that a request for an expedited determination has been made.

(2) The QIO determines whether the hospital delivered valid notice consistent with § 405.1205(b)(3).

(3) The QIO examines the medical and other records that pertain to the services in dispute.

(4) The QIO must solicit the views of the beneficiary (or the beneficiary's representative) who requested the expedited determination.

(5) The QIO must provide an opportunity for the hospital to explain why the discharge is appropriate.

(6)(i) When the beneficiary requests an expedited determination in accordance with paragraph (b)(1) of this section, the QIO must make a determination and notify the beneficiary, the hospital, and physician of its determination within one calendar day after it receives all requested pertinent information.

(ii) When the beneficiary makes an untimely request for an expedited determination, and remains in the hospital, consistent with paragraph (b)(5) of this section, the QIO will make a determination and notify the beneficiary, the hospital, and the physician of its determination within 2 calendar days following receipt of the request and pertinent information.

(iii) When the beneficiary makes an untimely request for an expedited determination, and is no longer an inpatient in the hospital, consistent with paragraph (b)(6) of this section, the QIO will make a determination and notify the beneficiary, the hospital, and physician of its determination within 30 calendar days after receipt of the request and pertinent information.

(7) If the QIO does not receive the information needed to sustain a hospital's decision to discharge, it may make its determination based on the evidence at hand, or it may defer a decision until it receives the necessary information. If this delay results in extended Medicare coverage of an individual's hospital services, the hospital may be held financially liable for these services, as determined by the QIO.

(8) When the QIO issues an expedited determination, the QIO must notify the beneficiary, the physician, and hospital of its decision by telephone, followed by a written notice that must include the following information:

(i) The basis for the determination.

(ii) A detailed rationale for the determination.

(iii) An explanation of the Medicare payment consequences of the determination and the date a beneficiary becomes fully liable for the services.

(iv) Information about the beneficiary's right to a reconsideration

of the QIO's determination as set forth in § 405.1204, including how to request a reconsideration and the time period for doing so.

(e) *Responsibilities of hospitals.* (1) When a QIO notifies a hospital that a beneficiary has requested an expedited determination, the hospital must deliver a detailed notice to the beneficiary as soon as possible but no later than noon of the day after the QIO's notification. The detailed notice must include the following information:

(i) A detailed explanation why services are either no longer reasonable and necessary or are otherwise no longer covered.

(ii) A description of any applicable Medicare coverage rule, instruction, or other Medicare policy, including information about how the beneficiary may obtain a copy of the Medicare policy.

(iii) Facts specific to the beneficiary and relevant to the coverage determination that are sufficient to advise the beneficiary of the applicability of the coverage rule or policy to the beneficiary's case.

(iv) Any other information required by CMS.

(2) Upon notification by the QIO of the request for an expedited determination, the hospital must supply all information that the QIO needs to make its expedited determination, including a copy of the notices required as specified in § 405.1205 (b) and (c) and paragraph (e)(1) of this section. The hospital must furnish this information as soon as possible, but no later than by noon of the day after the QIO notifies the hospital of the request for an expedited determination. At the discretion of the QIO, the hospital must make the information available by phone or in writing (with a written record of any information not transmitted initially in writing).

(3) At a beneficiary's (or representative's) request, the hospital must furnish the beneficiary with a copy of, or access to, any documentation that it sends to the QIO, including written records of any information provided by telephone. The hospital may charge the beneficiary a reasonable amount to cover the costs of duplicating the documentation and/or delivering it to the beneficiary. The hospital must accommodate such a request by no later than close of business of the first day after the material is requested.

(f) *Coverage during QIO expedited review*—(1) *General rule and liability while QIO review is pending.* If the beneficiary remains in the hospital past midnight of the discharge date ordered by the physician, and the hospital, the physician who concurred with the discharge determination, or the QIO subsequently finds that the beneficiary requires inpatient hospital care, the beneficiary is not financially responsible for continued care (other than applicable coinsurance and deductible) until the hospital once again determines that the beneficiary no longer requires inpatient care, secures concurrence from the physician responsible for the beneficiary's care or the QIO, and notifies the beneficiary with a notice consistent with 405.1205 (c).

(2) *Timely filing and limitation on liability.* If a beneficiary files a request for an expedited determination by the QIO in accordance with paragraph (b)(1) of this section, the beneficiary is not financially responsible for inpatient hospital services (other than applicable coinsurance and deductible) furnished before noon of the calendar day after the date the beneficiary (or his or her representative) receives notification (either orally or in writing) of the expedited determination by the QIO.

(3) *Untimely request and liability.* When a beneficiary does not file a request for an expedited determination by the QIO in accordance with paragraph (b) of this section, but remains in the hospital past the discharge date, that beneficiary may be held responsible for charges incurred after the date of discharge or as otherwise stated by the QIO.

(4) *Hospital requests an expedited review.* When the hospital requests a review in accordance with § 405.1208, and the QIO concurs with the hospital's discharge determination, a hospital may not charge the beneficiary until the date specified by the QIO.

(g) *Effect of an expedited QIO determination.* The QIO determination is binding upon the beneficiary, physician, and hospital, except in the following circumstances:

(1) *Right to request a reconsideration.* If the beneficiary is still an inpatient in the hospital and is dissatisfied with the determination, he or she may request a reconsideration according to the procedures described in § 405.1204.

(2) *Right to pursue the general claims appeal process.* If the beneficiary is no longer an inpatient in the hospital and is dissatisfied with this determination, the determination is subject to the general claims appeal process.

■ 4. In § 405.1208 the following amendments are made:

■ A. In paragraph (a), redesignate the text after the heading ''General rule'' as paragraph (a)(1) and add a new paragraph (a)(2) to read as set forth below:

■ B. In paragraph (e)(1), in the third sentence, remove the words ''paragraph (d)(1) of this section'' and add in their place, ''§ 405.1204(b)(1)''.

§ 405.1208 Hospital requests expedited QIO review.

(a) *General rule.* (1) * * *

(2) When the hospital requests review, and the QIO concurs with the hospital's discharge determination, a hospital may not charge a beneficiary until the date specified by the QIO in accordance with 405.1206(f)(4).

* * * * *

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

■ 5. The authority citation from part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), Sec. 124 of Pub. L. 106–113, 113 Stat. 1515, and Sec. 405 of Pub. L. of 108–173, 117 Stat. 2266, 42 U.S.C. 1305. 1395.

■ 6. Section 412.42(c) is amended by—

■ A. Republishing the introductory text.

■ B. Revising paragraphs(c)(2) and (c)(3) to read as follows:

§ 412.42 Limitations on charges to beneficiaries.

* * * * *

(c) *Custodial care and medically unnecessary inpatient hospital care.* A hospital may charge a beneficiary for services excluded from coverage on the basis of § 411.15(g) of this chapter (custodial care) or § 411.15(k) of this chapter (medically unnecessary services) and furnished by the hospital after all of the following conditions have been met:

* * * * *

(2) The attending physician agrees with the hospital's determination in writing (for example, by issuing a written discharge order). If the hospital believes that the beneficiary does not require inpatient hospital care but is unable to obtain the agreement of the physician, it may request an immediate review of the case by the QIO as described in § 405.1208 of this chapter. Concurrence by the QIO in the hospital's determination will serve in lieu of the physician's agreement.

(3) The hospital (acting directly or through its utilization review committee) notifies the beneficiary (or his or her representative) of his or her discharge rights in writing consistent with § 405.1205 and notifies the beneficiary, in accordance with § 405.1206 of this chapter (if applicable) that in the hospital's opinion, and with the attending physician's concurrence

or that of the QIO, the beneficiary no longer requires inpatient hospital care.

* * * * *

PART 422—MEDICARE ADVANTAGE PROGRAM

■ 7. The authority citation for part 422 continues to to read as follows:

Authority: Secs. 1102, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395cc, and 1395hh).

■ 8. Section 422.620 is revised to read as follows:

§ 422.620 Notifying enrollees of hospital discharge appeal rights.

(a) *Applicability and scope.* (1) For purposes of § 422.620 and § 422.622, the term hospital is defined as any facility providing care at the inpatient hospital level, whether that care is short term or long term, acute or non acute, paid through a prospective payment system or other reimbursement basis, limited to specialty care or providing a broader spectrum of services. This definition also includes critical access hospitals.

(2) For purposes of § 422.620 and § 422.622, a discharge is a formal release of an enrollee from an inpatient hospital.

(b) *Advance written notice of hospital discharge rights.* For all Medicare Advantage enrollees, hospitals must deliver valid, written notice of an enrollee's rights as a hospital inpatient including discharge appeal rights. The hospital must use a standardized notice, as specified by CMS, in accordance with the following procedures:

(1) *Timing of notice.* The hospital must provide the notice at or near admission, but no later than 2 calendar days following the enrollee's admission to the hospital.

(2) *Content of the notice.* The notice of rights must include the following information:

(i) The enrollee's rights as a hospital inpatient, including the right to benefits for inpatient services and for post hospital services in accordance with 1866(a)(1)(M) of the Act.

(ii) The enrollee's right to request an immediate review, including a description of the process under § 422.622 and the availability of other appeals processes if the enrollee fails to meet the deadline for an immediate review.

(iii) The circumstances under which an enrollee will or will not be liable for charges for continued stay in the hospital in accordance with 1866(a)(1)(M) of the Act.

(iv) The enrollee's right to receive additional information in accordance with section § 422.622(e).

(v) Any other information required by CMS.

(3) *When delivery of notice is valid.* Delivery of the written notice of rights described in this section is valid if—

(i) The enrollee (or the enrollee's representative) has signed and dated the notice to indicate that he or she has received the notice and can comprehend its contents, except as provided in paragraph (b)(4) of this section; and

(ii) The notice is delivered in accordance with paragraph (b)(1) of this section and contains all the elements described in paragraph (b)(2) of this section.

(4) *If an enrollee refuses to sign the notice.* The hospital may annotate its notice to indicate the refusal, and the date of refusal is considered the date of receipt of the notice.

(c) *Follow up notification.* (1) The hospital must present a copy of the signed notice described in paragraph (b)(2) of this section to the enrollee (or enrollee's representative) prior to discharge. The notice should be given as far in advance of discharge as possible, but not more than 2 calendar days before discharge.

(2) Follow up notification is not required if the notice required under 422.620(b) is delivered within 2 calendar days of discharge.

(d) *Physician concurrence required.* Before discharging an enrollee from the inpatient hospital level of care, the MA organization must obtain concurrence from the physician who is responsible for the enrollee's inpatient care.

■ 9. Section 422.622 is revised to read as follows:

§ 422.622 Requesting immediate QIO review of the decision to discharge from the inpatient hospital.

(a) *Enrollee's right to an immediate QIO review.* An enrollee has a right to request an immediate review by the QIO when an MA organization or hospital (acting directly or through its utilization committee), with physician concurrence determines that inpatient care is no longer necessary.

(b) *Requesting an immediate QIO review.* (1) An enrollee who wishes to exercise the right to an immediate review must submit a request to the QIO that has an agreement with the hospital as specified in § 476.78 of this chapter. The request must be made no later than the day of discharge and may be in writing or by telephone.

(2) The enrollee, or his or her representative, upon request by the QIO, must be available to discuss the case.

(3) The enrollee may, but is not required to, submit written evidence to be considered by a QIO in making its decision.

(4) An enrollee who makes a timely request for an immediate QIO review in accordance with paragraph (b)(1) of this section is subject to the financial liability protections under paragraph (f) of this section, as applicable.

(5) When an enrollee does not request an immediate QIO review in accordance with paragraph (b) of this section, he or she may request expedited reconsideration by the MA organization as described in § 422.584, but the financial liability rules of paragraph (f) of this section do not apply.

(c) *Burden of proof.* When an enrollee (or his or her representative, if applicable) requests an immediate review by a QIO, the burden of proof rests with the MA organization to demonstrate that discharge is the correct decision, either on the basis of medical necessity, or based on other Medicare coverage policies. Consistent with paragraph (e)(2) of this section, the MA organization should supply any and all information that a QIO requires to sustain the organization's discharge determination.

(d) *Procedures the QIO must follow.* (1) When the QIO receives the enrollee's request for an immediate review under paragraph (b), the QIO must notify the MA organization and the hospital that the enrollee has filed a request for an immediate review.

(2) The QIO determines whether the hospital delivered valid notice consistent with § 422.620(b)(3).

(3) The QIO examines the medical and other records that pertain to the services in dispute.

(4) The QIO must solicit the views of the enrollee (or his or her representative) who requested the immediate QIO review.

(5) The QIO must provide an opportunity for the MA organization to explain why the discharge is appropriate.

(6) When the enrollee requests an immediate QIO review in accordance with paragraph (b)(1) of this section, the QIO must make a determination and notify the enrollee, the hospital, the MA organization, and the physician of its determination within one calendar day after it receives all requested pertinent information.

(7) If the QIO does not receive the information needed to sustain an MA organization's decision to discharge, it may make its determination based on the evidence at hand, or it may defer a decision until it receives the necessary information. If this delay results in extended Medicare coverage of an individual's hospital services, the MA

organization may be held financially liable for these services, as determined by the QIO.

(8) When the QIO issues its determination, the QIO must notify the enrollee, the MA organization, the physician, and hospital of its decision by telephone, followed by a written notice that must include the following information:

(i) The basis for the determination.

(ii) A detailed rationale for the determination.

(iii) An explanation of the Medicare payment consequences of the determination and the date an enrollee becomes fully liable for the services.

(iv) Information about the enrollee's right to a reconsideration of the QIO's determination as set forth in § 422.626(f), including how to request a reconsideration and the time period for doing so.

(e) *Responsibilities of the MA organization and hospital.* (1) When the QIO notifies an MA organization that an enrollee has requested an immediate QIO review, the MA organization must, directly or by delegation, deliver a detailed notice to the enrollee as soon as possible, but no later than noon of the day after the QIO's notification. The detailed notice must include the following information:

(i) A detailed explanation of why services are either no longer reasonable and necessary or are no longer covered.

(ii) A description of any applicable Medicare coverage rule, instruction, or other Medicare policy including information about how the enrollee may obtain a copy of the Medicare policy from the MA organization.

(iii) Any applicable MA organization policy, contract provision, or rationale upon which the discharge determination was based.

(iv) Facts specific to the enrollee and relevant to the coverage determination sufficient to advise the enrollee of the applicability of the coverage rule or policy to the enrollee's case.

(v) Any other information required by CMS.

(2) Upon notification by the QIO of a request for an immediate review, the MA organization must supply any and all information, including a copy of the notices sent to the enrollee, as specified in § 422.620(b) and (c) and paragraph (e)(1) of this section, that the QIO needs to decide on the determination. The MA organization must supply this information as soon as possible, but no later than noon of the day after the QIO notifies the MA organization that a request for an expedited determination has been received from the enrollee. The MA organization must make the information available by phone (with a written record made of any information not transmitted initially in writing) and/or in writing, as determined by the QIO.

(3) In response to a request from the MA organization, the hospital must supply all information that the QIO needs to make its determination, including a copy of the notices required as specified in § 422.620(b) and (c) and paragraph (e)(1) of this section. The hospital must furnish this information as soon as possible, but no later than by close of business of the day the MA organization notifies the hospital of the request for information. At the discretion of the QIO, the hospital must make the information available by phone or in writing (with a written record of any information not transmitted initially in writing).

(4) Upon an enrollee's request, the MA organization must provide the enrollee a copy of, or access to, any documentation sent to the QIO by the MA organization, including written records of any information provided by telephone. The MA organization may charge the enrollee a reasonable amount to cover the costs of duplicating the documentation for the enrollee and/or delivering the documentation to the enrollee. The MA organization must accommodate such a request by no later than close of business of the first day after the day the material is requested.

(f) *Coverage during QIO expedited review.* (1) An MA organization is financially responsible for coverage of services as provided in this paragraph, regardless of whether it has delegated responsibility for authorizing coverage or discharge determinations to its providers.

(2) When the MA organization determines that hospital services are not, or are no longer, covered,

(i) If the MA organization authorized coverage of the inpatient admission directly or by delegation (or the admission constitutes emergency or urgently needed care, as described in § 422.2 and § 422.112(c)), the MA organization continues to be financially responsible for the costs of the hospital stay when an appeal is filed under paragraph (a)(1) of this section until noon of the day after the QIO notifies the enrollee of its review determination, except as provided in paragraph (b)(5) of this section. If coverage of the hospital admission was never approved by the MA organization or the admission does not constitute emergency or urgently needed care as described in § 422.2 and § 422.112(c), the MA organization is liable for the hospital costs only if it is determined on appeal that the hospital stay should have been covered under the MA plan.

(ii) The hospital may not charge the MA organization (or the enrollee) if—

(A) It was the hospital (acting on behalf of the enrollee) that filed the request for immediate QIO review; and

(B) The QIO upholds the non-coverage determination made by the MA organization.

(3) If the QIO determines that the enrollee still requires inpatient hospital care, the MA organization must provide the enrollee with a notice consistent with § 422.620(c) when the hospital or MA organization once again determines that the enrollee no longer requires acute inpatient hospital care.

(4) If the hospital determines that inpatient hospital services are no longer necessary, the hospital may not charge the enrollee for inpatient services received before noon of the day after the QIO notifies the enrollee of its review determination.

(g) *Effect of an expedited QIO determination.* The QIO determination is binding upon the enrollee, physician, hospital, and MA organization except in the following circumstances:

(1) *Right to request a reconsideration.* If the enrollee is still an inpatient in the hospital and is dissatisfied with the determination, he or she may request a reconsideration according to the procedures described in § 422.626(f).

(2) *Right to pursue the standard appeal process.* If the enrollee is no longer an inpatient in the hospital and is dissatisfied with this determination, the enrollee may appeal to an ALJ, the MAC, or a federal court, as provided for under this subpart.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ 10. The authority citation for part 489 continues to to read as follows:

Authority: Secs. 1102, 1819, 1861, 1864(m), 1866, 1869, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i–3, 1395x, 1395aa(m), 1395cc, and 1395hh).

■ 11. Section 489.27 is revised to read as follows:

§ 489.27 Beneficiary notice of discharge rights.

(a) A hospital that participates in the Medicare program must furnish each Medicare beneficiary or enrollee, (or an individual acting on his or her behalf), timely notice as required by section 1866(A)(1)(M) of the Act and in accordance with § 405.1205 and § 422.620. The hospital must be able to demonstrate compliance with this requirement.

(b) *Notification by hospitals and other providers.* Hospitals and other providers (as identified at 489.2(b)) that participate in the Medicare program must furnish each Medicare beneficiary, or representative, applicable CMS notices in advance of discharge or termination of Medicare services, including the notices required under § 405.1200, § 405.1202, § 405.1206, and § 422.624 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 13, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: November 15, 2006.

Michael O. Leavitt,

Secretary.

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0–199	(869–060–00116–6)	41.00	July 1, 2006
200–499	(869–060–00117–4)	46.00	July 1, 2006
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–060–00119–1)	61.00	July 1, 2006
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–060–00122–1)	37.00	July 1, 2006
700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–060–00124–7)	47.00	July 1, 2006
33 Parts:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–060–00127–1)	57.00	July 1, 2006
34 Parts:			
1–299	(869–060–00128–0)	50.00	July 1, 2006
300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	[8] July 1, 2006
36 Parts:			
1–199	(869–060–00131–0)	37.00	July 1, 2006
200–299	(869–060–00132–8)	37.00	July 1, 2006
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–060–00135–2)	60.00	July 1, 2006
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–060–00141–7)	61.00	July 1, 2006
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–060–00161–1)	39.00	July 1, 2006
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–060–00165–4)	56.00	July 1, 2006
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–060–00167–1)	61.00	July 1, 2006
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–060–00170–1)	21.00	[8] July 1, 2006
102–200	(869–060–00171–9)	56.00	July 1, 2006
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–056–00173–8)	61.00	Oct. 1, 2005
400–429	(869–056–00174–6)	63.00	Oct. 1, 2005
*430–End	(869–060–00175–1)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–056–00176–2)	56.00	Oct. 1, 2005
1000–end	(869–056–00177–1)	62.00	Oct. 1, 2005
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
*1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
*500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
*1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–056–00183–5)	46.00	Oct. 1, 2005
41–69	(869–056–00184–3)	39.00	[10] Oct. 1, 2005
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
*140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–056–00194–1)	40.00	Oct. 1, 2005
70–79	(869–056–00195–9)	61.00	Oct. 1, 2005
80–End	(869–056–00196–7)	61.00	Oct. 1, 2005
48 Chapters:			
1 (Parts 1–51)	(869–056–00197–5)	63.00	Oct. 1, 2005
1 (Parts 52–99)	(869–056–00198–3)	49.00	Oct. 1, 2005
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006
*7–14	(869–060–00202–2)	56.00	Oct. 1, 2006
15–28	(869–056–00202–5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
*29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–056–00204–1)	60.00	Oct. 1, 2005
100–185	(869–056–00205–0)	63.00	Oct. 1, 2005
186–199	(869–056–00206–8)	23.00	Oct. 1, 2005
200–299	(869–056–00207–6)	32.00	Oct. 1, 2005
300–399	(869–056–00208–4)	32.00	Oct. 1, 2005
400–599	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–056–00212–2)	34.00	Oct. 1, 2005
50 Parts:			
1–16	(869–060–00214–6)	11.00	[9] Oct. 1, 2006
17.1–17.95(b)	(869–056–00214–9)	32.00	Oct. 1, 2005
17.95(c)–end	(869–056–00215–7)	32.00	Oct. 1, 2005
*17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[9] Oct. 1, 2006
18–199	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–056–00218–1)	45.00	Oct. 1, 2005
600–End	(869–056–00219–0)	62.00	Oct. 1, 2005
CFR Index and Findings Aids	(869–060–00050–0)	62.00	Jan. 1, 2006
Complete 2006 CFR set		1,398.00	2006
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Subscription (mailed as issued)		332.00	2006
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Complete set (one-time mailing)		325.00	2004

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.