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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, December 12, 2006
9:00 a.m.-Noon

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

RESERVATIONS: (202) 741-6008



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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 ENERGY

2 CFR Part 901

10 CFR Parts 600 and 606

RIN 1991-AB74

Nonprocurement Debarment and Suspension

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is moving its regulations on nonprocurement debarment and suspension from their current location in title 10 of the Code of Federal Regulations (CFR) to title 2 of the CFR, and is adopting the format established by the Office of Management and Budget (OMB) in a notice of interim final guidance on nonprocurement debarment and suspension published in the **Federal Register** on August 31, 2005. In today's rule, DOE establishes a new 2 CFR part 901 that adopts OMB's final government-wide guidance on nonprocurement debarment and suspension and contains supplemental DOE nonprocurement debarment and suspension provisions. In addition, this rule removes 10 CFR part 606, the existing DOE nonprocurement debarment and suspension regulations, and makes a conforming change to 10 CFR part 600. These changes constitute an administrative simplification that makes no substantive change in DOE policy or procedures for nonprocurement debarment and suspension.

DATES: *Effective Date:* This final rule is effective on December 5, 2006.

FOR FURTHER INFORMATION CONTACT: Cynthia Yee, Office of Procurement and Assistance Management, Department of Energy, Mail Stop MA-61, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202-

287-1666 and e-mail: Cynthia.yee@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 11, 2004, OMB established title 2 of the CFR with two subtitles (69 FR 2627). Subtitle A, "Government-wide Grants and Agreements," contains OMB policy guidance to Federal agencies on grants and agreements. Subtitle B, "Federal Agency Regulations for Grants and Agreements," contains Federal agencies' regulations implementing the OMB guidance, as it applies to grants and other financial assistance agreements and nonprocurement transactions.

On August 31, 2005, OMB published interim final guidance for government-wide nonprocurement debarment and suspension in the **Federal Register** (70 FR 51863). The guidance was located in title 2 of the CFR as new subtitle A, chapter 1, part 180. The interim final guidance updated previous OMB guidance that was issued pursuant to Executive Order 12549, "Debarment and Suspension" (February 18, 1986), which gave government-wide effect to each agency's nonprocurement debarment and suspension actions. Section 6 of the Executive order authorized OMB to issue guidance to Executive agencies on nonprocurement debarment and suspension, including provisions prescribing government-wide criteria and minimum due process procedures. Section 3 directed Executive agencies to issue regulations implementing the Executive order that are consistent with the OMB guidelines. The interim final guidance at 2 CFR part 180 conforms the OMB guidance with the Federal agencies' November 26, 2003, update to the common rule on nonprocurement debarment and suspension (*see* 70 FR 51864). Although substantively the same as the common rule, OMB's interim final guidance was published in a form suitable for agency adoption, thus eliminating the need for each agency to repeat the full text of the OMB government-wide guidance in its implementing regulations. This new approach is intended to make it easier for recipients of covered transactions or respondents in suspension or debarment actions to discern agency-to-agency variations from the common rule language; reduce the volume of Federal regulations in the CFR; and streamline

the process for updating the government-wide requirements on nonprocurement debarment and suspension (70 FR 51864). On November 15, 2006, OMB published a final rule adopting the interim final guidance with changes (71 FR 66431).

This final rule places DOE's nonprocurement debarment and suspension regulations in subtitle B of title 2 of the CFR, along with other agencies' nonprocurement debarment and suspension rules. This action was required by the OMB interim final guidance, which is made final on November 15, 2006 (*see* 2 CFR 180.20, 180.25, 180.30 and 180.35). The new CFR part 901 adopts the OMB guidelines with additions and clarifications that DOE made to the common rule on nonprocurement suspension and debarment in the DOE rule published on November 26, 2003 (68 FR 66566-68). The substance of DOE's nonprocurement debarment and suspension regulations is unchanged. DOE is removing 10 CFR part 606, which was added to the CFR as part of the November 2003 common rule. DOE also is amending a provision in its Financial Assistance Rules (10 CFR 600.23) to update the reference to DOE's nonprocurement debarment and suspension regulations.

II. Procedural Requirements

A. Executive Order 12866

OMB has determined this rule to not be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs within OMB.

B. Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19,

2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>. DOE today is amending its nonprocurement debarment and suspension procedures. Because a general notice of proposed rulemaking is not required for this rulemaking, the Regulatory Flexibility Act requirements do not apply.

C. *Unfunded Mandates Act of 1995*

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

D. *Paperwork Reduction Act of 1995*

This final rule does not impose any new collection of information subject to review and approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. *Federalism*

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

F. *National Environmental Policy Act*

DOE has determined that this rule is covered under the Categorical Exclusion found in the Department's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to rulemakings that are strictly procedural. Today's final rule makes non-substantive changes to DOE's nonprocurement debarment and suspension procedures. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

G. *Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it

is not necessary to prepare a Family Policymaking Assessment.

H. *Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

I. *Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. *Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. *Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

III. **Approval of the Office of the Secretary of Energy**

Issuance of this final rule has been approved by the Office of the Secretary of Energy.

List of Subjects

2 CFR Part 901

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

10 CFR Part 600

Administrative practice and procedure, Assistance programs.

10 CFR Part 606

Administrative practice and procedure, Debarment and suspension, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Issued in Washington, DC on November 29, 2006.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management, Office of Management, Department of Energy.

David O. Boyd,

Acting Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

■ Accordingly, DOE hereby amends subtitle B of title 2 and Chapter II of title 10 of the Code of Federal Regulations, as set forth below:

Title 2—Grants and Agreements

■ 1. Add Chapter 9, consisting of Part 901 to Subtitle B to read as follows:

CHAPTER 9—Department of Energy

PART 901—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

901.10 What does this part do?

901.20 Does this part apply to me?

901.30 What policies and procedures must I follow?

Subpart A—General

901.137 Who in the Department of Energy may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

901.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

901.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

901.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subpart E—H—[Reserved]

Subpart I—Definitions

901.930 Debarring official (Department of Energy supplement to government-wide definition at 2 CFR 180.935).

901.950 Federal agency (Department of Energy supplement to government-wide definition at 2 CFR 180.910).

901.1010 Suspending official (Department of Energy supplement to government-wide definition at 2 CFR 180.1010).

Subpart J [Reserved]

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

§ 901.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the DOE policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for DOE to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189); Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (31 U.S.C. 6101 note).

§ 901.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970);

(b) Respondent in a DOE suspension or debarment action;

(c) DOE debarment or suspension official; and

(d) DOE grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 901.30 What policies and procedures must I follow?

The DOE policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180 and any supplemental policies and procedures set forth in this part.

Subpart A—General

§ 901.137 Who in the Department of Energy may grant an exception to let an excluded person participate in a covered transaction?

The Director, Office of Procurement and Assistance Management, DOE, for DOE actions, and the Director, Office of Acquisition and Supply Management, NNSA, for NNSA actions, may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Director, Office of Procurement and Assistance Management, DOE, for DOE actions, and Director, Office of Acquisition and Supply Management, NNSA, for NNSA actions, grants an exception, the exception must be in writing and state

the reason(s) for deviating from the government-wide policy in Executive Order 12549.

Subpart B—Covered Transactions

§ 901.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the Appendix to 2 CFR part 180), DOE does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 901.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 901.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant’s compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subpart E—H—[Reserved]

Subpart I—Definitions

§ 901.930 Debarring official (Department of Energy supplement to government-wide definition at 2 CFR 180.930).

The Debarring Official for the Department of Energy, exclusive of NNSA, is the Director, Office of Procurement and Assistance Management, DOE. The Debarring Official for NNSA is the Director, Office of Acquisition and Supply Management, NNSA.

§ 901.950 Federal agency (Department of Energy supplement to government-wide definition at 2 CFR 180.950).

DOE means the U.S. Department of Energy, including the NNSA.

NNSA means the National Nuclear Security Administration.

§ 901.1010 Suspending official (Department of Energy supplement to government-wide definition at 2 CFR 180.1010).

The suspending official for the Department of Energy, exclusive of NNSA, is the Director, Office of Procurement and Assistance Management, DOE. The suspending official for NNSA is the Director, Office of Acquisition and Supply Management, NNSA.

Subpart J—[Reserved]

Title 10—Energy

Chapter II, Subchapter H

PART 600—FINANCIAL ASSISTANCE RULES

■ 2. The authority citation for part 600 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.*, unless otherwise noted.

§ 600.23 [Amended]

■ 3. Section 600.23 of subpart A is amended by removing “10 CFR part 1036” and adding “2 CFR part 901” in lieu thereof.

PART 606—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

■ 4. Remove part 606.

[FR Doc. E6–20518 Filed 12–4–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA–2006–26477]

Rules of Practice in FAA Civil Penalty Actions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: We are amending the procedural regulations governing the FAA’s administrative assessment of civil penalties for violations of certain

provisions of the Federal aviation statute and the Federal hazardous materials. We are also amending the FAA’s procedural regulations governing non-civil penalty enforcement matters. These changes are necessary to update the regulations and to reflect statutory changes. The intended effect of these changes is to ensure that regulated parties have current and correct procedural information.

DATES: This rule is effective on December 5, 2006.

FOR FURTHER INFORMATION CONTACT:

Vicki Sherman Leemon, Office of the Chief Counsel, Adjudication Branch, AGC–439, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202/385–8227.

SUPPLEMENTARY INFORMATION:

Background

The Administrator of the FAA may impose a civil penalty not exceeding specified amounts on a person, other than an individual acting as a pilot, flight engineer, mechanic or repairman, only after notice and an opportunity for hearing on the record under 49 U.S.C. 46301(d)(7)(A). The Administrator’s authority to assess civil penalties under 49 U.S.C. 46301(d) extends only to civil penalties that do not exceed the maximum amounts specified in 49 U.S.C. 46301(d)(8) as follows:

(a) \$50,000, if the violation was committed by a person before December 12, 2003 (the date of enactment of Vision 100—Century of Aviation Reauthorization Act);

(b) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after December 12, 2003;

(c) \$50,000, if the violation was committed by an individual or small business concern on or after December 12, 2003.

To implement this civil penalty assessment authority, we issued procedural rules published at 14 CFR 13.16 and 14 CFR Part 13, subpart G (14 CFR 13.201–13.235). Section 13.16 of Part 13 includes the procedures we follow when notifying a person, other than an individual acting as a pilot, flight engineer, mechanic or repairman, about alleged violations and proposed civil penalties, and for that person to use to request a hearing before a Department of Transportation (DOT) administrative law judge. The hearing process is governed by the regulations included in 14 CFR 13.16 and 14 CFR part 13, subpart G. Under these rules, the Administrator, acting in her capacity as the FAA decisionmaker, resolves any appeals of initial decisions rendered by

an administrative law judge. See 14 CFR 13.16(j), 13.202 (definition of FAA decisionmaker), and 13.233(j).

We use 14 CFR 13.16 and 14 CFR Part 13, subpart G when assessing civil penalties not exceeding 49 U.S.C. 46301(d)(8)’s limits for violations arising from many different provisions of the Federal aviation statute. Specifically, we use these regulations when assessing civil penalties for violations of statutory provisions listed in the first sentence of 49 U.S.C. 46301(d)(2) or any of their implementing regulations. Under the first sentence of 49 U.S.C. 46301(d)(2), the Administrator may impose a civil penalty for violations of the following statutory provisions of any regulations implementing those provisions:

(a) Chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117) of Title 49;

(b) Chapter 441 (except section 44109) of Title 49;

(c) Sections 44502(b) and (c) of Title 49;

(d) Chapter 447 (except sections 44717 and 44719–44723) of Title 49;

(e) Section 46301(b) of Title 49;

(f) Section 46302 (for a violation relating to section 46504) of Title 49;

(g) Section 46318 of Title 49;

(h) Section 47107(b) of Title 49.

Many of the statutory provisions listed in the first sentence of 49 U.S.C. 56301(d)(2) are aviation safety-related. See *e.g.*, 49 U.S.C. chapter 447, entitled “Safety Regulation,” and 49 U.S.C. 46301(b) prohibiting tampering with smoke detectors; *but see e.g.*, 49 U.S.C. 47107(b) conditioning the approval of airport development grant applications upon the receipt by the FAA of written assurances that local taxes on aviation fuel and public airport revenues will only be expended for certain purposes.

The procedural rules in 14 CFR 13.16 and 14 CFR part 13, subpart G, also apply when we assess a civil penalty not exceeding 49 U.S.C. 46301(d)(8)’s limits for violations of certain statutory provisions of the Federal aviation statute, or their implementing regulations, not listed in the first sentence of 49 U.S.C. 46301(d)(2). Persons who violate 49 U.S.C. 47528, 47529 or 47530, or any regulation issued under those sections, are subject to a civil penalty. Sections 47528 through 47530 of Title 49 prohibit the operation of certain aircraft when those aircraft do not comply with the Stage 3 noise levels (see 14 CFR part 91, subpart I). Section 47531 of Title 49 provides that a person violating one of those statutory provisions or implementing regulations is subject to the same civil penalty amounts and procedures under chapter

463 as a person violating section 44701(a) or (b) or any of sections 44702–44716 (which are listed in 49 U.S.C. 46301(D)(2)). When assessing civil penalties that do not exceed 49 U.S.C. 46301(d)(8)'s limitations, for violations of 49 U.S.C. 47528, 47529 or 47530, we use the procedures for notice and opportunity for a hearing on the record provided in 14 CFR 13.16 and 14 CFR part 13, subpart G.

In addition, under the Federal hazardous materials transportation statute, 49 U.S.C. 5123, and 49 CFR 1.47(k), the Administrator may assess a civil penalty against any person who knowingly violates the Federal hazardous materials transportation statute, 49 U.S.C. chapter 51, or any of its implementing regulations. Section 5123 of Title 49 does not limit the total civil penalty that the Administrator may assess for violations of the Federal hazardous materials transportation statute or its implementing regulations. The limitations set forth in 49 U.S.C. 46301(d)(8) do not apply in hazardous materials cases when the Administrator initiates civil penalty actions under the Federal hazardous materials transportation statute, 49 U.S.C. 5123, and 14 CFR 1.47(k). We use 14 CFR 13.16 and 14 CFR part 13, subpart G, when assessing civil penalties in cases involving the transportation of hazardous materials by air.

The FAA also issues enforcement orders that do not assess civil penalties. For example, we issue cease and desist orders under 14 CFR 13.20, and orders of compliance under 14 CFR 13.71–13.87. Requests for hearing from these proposed orders are filed in the Hearing Docket. The procedural rules in 14 CFR part 13, subpart D govern proceedings in these cases, in which requests for hearing are filed under 14 CFR 13.19(c)(5), 13.20(c), 13.20(d), 13.75(a)(2), 13.75(b) or 13.81(e).

This Rulemaking

1. We are updating 14 CFR 13.16 and 14 CFR part 13, subpart G in this rulemaking as follows.

a. *The Applicability of 14 CFR 13.16 and 14 CFR part 13, subpart G.*

In October 2004, we amended the civil penalty assessment procedure in 14 CFR part 13, including 14 CFR 13.16 and 14 CFR part 13, subpart G. 69 FR 59490, October 4, 2004. We explained in the preamble that we were amending section 13.16 to update the list of statutory provisions authorizing the FAA to assess civil penalties. 69 FR at 59493. We revised section 13.16 when assessing “a civil penalty against a person other than an individual acting as a pilot, flight engineer, mechanic or

repairman for a violation cited in 49 U.S.C. 46301(d)(2) or 47531.” 69 FR at 59493 and 59496. We added a new section 13.16(c) for the administrative assessment of civil penalties against all persons for violations of 49 U.S.C. chapter 51, the Federal hazardous materials transportation statute. Further, we amended 14 CFR 13.201(a) to explain that 14 CFR part 13, subpart G applies to all civil penalty actions initiated under 14 CFR 13.16 in which a person requests a hearing.

The revision of section 13.16(a)—regarding the use of 14 CFR 13.16's procedures in civil penalty actions for violations cited in 49 U.S.C. 46301(d)(2) or 47531—appeared in the 2005 volume of the Code of Federal Regulations. However, the phrase “or 47531” did not appear in section 13.16(a) when the 2006 volume of the Code of Federal Regulations was printed. We reiterate here that we use the procedures in 14 CFR 13.16 (and 14 CFR part 13, subpart G when a hearing is requested) when assessing civil penalties for violations of the statutory provisions cited in 49 U.S.C. 47531 or of any implementing rules, regulations or orders.

We are also amending section 13.16(a), as well as certain regulations in subpart G, to clarify that we use the procedures set forth in section 14 CFR 13.16 and part 13, subpart G, for violations of provisions of the Federal aviation statute listed in the first sentence of 49 U.S.C. 46301(d). The first sentence of 49 U.S.C. 46301(d)(2) authorizes the FAA Administrator to assess civil penalties for violations offering provisions of the Federal aviation statute. The second sentence sets forth the civil penalty assessment authority of the Secretary of Homeland Security.

b. Judicial review of final agency orders assessing a civil penalty for violations of the Federal aviation statute, the Federal hazardous materials transportation law, or any implementing rules, regulations or orders.

Judicial review of final agency orders assessing civil penalties for violations of the Federal aviation statute and its implementing regulations is available in the appropriate Federal court of appeals under 49 U.S.C. 46110. Under 49 U.S.C. 46110, a person affected by an order issued by the Administrator of the FAA under part A or part B, or section 114(l) or (s) of the Federal aviation statute, may file a petition for review of that order in the United States Court of Appeals for the District of Columbia Circuit or in the United States court of appeals for the circuit in which the person resides or has that person's principal place of business. Under 49

U.S.C. 46110(a), the petition for review must be filed not later than 60 days after the issuance of the order, unless a Federal court finds that reasonable grounds exist for the late-filing.

Judicial review of civil penalty orders issued under the Federal aviation statute is also provided under the following:

- 49 U.S.C. 46301(d)(7)(D)(iii) providing that judicial review of any order assessing a civil penalty for a violation of 49 U.S.C. 47107(b) or any grant assurance under that section for misuse of public airport revenues may be obtained only under 49 U.S.C. 46110;

- 49 U.S.C. 46301(g) providing that “[a]n order of the * * * Administrator imposing a civil penalty may be reviewed judicially only under section 46110 of this title.”

- 49 U.S.C. 47532 (and 49 CFR 1.47(s)) providing that an action taken by the Administrator under 49 U.S.C. 47528, 47529 or 47530 regarding the operation of certain aircraft not in compliance with stage 3 noise levels is subject to judicial review as provided under 49 U.S.C. 46110.

Before the enactment of the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA—LU) in 2005, the Federal hazardous materials transportation law, 49 U.S.C. chapter 51, was silent on the issue of judicial review of an order assessing a civil penalty. As a result, final agency orders assessing civil penalties in cases involving the transportation by air of hazardous materials were subject to review in the appropriate United States district court under 5 U.S.C. 701, *et seq.*, and 28 U.S.C. 1331.

SAFETEA—LU added a new section 5127 to the Federal hazardous materials transportation statute, 49 U.S.C. 5127, pertaining specifically to judicial review of final orders. Section 5127 of Title 49 now provides that a person aggrieved by a final agency action involving the transportation of hazardous materials may file a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States in the circuit which the party resides or has the party's principal place of business. Thus, under SAFETEA—LU, persons aggrieved by a final order issued by the Administrator arising from the transportation by air of a hazardous materials may petition the appropriate Federal court of appeals for review.

Under the new 49 U.S.C. 5127, a petitioner must file the petition for review no later than 60 days after the action “*becomes final.*” 49 U.S.C. 5127 (emphasis added.) Decisions and orders

in hazardous materials cases issued by the Administrator under 14 CFR 13.233(j)(2) (on appeal to the Administrator from a decision of an administrative law judge) and under 14 CFR 13.234(g) (on petition for reconsideration, rehearing or modification), are final when they are served. Therefore, a person filing a petition for review of an order issued under 14 CFR 13.233(j)(2) or 13.234(g) in a civil penalty case involving the transportation of hazardous materials must do so no later than 60 days after the Administrator's decision is served. (See 14 CFR 13.235.)

Judicial review in civil penalty cases is discussed in the Federal Aviation Regulations at 14 CFR 13.16 and 13.235. Currently, section 13.16(m)(1) provides that a party may file a petition for review of a final agency order in cases under the Federal aviation statute in the appropriate United States court of appeals under 49 U.S.C. 46110(a), 46301(d)(6) and 46301(g). Section 13.16(m)(2) provides that in cases under the Federal hazardous materials transportation law, a party may seek judicial review of a final agency order in an appropriate United States district court under 5 U.S.C. 703 and 704 and 28 U.S.C. 1331.

Section 13.235 of the Federal Aviation Regulations also deals with the issue of judicial review of a final agency decision in civil penalty cases. Unlike 14 CFR 13.16(m), section 13.235 does not distinguish between cases arising under the Federal aviation statute and cases arising under the Federal hazardous materials transportation statute. It is stated in 14 CFR 13.235: "A person may seek judicial review of a final decision and order of the Administrator as provided in section 1006 of the Federal Aviation Act of 1958, as amended [currently 49 U.S.C. 46110]." Currently, section 13.235 does not include references to sections 5127, 46301(d)(7)(D)(iii), 46301(g), or 47532 of Title 49, which also provide for judicial review of final agency orders involving certain violations of the Federal hazardous materials transportation statute and the Federal aviation statute.

We are amending 14 CFR 13.16(m) and 14 CFR 13.235 to incorporate SAFETEA-LU's changes regarding judicial review of final agency decisions in hazardous materials cases, as now set forth in 49 U.S.C. 5127, as well as to include references to other statutory provisions for judicial review. In this rulemaking, we are dividing section 13.235 into four paragraphs for the sake of clarity. New paragraph (a) provides that in cases under the Federal aviation statute, a party may seek judicial review

of a final decision and order of the Administrator, as provided in 49 U.S.C. 46110(a), and as applicable, in 49 U.S.C. 46301(d)(7)(D)(iii), 46301(g), or 47532. New paragraph (b) explains that judicial review in cases under the Federal hazardous materials transportation statute is under 49 U.S.C. 5127. New paragraph (c) provides that parties seeking review of a final agency order may file a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the United States court of appeals for the circuit in which the party resides or has its principal place of business. New paragraph (d) explains that the party seeking review must file the petition for review no later than 60 days after service of the Administrator's final decision and order.

Since the passage of SAFETEA-LU, there is no need to divide 14 CFR 13.16(m) into paragraphs (1) and (2) because review is now available in the appropriate Federal court of appeals for civil penalty orders arising from violations of the Federal aviation statute and the Federal hazardous materials transportation law. The new section 13.16(m) provides that a party may seek judicial review of a final decision and order of the Administrator involving a violation of the Federal aviation statute or the Federal hazardous materials transportation law. It explains that review is in the United Court of Appeals for the District of Columbia Circuit or the courts of appeals of the United States for the circuit in which the party resides or has the party's principal place of business. It refers the reader to 14 CFR 13.235 for references to the provisions in Title 49 of the United States Code for judicial review.

Currently, section 13.16(m)(1) cites 49 U.S.C. 46301(d)(6), as well as 49 U.S.C. 46110 and 46301(g), as authority for the availability of judicial review in an appropriate Federal court of appeals. Section 46301(d)(6) of Title 49 provides for judicial review of orders of the National Transportation Safety Board in civil penalty cases under 49 U.S.C. 46301(d)(5) against individuals acting as pilots, flight engineers, mechanics or repairmen. (See 14 CFR 13.18(h)). Section 13.16, however, deals with orders of the FAA Administrator in civil penalty proceedings against persons other than individuals acting as pilots, mechanics, flight engineers or repairmen. Consequently, we are not including a reference to 49 U.S.C. 46301(d)(6) in the new 14 CFR 13.16(m) or in the amended section 13.235.

We are amending the authority section of 14 CFR part 13 to include the statutory provisions added to Title 49

regarding the transportation of hazardous materials by SAFETEA-LU.

c. *Current Hearing Docket Address.* Last year, we amended 14 CFR, part 13, subpart G, to provide the new address of the FAA Hearing Docket. 70 FR 8236, February 18, 2005. Since publishing that notice, the offices in the Wilbur Wright Building, in which the Hearing Docket is now located, have been re-numbered. Under the current room number system, the Hearing Docket is located in Suite 2W1000. We are updating the suite number for the Hearing Docket in this rulemaking.

d. *FAA Civil Penalty Adjudication Web site.* Also, by notice published on February 18, 2005, we amended section 13.210 by adding paragraph (e), which included information about the FAA civil penalty adjudication Web site. The FAA's Web site recently has been revised. The FAA civil penalty adjudication Web site is now located at the following address: http://faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty. This technical amendment provides the current Internet address for the FAA civil penalty adjudication Web site, as well as more complete description of the information available on the Web site.

e. *Definition of Complaint.* As defined in 14 CFR 13.202, a "complaint" is a document that is filed by the agency attorney after a hearing is requested under 14 CFR 13.16. In 2004, we redesignated the paragraphs in 14 CFR 13.16 about requests for hearing as 14 CFR 13.16(f)(3) and (g)(2)(ii). 69 FR at 59496. Now, we are amending the definition of "complaint" in section 13.202 to replace references to the former paragraph numbers about requests for hearing with the current citations, 14 CFR 13.16(f)(3) and (g)(2)(ii).

f. *Recodification of the FAA's Governing Statute and the Hazardous Materials Transportation Act.* In 1994, Congress recodified into positive law the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act, and other pieces of transportation law. We amended the authority sections for the Federal Aviation Regulations, including Part 13, to reflect the recodification, by final rule published on December 28, 1995 (60 FR 67254). Now, we are amending 14 CFR 13.202 (definitions of "complaint" and "order assessing civil penalty"), 13.218(f)(1), 13.219(a), 13.228(c), and 13.235 to replace out-of-date statutory references with citations to the Federal aviation statute, and to the Federal hazardous materials transportation statute.

2. We are updating other sections of Part 13 of the Federal Aviation Regulations, as follows:

a. Civil penalties, generally, under 14 CFR 13.14.

Section 13.14(a) of the Federal Aviation Regulations, 14 CFR 13.14(a) explains that a person who violates certain provisions of the Federal aviation statute or any implementing rule, regulation, or order, is subject to a civil penalty not exceeding the amount specified in 49 U.S.C. chapter 463 for each violation. Section 13.14(a) should include those sections listed in the first sentence of 49 U.S.C. 46301(d)(2) and in 49 U.S.C. 47531.

Currently, 14 CFR 13.14(a)(6) provides that a person is subject to a civil penalty for a violation of 49 U.S.C. 46301(b), 46302, 46303, 46318 or 46319. Section 13.14(a)(6) needs revision in three respects. First, under 49 U.S.C. 46301(d)(2), the Secretary of Homeland Security—not the Administrator of the FAA—has the authority to assess civil penalties for violations of 49 U.S.C. 46303. Consequently, a reference to 49 U.S.C. 46303 does not belong in 14 CFR 13.14(a)(6).

Second, under 49 U.S.C. 46319(c), a public agency is liable for a civil penalty of \$10,000 for each day that an airport remains closed without having given the FAA the notice required under 49 U.S.C. 46319(a). Congress, however, failed to specify in 49 U.S.C. 46301(d)(2) or anywhere else in the Federal aviation statute, that the Administrator has the authority to assess a penalty for violations of 49 U.S.C. 46319. As a result, a reference to 49 U.S.C. 46319 should not be included in 14 CFR 13.14(a)(6). In this rulemaking, we are deleting the reference to 49 U.S.C. 46319.

Third, the Administrator of the FAA has the authority to assess civil penalties for violations of 49 U.S.C. 46302 for a violation relating to 49 U.S.C. 46504, and the Secretary of Homeland Security has the authority to assess civil penalties for other violations of 49 U.S.C. 46302. For this reason, we are adding a parenthetical after “section 46302” in 14 CFR 13.14(a)(6) as follows: “(For a violation relating to 49 U.S.C. 46504.)” As a result of these changes, 14 CFR 13.14(a)(6), as amended by this rulemaking, will read: “Any person who violated any of the following statutory provisions, or any rule, regulation or order issued thereunder is subject to a civil penalty * * * (6) Sections 46301(b), 46302 (for a violation relating to 49 U.S.C. 46504), or 46318.” We are also adding the parenthetical “(for a violation relating to 49 U.S.C. 46504)”

after “49 U.S.C. 46302” in the statutory authority section of Part 13.

The Administrator may assess a civil penalty for a violation of 49 U.S.C. 47107(b) under the first sentence of 49 U.S.C. 46301(d)(2). We inadvertently omitted 49 U.S.C. 47107(b) when we drafted 14 CFR 13.14. We are correcting that omission in this rulemaking by adding a new section 13.14(a)(7), regarding a violation of 49 U.S.C. 47017(b). We are redesignating the current section 13.14(a)(7) as section 13.14(a)(8).

We also did not include 49 U.S.C. 47107 in the authority section of Part 13. We are correcting that oversight in this rulemaking.

b. Providing the correct address for the Hearing Docket in the procedural rules in 14 CFR part 13, subpart D.

Under Part 13 of the Federal Aviation Regulations, we also issue enforcement orders not involving the assessment of civil penalties. For example, under 14 CFR 13.20, we issue cease and desist orders and orders of denial, and under 14 CFR 13.71–13.87, we issue orders of compliance and orders of immediate compliance involving the transportation of hazardous materials by air. If a recipient of a proposed order (or an order of immediate compliance) requests a hearing under 14 CFR 13.19(c)(5), 13.20(c), 13.20(d), 13.75(a)(2), 13.75(b) or 13.81(e), the proceedings are governed by the rules contained in 14 CFR part 13, subpart D (14 CFR 13.31–13.63).

In proceedings conducted under 14 CFR part 13, subpart D, the parties should file documents, including the request for hearing and the pleadings, in the Hearing Docket. See 14 CFR 13.35 and 13.43. The address of the Hearing Docket is provided in 14 CFR 13.35, which is the rule pertaining to requests for hearing. Section 13.35 sets forth the Hearing Docket’s old address. The Hearing Docket’s current street address is as follows: Federal Aviation Administration, 600 Independence Avenue, SW., Wilbur Wright Building—Suite 2W1000, Washington, DC 20591; Attention: Hearing Docket Clerk, AGC–430. When a party hand-delivers or sends documents by commercial expedited courier (e.g., Federal Express or United Parcel Service), the party should use the street address.

The Wilbur Wright Building, in which the Hearing Docket is located, does not have a mailroom. Documents delivered by the U.S. Postal System must be sent to, and processed by, the mailroom located in the FAA headquarters building, at 800 Independence Avenue, SW. When sending documents to the Hearing Docket by U.S. mail or U.S.

certified mail, the following mailing address should be used (instead of the street address): Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Attention: Hearing Docket Clerk, AGC–430, Wilbur Wright Building—Suite 2W1000. We are amending 14 CFR 13.35 to include the correct street and mailing addresses for the Hearing Docket.

Procedure Matters

In general, under the Administrative Procedure Act, 5 U.S.C. 553, agencies must publish regulations for public comment and give the public at least 30 days notice before adopting regulations. There is an exception to these requirements if the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. In this case, the FAA finds that notice and comment requirements are unnecessary due to the administrative nature of the changes. The public interest is served by revising section 13.16 and section 13.235 immediately to inform parties in hazardous materials civil penalty cases of the availability of judicial review in the appropriate Federal court of appeals under SAFETEA–LU. It is in the public interest that the revisions to 14 CFR 13.35 and 13.210 take effect promptly so that parties filing documents in proceedings under either subpart D or subpart G of part 13 of the Federal Aviation Regulations use the Hearing Docket’s correct street or mailing address. Also, it is in the public interest that the Rules of Practice correctly state the Internet address for the FAA civil penalty adjudication Web site. The editorial amendments to bring the citations to the Federal Aviation Act of 1958, as amended, and to the Hazardous Materials Transportation Act into conformity with the recodification of the transportation laws and Part 13’s revised authority citation will be helpful to the public and do not warrant notice and comment. The amendments set forth in this notice do not affect the rights or duties of any regulated entity.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Aviation safety, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

The Amendments

■ Accordingly, the Federal Aviation Administration amends part 13 of the Federal Aviation Regulations as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. Revise the authority citation for part 13 to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5128, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304–46316, 46318, 46501–46502, 46504–46507, 47106, 47107, 47111, 47122, 47306, 47531–47532; 49 CFR 1.47.

■ 2. Amend § 13.14 by revising § 13.14(a)(6), redesignating the current § 13.14(a)(7) as new § 13.14(a)(8), and adding a new § 13.14(a)(7), to read as follows:

§ 13.14 Civil penalties: General.

- (a) * * *
- (6) Sections 46301(b), 46302 (for a violation of 49 U.S.C. 46504), or 46318;
- (7) Section 47107(b); or

■ 3. Revise § 13.16(a) and § 13.16(m) to read as follows:

§ 13.16 Civil Penalties: Administrative assessment against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman. Administrative assessment against all persons for hazardous materials violations.

(a) The FAA uses these procedures when it assesses a civil penalty against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman for a violation cited in the first sentence of 49 U.S.C. 46301(d)(2) or in 49 U.S.C. 47531, or any implementing rule, regulation or order.

(m) A party may seek review only of a final decision and order of the FAA decisionmaker involving a violation of the Federal aviation statute or the Federal hazardous materials transportation law. Judicial review is in the United States Court of Appeals for the District of Columbia Circuit or the United States court of appeals for the circuit in which the party resides or has the party's principal place of business as provided in § 13.235 of this part. Neither an initial decision or an order issued by an administrative law judge that has not been appealed to the FAA decisionmaker, nor an order compromising a civil penalty action, may be appealed under any of those sections.

■ 4. Amend § 13.35 by revising paragraph (a), redesignating current paragraphs (b) and (c) as (c) and (d), and adding a new paragraph (b), to read as follows:

§ 13.35 Request for hearing.

(a) A request for hearing must be made in writing and filed in the Hearing Docket.

(1) *If delivery is in person, or by expedited courier service.* A person delivering the request for hearing in person or sending the request for hearing by commercial expedited courier (for example, Federal Express or United Parcel Service), should use the following address: Federal Aviation Administration, 600 Independence Avenue, SW., Wilbur Wright Building—Suite 2W1000, Washington, DC 20591; Attention: Hearing Docket Clerk, AGC–430.

(2) *If delivery is by U.S. Mail:* If the request for hearing is sent by U.S. Mail, then it should be addressed as follows: Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Attention: Hearing Docket Clerk, AGC–430, Wilbur Wright Building—Suite 2W1000.

(b) The request for hearing must describe the action proposed by the FAA, and must contain a statement that a hearing is requested. A copy of the request for hearing and a copy of the answer required by paragraph (c) of this section must be served on the official who issued the notice of proposed action.

■ 5. Amend § 13.202 by revising the definition of “complaint” and the first sentence of the definition of “order assessing civil penalty” to read as follows:

§ 13.202 Definitions

Complaint means a document issued by an agency attorney alleging a violation of a provision of the Federal aviation statute listed in the first sentence of 49 U.S.C. 46301(d)(2) or in 49 U.S.C. 47531, or of the Federal hazardous materials transportation statute, 49 U.S.C. 5121–5128, or a rule, regulation, or order issued under those statutes, that has been filed with the Hearing Docket after a hearing has been requested under § 13.16(f)(3) or (g)(2)(ii) of this part.

Order assessing civil penalty means a document that contains a finding of a violation of a provision of the Federal aviation statute listed in the first sentence of 49 U.S.C. 46301(d)(2) or in 49 U.S.C. 47531, or of the Federal hazardous materials transportation statute, 49 U.S.C. 5121–5128, or a rule, regulation or order issued under those

statutes, and may direct payment of a civil penalty. * * *

■ 6. Amend § 13.210 by revising paragraphs (a)(1) and (2) and (e)(2) to read as follows:

§ 13.210 Filing of documents.

(1) *If delivery is in person, or via expedited courier service:* Federal Aviation Administration, 600 Independence Avenue, SW., Wilbur Wright Building—Suite 2W1000, Washington, DC 20591; Attention: Hearing Docket Clerk, AGC–430.

(2) *If delivery is via U.S. Mail:* Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Attention: Hearing Docket Clerk, AGC–430, Wilbur Wright Building—Suite 2W1000.

(2) Decisions and orders issued by the Administrator in civil penalty cases, indexes of decisions, contact information for the FAA Hearing Docket, and the administrative law judges, the rules of practice, and other information is available on the FAA civil penalty adjudication Web site at: http://faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty.

■ 7. Amend § 13.218 by revising the third sentence of paragraph (f)(1) to read as follows:

§ 13.218 Motions.

(1) * * * A motion to dismiss the complaint for insufficiency must show that the complaint fails to state a violation of a provision of the Federal aviation statute listed in the first sentence in 49 U.S.C. 46301(d)(2) or in 49 U.S.C. 47531, or any implementing rule, regulation, or order, or a violation of the Federal hazardous materials transportation statute, 49 U.S.C. 5121–5128, or any implementing rule, regulation or order.

■ 8. Amend § 13.219 by revising the second sentence of paragraph (a) to read as follows:

§ 13.219 Interlocutory appeals.

(a) * * * A decision or order of the FAA decisionmaker on the interlocutory appeal does not constitute a final order of the Administrator for the purposes of judicial appellate review as provided in § 13.235 of this subpart.

■ 9. Revise § 13.228(c) to read as follows:

§ 13.228 Subpoenas.

* * * * *

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, a party may apply to the local federal district court to seek judicial enforcement of the subpoena in accordance with 49 U.S.C. 46104 in cases under the Federal aviation statute.

■ 10. Revise § 13.235 to read as follows:

§ 13.235 Judicial review of a final decision and order.

(a) In cases under the Federal aviation statute, a party may seek judicial review of a final decision and order of the Administrator, as provided in 49 U.S.C. 46110(a), and, as applicable, in 49 U.S.C. 46301(d)(7)(D)(iii), 46301(g), or 47532.

(b) In cases under the Federal hazardous materials transportation statute, a party may seek judicial review of a final decision and order of the Administrator, as provided in 49 U.S.C. 5127.

(c) A party seeking judicial review of a final order issued by the Administrator may file a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the United States Court of Appeals for the circuit in which the party resides or has its principal place of business.

(d) The party must file the petition for review no later than 60 days after service of the Administrator's final decision and order.

Issued in Washington, DC, on November 28, 2006.

Rebecca MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 06-9508 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2006-25038; Airspace Docket No. 06-ANM-4]

Revision of Class E Airspace; Sheridan, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will revise the Class E airspace at Sheridan, WY. Additional controlled airspace is

necessary to accommodate aircraft executing a new Area Navigation (RNAV) Global Positioning System (GPS) approach procedure at Sheridan County Airport. This action will improve the safety of Instrument Flight Rules (IFR) aircraft executing this new procedure at Sheridan County Airport, Sheridan, WY.

DATES: *Effective Date:* 0901 UTC, March 15, 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: Ed Haeseker, Federal Aviation Administration, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98055-4056; telephone (425) 227-2527.

SUPPLEMENTARY INFORMATION:

History

On August 25, 2006, the FAA published in the **Federal Register** a notice of proposed rulemaking to revise Class E airspace at Sheridan, WY, (71 FR 50376). This action would improve the safety of Instrument Flight Rules (IFR) aircraft executing this new RNAV GPS approach procedure at Sheridan County Airport, Sheridan, WY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. The NPRM described the Wenz NDB bearings "to" the facility instead of "from" the facility, which is standard practice. This rule makes an editorial change to describe the bearings "from" the NDB. Except for this editorial change, this rule is the same as proposed in the NPRM.

Class E airspace designations are published in paragraph 6002 and 6005 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Sheridan, WY. Additional controlled airspace is necessary to accommodate IFR aircraft executing a new RNAV (GPS) approach procedure at Sheridan County Airport, Sheridan, WY.

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 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.

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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ANM WY E2 Sheridan WY [Revised]

Sheridan County Airport, WY
(Lat. 44°46'09" N., long. 106°58'49" W.)
Sheridan VORTAC
(Lat. 44°50'32" N., long. 107°03'40" W.)

That airspace extending upward from the surface within a 4.5-mile radius of the Sheridan County Airport, and within 4.5 miles each side of the 157° bearing from the airport, extending from the 4.5-mile radius to 17.6 miles southeast of the airport, and within 3.5 miles each side of the Sheridan VORTAC 312°, 327° radials extending from the 4.5-mile radius to 10.1 miles northwest of the VORTAC, and 4.0 miles each side of the 336° bearing from the Sheridan Airport extending from the 4.5-mile radius to 15.4 miles northwest of the Airport, and within 3.5 miles each side of the Sheridan VORTAC

140° radial extending from the 4.5-mile radius to 21.4 miles southeast of the VORTAC.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Sheridan WY [Revised]

Sheridan County Airport, WY
(Lat. 44°46'09" N., long. 106°58'49" W.)
Gillette VOR/DME
(Lat. 44°20'52" N., long. 105°32'37" W.)
Crazy Woman VOR/DME
(Lat. 43°59'59" N., long. 106°26'09" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Sheridan County Airport; that airspace extending upward from 1,200 feet above the surface beginning at lat. 45°15'00" N., long. 107°30'00" W.; to lat. 45°15'00" N., long. 107°00'00" W.; to lat. 45°00'00" N., long. 106°40'00" W.; to Gillette VOR/DME; to Crazy Woman VOR/DME; to lat. 44°00'00" N., long. 106°45'00" W.; to lat. 44°30'00" N., long. 107°00'00" W.; to lat. 45°00'00" N., long. 107°30'00" W.; to point of beginning.

* * * * *

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

Clark Desing,

Manager, System Support, Western Service Area.

[FR Doc. E6-20489 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA-2006-26133; Airspace Docket No. 06-AAL-33]

RIN 2120-AA66

Change of Using Agency for Restricted Area R-2202, Big Delta, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency of Restricted Areas R-2202A, R-2202B, and R-2202C from "U.S. Army, Commander, Cold Regions Test Activity, Fort Greely, AK" to "U.S. Army, Commander, Cold Regions Test Center Fort Greely, AK". The FAA is taking this action in response to a request from the United States Army to reflect an administrative title change. There are no changes to the boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted areas.

DATES: *Effective Date:* 0901 UTC, March 15, 2007.

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:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by changing the using agency of R-2202A, B, and C, Fort Greely, AK, from "U.S. Army, Commander, Cold Regions Test Activity, Fort Greely, AK" to "U.S. Army, Commander, Cold Regions Test Center Fort Greely, AK". This is an administrative change and does not affect the boundaries; designated altitudes; or activities conducted within the restricted areas. Therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.22 of Title 14 CFR part 73 was republished in FAA Order 7400.8M, dated January 6, 2006.

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 311d., FAA Order 1050.1E, "Environmental Impacts: Policies 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 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.22 [Amended]

■ 2. Section 73.22 is amended as follows:

* * * * *

R-2202A Big Delta, AK [Amended]

Under using agency, by removing the words "U.S. Army, Commander, Cold Regions Test Activity, Fort Greely, AK" and inserting the words "U.S. Army, Commander, Cold Regions Test Center, Fort Greely, AK".

R-2202B Big Delta, AK [Amended]

Under using agency, by removing the words "U.S. Army, Commander, Cold Regions Test Activity, Fort Greely, AK" and inserting the words "U.S. Army, Commander, Cold Regions Test Center, Fort Greely, AK".

R-2202C Big Delta, AK [Amended]

Under using agency, by removing the words "U.S. Army, Commander, Cold Regions Test Activity, Fort Greely, AK" and inserting the words "U.S. Army, Commander, Cold Regions Test Center, Fort Greely, AK".

* * * * *

Issued in Washington, DC, on November 27, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E6-20491 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA-2006-26351; Airspace Docket No. 06-ASO-12]

RIN 2120-AA66

Change of Controlling Agency and Using Agency for Restricted Areas R-6608A, B, and C; Quantico, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the names of the controlling agency and using agency for Restricted Areas R-6608A, B, and C, Quantico, VA. The FAA is taking this action at the request of the U.S. Marine Corps to reflect the

current organizational names. This is an administrative change that does not alter the boundaries, designated altitudes, time of designation, or activities conducted within the affected restricted areas.

DATES: *Effective Dates:* 0901 UTC, January 18, 2007.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, 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:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by changing the name of the controlling agency for Restricted Areas R-6608A, B, and C, Quantico, VA, from "FAA, Potomac Approach," to "FAA, Potomac TRACON." In addition, this action changes the name of the using agency for the restricted areas from "U.S. Marine Corps, Commanding General, Marine Corps Development and Education Command, Quantico, VA," to "U.S. Marine Corps, Commanding General, Marine Corps Base, Quantico, VA." These changes are administrative only and do not affect the boundaries, designated altitudes, or activities conducted within the restricted areas. Therefore, notice and public procedures under 5 U.S.C. 553(b) is unnecessary.

Section 73.66 of Title 14 CFR part 73 was republished in FAA Order 7400.8M, dated January 6, 2006.

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 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 311d., FAA Order 1050.1E, "Environmental Impacts: Policies 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 73

Airspace, Prohibited Areas, Restricted Areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.66 [Amended]

■ 2. § 73.66 is amended as follows:

* * * * *

R-6608A Quantico, VA [Amended]

Under Controlling agency by removing the words "FAA, Potomac Approach," and inserting the words "FAA, Potomac TRACON;" and Under Using agency, by removing the words "U.S. Marine Corps, Commanding General, Marine Corps Development and Education Command, Quantico, VA," and inserting the words "U.S. Marine Corps, Commanding General, Marine Corps Base, Quantico, VA."

R-6608B Quantico, VA [Amended]

Under Controlling agency by removing the words "FAA, Potomac Approach," and inserting the words "FAA, Potomac TRACON;" and Under Using agency, by removing the words "U.S. Marine Corps, Commanding General, Marine Corps Development and Education Command, Quantico, VA," and inserting the words "U.S. Marine Corps, Commanding General, Marine Corps Base, Quantico, VA."

R-6608C Quantico, VA [Amended]

Under Controlling agency by removing the words "FAA, Potomac Approach," and inserting the words "FAA, Potomac TRACON;" and Under Using agency, by removing the words "U.S. Marine Corps, Commanding General, Marine Corps Development and Education Command, Quantico, VA," and inserting the words "U.S. Marine Corps, Commanding General, Marine Corps Base, Quantico, VA."

* * * * *

Issued in Washington, DC on November 22, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E6-20490 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08-06-040]

Drawbridge Operating Regulations; Inner Harbor Navigation Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 46 (St. Claude Avenue) bridge across the Inner Harbor Navigation Canal, mile 0.5 (GIWW mile 6.2 East of Harvey Lock) in New Orleans, Orleans Parish, Louisiana. This deviation provides for the bridge to remain closed to navigation for approximately 11 consecutive hours to conduct scheduled maintenance to the drawbridge.

DATES: This deviation is effective from 6:30 a.m. until 5:45 p.m. on Tuesday, December 5, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 500 Poydras Street, New Orleans, Louisiana 70130-3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 671-2128. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 671-2128.

SUPPLEMENTARY INFORMATION: The Board of Commissioners of the Port of New Orleans has requested a temporary deviation in order to replace the riverside lower forward roller assembly for the operating strut guide of the bridge. These repairs are necessary for the continued operation of the bridge. This deviation allows the draw of the St. Claude Avenue bascule bridge across the Inner Harbor Navigation Canal, mile

0.5 (GIWW mile 6.2 East of Harvey Lock), to remain closed to navigation from 6:30 a.m. until 5:45 p.m. on Tuesday, December 5, 2006.

The bascule bridge has a vertical clearance of 1 foot above high water in the closed-to-navigation position. Navigation on the waterway consists mainly of tugs with tows and some ships. The bridge normally opens to pass navigation an average of eight times during the deviation period. In accordance with 33 CFR 117.458(a), the draw of the bridge shall open on signal; except that, from 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:45 p.m., Monday through Friday, except federal holidays, the draw need not open for the passage of vessels. The draw shall open at any time for a vessel in distress. Normally, the draw is required to open at any time for a vessel in distress. However, the bridge will not be able to open for emergencies during the closure period. An alternate route is available to mariners by proceeding down the Mississippi River to Venice, Louisiana, crossing the Breton Sound and proceeding up the Mississippi River Gulf Outlet.

The Coast Guard has coordinated the closure with waterway users, industry, and other Coast Guard units. It has been determined that this closure will not have a significant effect on vessel traffic.

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

Dated: November 13, 2006.

Marcus Redford,
Bridge Administrator.

[FR Doc. E6-20485 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08-06-041]

Drawbridge Operating Regulations; Berwick Bay, (Atchafalaya River) Morgan City, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation

governing the operation of the BNSF Railway Company Vertical Lift Span Bridge across Berwick Bay, mile 0.4, (Atchafalaya River, mile 17.5) at Morgan City, St. Mary Parish, Louisiana. This deviation provides for the bridge to remain closed to navigation for 12 consecutive hours to conduct scheduled maintenance to the drawbridge.

DATES: This deviation is effective from 8 a.m. until 8 p.m. on Wednesday, December 13, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 500 Poydras Street, New Orleans, Louisiana 70130-3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 671-2128. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 671-2128

SUPPLEMENTARY INFORMATION: The BNSF Railway Company has requested a temporary deviation in order to replace the railroad signal circuits of the BNSF Railway Railroad Vertical Lift Span Bridge across Berwick Bay, mile 0.4 (Atchafalaya River, mile 17.5) at Morgan City, St. Mary Parish, Louisiana. Replacement of the signal circuits is necessary to turn the lining of signals across the bridge into a fully automatic operation so that the bridge will be in full compliance with requirements of the Federal Railroad Administration. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 8 a.m. until 8 p.m. on Wednesday, December 13, 2006. There may be times, during the closure period, when the draw will not be able to open for emergencies.

The bridge provides 4 feet of vertical clearance in the closed-to-navigation position. Thus, most vessels will not be able to transit through the bridge site when the bridge is closed. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft including sailboats and powerboats. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels.

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

regulations is authorized under 33 CFR 117.35.

Dated: November 16, 2006.

Marcus Redford,

Bridge Administrator.

[FR Doc. E6-20486 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R07-OAR-2006-0900; FRL-8250-7]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the State Implementation Plan (SIP) and operating permits program revision submitted by the state of Missouri to update the ambient air quality standards, sampling methods, definitions, and common reference methods and tables. The update also includes references to implement the 8-hour ozone and PM_{2.5} National Ambient Air Quality Standards that were finalized on July 18, 1997.

DATES: This direct final rule will be effective February 5, 2007, without further notice, unless EPA receives adverse comment by January 4, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2006-0900, by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. E-mail: algoe-eakin.amy@epa.gov.

3. Mail: Amy Algae-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to Amy Algae-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2006-0900. EPA's policy is that all comments received will be included in the public

docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., 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 electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551-7942, or by e-mail at algoe-eakin.amy@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean

EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is the Part 70 operating permit program and approval process?

What is being addressed in this document? Have the requirements for approval of a SIP revision and operating permit program revision been met?

What action is EPA taking?

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards (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 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.

What is the Federal approval process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are

maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What does Federal approval of a state regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What is the Part 70 operating permits program and approval process?

The CAA requires all states to develop operating permits programs that meet certain Federal criteria. The purpose of the program is to consolidate all applicable CAA requirements into a single permit document issued to a source subject to the permit program. The process for EPA approval of a Part 70 program or program revision is similar to the process for approval of a SIP. Permits issued under an EPA-approved permit program are enforceable by EPA and the state.

What is being addressed in this document?

EPA is approving a revision to the SIP and Part 70 permits program for the state of Missouri that was state effective on February 28, 2006. The revisions include the 8-hour ozone and PM_{2.5} NAAQS that were finalized by EPA on July 18, 1997.

The revision to 10 CSR 10-6.010 (Ambient Air Quality Standards) updates the ambient air quality standards table to include the Federal revision to the NAAQS, and reformatted the columns for clarity. It should be noted that, unlike many other requirements in the Missouri SIP, the NAAQS are not requirements imposed directly on sources under the CAA (although states may impose such requirements directly on sources under state law). Sources must comply with emissions limitations and standards under the CAA and the SIP, but the NAAQS are not emissions limitations and standards under the CAA. However, because the Missouri rules establish other requirements, applicable to sources, designed to protect the NAAQS

(e.g., the requirement that a source may not obtain certain permits if it would cause or contribute to a violation of the NAAQS), EPA has included Missouri's adoption of the NAAQS in the SIP to assist in implementation of the NAAQS.

Chapter 10 CSR 10-6.020 (Definitions and Common Reference Tables) revises the definitions for insignificant activity, particulate matter, and adds definitions for PM_{2.5}. Five compounds were added to the volatile organic compounds definition and minor changes were made to the table listing hazardous air pollutants (table 3), and the related footnotes. In order to maintain formatting consistent with other rules, the state added sections (4) and (5) to state that reporting and record keeping, and test methods are not applicable to 10 CSR 10-6.020. It should be noted that revisions made to 10 CSR 10-6.020, and specifically the clarification of the definition of "insignificant activity" also apply to Missouri's operating permits program.

The revisions to 10 CSR 10-6.030 (Sampling Methods for Air Pollution sources) add EPA's Conditional Test Method 039 to determine the total PM₁₀ and PM_{2.5} fraction of filterable particulate matter including condensibles. Two paragraphs that discussed PM_{2.5} emissions in stack gases were combined for clarity and readability.

Revisions to 10 CSR 10-6.040 (Reference Methods) add references to appendices included in the Federal regulations that specify test methods for PM_{2.5}.

Minor revisions to each of the rules were made to correct spelling, to include the most recent date of the Federal regulations, and to improve the overall readability.

Have the requirements for approval of a SIP revision and operating permit program revision been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA. Finally, the submittal meets the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR Part 70.

What action is EPA taking?

EPA is approving a revision to the SIP for the state of Missouri to update the ambient air quality standards,

sampling methods, definitions, and common reference methods and tables to include the 8-hour ozone and PM_{2.5} NAAQS that were finalized on July 18, 1997. EPA is also approving the revisions to the state's definitions rule as a revision to the Part 70 operating program. We are processing this action as a direct final action because the revisions make routine changes to the existing SIP which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

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 state 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 state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 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

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating

permits, Reporting and recordkeeping requirements.

Dated: November 21, 2006.

John B. Askew,
Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations 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 AA—Missouri

■ 2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entries for “10–6.010, 10–6.020, 10–6.030 and 10–6.040” to read as follows:

§ 52.1320 Identification of Plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * *				
10–6.010	Ambient Air Quality Standards	2/28/06	12/5/06 [insert FR page number where the document begins]	*
10–6.020	Definitions and Common Reference Tables	2/28/06	12/5/06 [insert FR page number where the document begins]	*
10–6.030	Sampling Methods for Air Pollution Sources	2/28/06	12/5/06 [insert FR page number where the document begins]	*
10–6.040	Reference Methods	2/28/06	12/5/06 [insert FR page number where the document begins]	*
* * * * *				

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PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:
Authority: 42 U.S.C. 7401 *et seq.*

Appendix A—[Amended]

■ 2. Appendix A to part 70 is amended by adding paragraph (s) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri
* * * * *

(s) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.020, “Definitions and Common Reference Tables,” on March 13, 2006, approval effective January 4, 2007.
* * * * *

[FR Doc. E6–20446 Filed 12–4–06; 8:45 am]
BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 71, No. 233

Tuesday, December 5, 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 THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 70]

RIN 1513-AB21

Proposed Expansion of the San Francisco Bay Viticultural Area (2005R-413P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to expand the San Francisco Bay viticultural area in northern California. The proposed expansion would add 88 square miles to the viticultural area to its north in Solano County, California. 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. We invite comments on this proposed viticultural area expansion.

DATES: We must receive written comments on or before February 5, 2007.

ADDRESSES: You may send comments to any of the following addresses:

- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 70, P.O. Box 14412, Washington, DC 20044-4412.

- 202-927-8525 (facsimile).

- nprm@ttb.gov (e-mail).

- http://www.ttb.gov/wine/wine_rulemaking.shtml. An online comment form is posted with this notice on our Web site.

- <http://www.regulations.gov> (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this proposal by appointment at the TTB

Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202-927-2400. You may also access copies of the notice and comments online at http://www.ttb.gov/wine/wine_rulemaking.shtml.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

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

SUPPLEMENTARY INFORMATION

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

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 geographical 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. Petitioners may use the same procedure to request changes involving existing viticultural areas. 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.

San Francisco Bay and Central Coast Expansion Petition

Hestan Vineyards, LLC, of Vallejo, California, represented by Holland and Knight LLP of San Francisco, California, submitted a petition for an 88-square-mile boundary expansion that includes portions of Solano County to the north of the Carquinez Strait, and would apply to both the established San Francisco Bay viticultural area (27 CFR 9.157) and the established Central Coast viticultural area (27 CFR 9.75). After reviewing the petition, TTB determined that the evidence submitted in support of the proposed expansion of the San Francisco Bay viticultural area merits rulemaking action. On the other hand, for the reasons outlined below, TTB also determined that there was not sufficient documentation to proceed with

rulemaking for the proposed Central Coast viticultural area expansion. Accordingly, TTB notified the petitioner of these determinations, and the petitioner agreed to proceed with only the San Francisco Bay viticultural area expansion portion of the petition.

Central Coast Viticultural Area Expansion

The petitioner stated in the petition: "Since the Central Coast AVA now includes the San Francisco Bay AVA, it would stand to reason that a county in the San Francisco Bay Area that encompasses all of the attributes of the other counties included in the San Francisco Bay AVA (i.e., coastal climate, geology, etc.), should also be included in the Central Coast AVA." (TTB notes that the petitioner's use of the "San Francisco Bay Area" name reflects a larger geographical region than that included in the established San Francisco Bay viticultural area.) The expansive geographical boundaries of the established Central Coast viticultural area include a large region of California between the Pacific Ocean coastline to the west, the foothill elevations of the Coast Range to the east, Point Conception to the south, and the Carquinez Strait to the north.

TTB identified several concerns related to the lack of name association and the geographical boundaries between the San Francisco Bay area and Central Coast viticultural areas, as discussed below.

The petition lacked adequate name documentation to identify the proposed expansion area as part of the Central Coast viticultural area. The petitioner relied on the Central Coast viticultural area boundary line encumbrance of the San Francisco Bay viticultural area, without providing adequate, independent documentation to substantiate the "Central Coast" name usage in the proposed Solano County expansion area.

Consumer confusion could result if the Central Coast viticultural area boundary line were expanded to include an area north of the San Francisco and San Pablo Bays. The North Coast viticultural area (27 CFR 9.30) includes a portion of the San Pablo Bay west and north shoreline. Based on petition information and USGS maps, San Pablo Bay, which adjoins San Francisco Bay to its south, provides a geographically defining landmark between the established viticultural areas known as "Central Coast," to the east and south, and "North Coast," to the north and west.

San Francisco Bay Expansion Petition Evidence

The petitioner submitted the following information in support of the expansion of the San Francisco Bay viticultural area.

The San Francisco Bay area is a loosely bound region that includes other bodies of water, including San Pablo Bay, the Carquinez Strait, and Suisun Bay, the petition explains. USGS maps of the region show that San Francisco Bay joins San Pablo Bay to its north. Also, the Carquinez Strait connects the San Pablo Bay on the west with Suisun Bay on the east.

The petition states that the proposed expansion of the San Francisco Bay viticultural area, which is located adjacent to the north shores of San Pablo Bay and the Carquinez Strait, is an area historically, economically, and socially considered to be a part of the San Francisco Bay region. With the exception of the 4,480 acres, or 7 square miles, of the Carquinez Strait waterway, the petition explains, the entire proposed expansion area is on land in western Solano County.

A previous expansion of the San Francisco Bay viticultural area was published in the **Federal Register** on June 15, 2006, at 71 FR 34522. That expansion, effective July 17, increased the viticultural area by about 20,000 acres to the east in Alameda and Contra Costa Counties.

Name Evidence

A number of Government agencies and interest groups provide services to the nine counties in the recognized San Francisco Bay area, including the proposed expansion area in Solano County, as documented in the petition. Also, the Bay Area Council's Web site as of April 12, 2005, lists its nine counties, which include Solano, San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, Napa, Sonoma, and Marin, according to the petition. Other government agencies and interest groups using the same nine-county San Francisco Bay area parameter include the Association of Bay Area Governments, Bay Area Water Transit Authority, Bay Area Marketing Partnership, and Bay Area Economic Forum. Evidence of this usage was submitted with the petition.

The City of Vallejo, in southwest Solano County and within the proposed San Francisco Bay expansion boundary, serves as a key ferry transportation hub into the City of San Francisco, the petition documents. The Vallejo ferry system, as explained on the Bay Area Water Transit authority Web site, carries

thousands of passengers each week from Solano County to the City of San Francisco and back.

In 1987, the State of California legislature passed a bill establishing the "San Francisco Bay Trail," as noted on page 160 of *San Francisco Bay: Portrait of an Estuary*, by John Hart, and published by the University of California Press in 2003. Mr. Hart states that this trail system includes the Vallejo area of Solano County, which the petition notes is a part of the proposed San Francisco Bay viticultural area expansion.

Boundary Evidence

The proposed San Francisco Bay viticultural area expansion area comprises an 88-square-mile area that lies northeast of the City of San Francisco and San Francisco Bay, the petition explains. The proposed boundary line of the expansion area includes portions of San Pablo Bay's shoreline, the Solano and Napa Counties boundary line, a railroad track, and an interstate highway.

The proposed expansion area's northern boundary line follows the dividing line between Napa and Solano Counties and the Southern Pacific railroad track between Creston and Cordelia, as found on the USGS Cuttings Wharf and Cordelia maps. (TTB notes that the proposed expansion area boundary line coincides with various portions of the established boundaries for the North Coast, Napa Valley (27 CFR 9.23), and Solano County Green Valley (27 CFR 9.44) viticultural areas.)

Distinguishing Features

David G. Howell, PhD, Geologist at Stanford University in Palo Alto, California, Deborah Harden, PhD, Geologist at San Jose State University, San Jose, California, and Robert Bornstein, PhD, Meteorologist at San Jose State University, San Jose, California, combined efforts to provide petition evidence and documentation substantiating the northerly expansion of the San Francisco Bay viticultural area. The petition addresses the commonality of distinguishing features shared by the established San Francisco Bay viticultural area and the proposed northern expansion area.

Geology

The petition explains the similarity of geology, as a distinguishing feature, between the northern portion of the San Francisco Bay viticultural area and the proposed viticultural area expansion into Solano County. The Franklin Ridge landform of Contra Costa County, located in the northmost portion of the

established San Francisco Bay viticultural area, according to the petition, continues northward into the proposed expansion area of Solano County. Franklin Ridge becomes known as Sulphur Mountain Ridge in Solano County, with the two ridges geologically joining beneath the Carquinez Strait, the petition states.

The north-south linkage between the established and proposed portions of the San Francisco Bay viticultural area relies on the continuity of the underlying geology, the petition states. The bedrock formations, earthquake faults, landforms, and soils of northern San Francisco Bay viticultural area, according to the petition, continue north into the proposed expansion area of Solano County.

The petition identifies the geological bedrock core of the proposed expansion area as Cretaceous sandstone and shale. This body of rock, the petition explains, extends northward from the Mount Diablo region in Contra Costa County into the proposed expansion area that includes parts of Solano County.

Soil

The two general categories of soils in the proposed expansion area are those formed in salt marshes and those formed in sandstone over shale bedrock on uplands, as described in the Soil Survey of Solano County, California, issued by the U.S. Department of Agriculture in 1977.

The Solano County general soil map documents that soils in salt marshes predominate in areas at a low elevation south of Vallejo. Also, the map shows that some of the soils in the predominant Joice, Reyes, Suisun, and Tamba soil series are mucks or peaty mucks.

The soils on uplands in Solano County are common to other parts of the San Francisco Bay viticultural area, including areas of Alameda and Santa Clara Counties, the petition explains. The most prevalent soils on uplands are in the Dibble and Los Osos series, and are moderately deep soils formed in weathered sandstone and shale under climatic conditions of seasonal soil moisture. The Altamont, Gaviota, and Millsholm series are also on uplands, according to the petitioner; the Rincon series are on alluvial fans.

Climate

The eastward and inland movement of marine air through the Golden Gate Gap, the petition explains, dominates the climate of the land areas adjacent to San Francisco Bay and San Pablo Bay and within the established viticultural area boundaries. Carquinez Strait joins

San Pablo Bay at the bay's southeast corner, according to USGS maps, and receives the same marine air that cools the San Francisco and San Pablo Bays, the petitioner explains.

The Carquinez Strait funnels the marine air to both the north and south sides of its shoreline, according to the petition. (TTB notes that the current San Francisco Bay viticultural area's northern boundary line extends along the south shoreline of the Carquinez Strait, following the Contra Costa County northern boundary line to BM 15 on the Honker Bay USGS map.) The proposed expansion area extends northward to include all the Carquinez Strait and portions of Solano County, according to the written boundary description and maps provided with the petition.

The current expansion petition provides evidence and documentation of the marine airflow, and its cooling effect, traveling north and east from the Golden Gate, through the San Francisco Bay, San Pablo Bay, and Carquinez Strait, into the proposed inland expansion area. Although the proposed expansion area was not included in the original San Francisco Bay AVA petition, since the filing of the original petition, additional observation sites have become available that provide a more detailed analysis of the air flow patterns in and around the Carquinez Strait. Figures obtained from a new observation site that show the typical summer afternoon flow pattern on both sides of the Carquinez Strait clearly show that the Carquinez Strait is not the northern boundary of the influence of the marine air that has entered through the Golden Gate Gap.

The California Air Resources Board maps, submitted with the petition, show that the marine influence extends both north and south of the Carquinez Strait. A San Francisco Bay Air Quality Management District map shows air flow through the Carquinez Strait on July 31, 2000, a typical summer day. The airflow pattern through the Carquinez Strait brings the marine influence to the north, east, and south of the waterway, according to the map. Another computerized map of the air flow, also documented on July 31, 2000, shows the marine air entering San Francisco Bay through the Golden Gate Gap, then traveling through San Pablo Bay, and continuing east through the Carquinez Strait, north into Suisun Bay, and south into the Livermore Valley.

The information submitted with the petition concludes that the Carquinez Strait should not be considered the northernmost boundary of the San Francisco Bay viticultural area. Marine

air, which is a significant distinguishing climatic characteristic of the San Francisco Bay viticultural area and region, is also significant in the proposed expansion area, according to the petition.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area expansion in the proposed regulatory text amendment published at the end of this notice.

Maps

The petitioner provided the required maps, which are listed below in the proposed regulatory text amendment.

Impact on Current Wine Labels

The proposed expansion of the San Francisco Bay viticultural area will not affect currently approved wine labels. The approval of this proposed expansion may allow additional vintners to use "San Francisco Bay" as an appellation of origin on their 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. For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as 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). 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.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should expand the established San Francisco Bay viticultural area as proposed.

The currently proposed expansion area, TTB notes and petition-provided USGS maps confirm, lies in an area of southern Solano County, outside of the North Coast viticultural area boundary line. The proposed expansion area lies between the boundary lines of the North Coast and Central Coast viticultural areas.

In addition to receiving comments on the issues described above, we are interested in comments on the sufficiency and accuracy of the name,

boundary, and other required information submitted in support of the petition.

Please provide any available specific information in support of your comments.

Submitting Comments

Submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- *Mail*: You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile*: You may submit comments by facsimile transmission to 202-927-8525. Faxed comments must—
 - (1) Be on 8.5- by 11-inch paper;
 - (2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *E-mail*: You may e-mail comments to nprm@ttb.gov. Comments transmitted by electronic mail must—

- (1) Contain your e-mail address;
- (2) Reference this notice number on the subject line; and
- (3) Be legible when printed on 8.5- by 11-inch paper.

- *Online form*: We provide a comment form with the online copy of this notice on our Web site at http://www.ttb.gov/wine/wine_rulemaking.shtml. Select the "Send comments via e-mail" link under this notice number.

- *Federal e-Rulemaking Portal*: To submit comments to us via the Federal e-rulemaking portal, visit <http://www.regulations.gov> and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and

any comments we receive by appointment at the TTB Information Resource Center at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- × 11-inch page. Contact our information specialist at the above address or by telephone at 202-927-2400 to schedule an appointment or to request copies of comments.

We will post this notice and any comments we receive on this proposal on the TTB Web site. All name and address information submitted with comments will be posted, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Information Resource Center. To access the online copy of this notice and the submitted comments, visit http://www.ttb.gov/wine/wine_rulemaking.shtml. Select the "View Comments" link under this notice number to view the posted comments.

Regulatory Flexibility Act

We certify that this proposed regulatory amendment, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed amendment imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be 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 proposed 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.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to 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. Section 9.157 is amended by revising the introductory text of paragraph (b), removing the word "and" at the end of paragraph (b)(42), replacing the period with a semicolon at the end of paragraph (b)(43), adding new paragraphs (b)(44) through (b)(47), revising the introductory text of paragraph (c) and paragraph (c)(24), redesignating paragraphs (c)(25) through (c)(38) as (c)(31) through (c)(44), and adding new paragraphs (c)(25) through (c)(30), to read as follows:

§ 9.157 San Francisco Bay.

* * * * *

(b) *Approved Maps*. The appropriate maps for determining the boundary of the San Francisco Bay viticultural area are 47 1:24,000 Scale USGS topographic maps. They are titled:

* * * * *

(44) Cuttings Wharf, Calif.; 1949; Photorevised 1981;

(45) Sears Point, Calif.; 1951; Photorevised 1968;

(46) Cordelia, Calif.; 1951; Photorevised 1980; and

(47) Fairfield South, Calif., 1949; Photorevised 1980.

(c) *Boundary*. The San Francisco Bay viticultural area is located mainly within five counties, San Francisco, San Mateo, Santa Clara, Alameda, and Contra Costa, which border the San Francisco Bay. The area also includes portions of three other counties, Solano, Santa Cruz, and San Benito, which are in the general vicinity of the greater San Francisco Bay metropolitan area. The boundary of the San Francisco Bay viticultural area is as described below.

* * * * *

(24) Then proceed west-southwest along the south shoreline of the Suisun Bay and the Carquinez Strait to its intersection with Interstate 680 at the Benicia-Martinez Bridge and BM 66, T3N/R2W, on the Vine Hill Quadrangle.

(25) Then proceed generally north following Interstate 680, crossing over and back on the Benicia Quadrangle map and continuing over the Fairfield South Quadrangle map, to its intersection with the Southern Pacific railroad track at Cordelia, Section 12, T4N/R3W, on the Cordelia Quadrangle map.

(26) Then proceed generally west along the Southern Pacific railroad track to its intersection with the Napa and Solano Counties boundary line in Jameson Canyon at Creston, Section 9, T4N/R3W, on the Cordelia Quadrangle map.

(27) Then proceed generally south-southeast, followed by straight west along the Napa and Solano Counties boundary line; continue straight west, crossing over the Cuttings Wharf Quadrangle map, to its intersection with the east shoreline of Sonoma Creek slough, which coincides with the Highway 37 bridge on the Solano County side of the creek, T4N/R5W, on the Sears Point Quadrangle.

(28) Then proceed generally southeast along the north and east shorelines of San Pablo Bay, also known as the San Pablo Bay National Wildlife Refuge, crossing over the Cuttings Wharf Quadrangle map, to its intersection with the Breakwater line, located within the Vallejo City boundaries and 0.7 mile west-southwest of the beacon, T3N/R4W, on the Mare Island Quadrangle.

(29) Then proceed 1.2 miles straight south-southwest to its intersection with the San Pablo Bay shoreline at BM 14, west of Davis Point, T3N/R4W, on the Mare Island Quadrangle.

(30) Then proceed generally south along the contiguous eastern shorelines of San Pablo Bay and San Francisco Bay, crossing over the Richmond and San Quentin Quadrangle maps, to its intersection with the San Francisco/Oakland Bay Bridge on the Oakland West Quadrangle.

* * * * *

Dated: November 28, 2006.

John J. Manfreda,

Administrator.

[FR Doc. E6-20504 Filed 12-4-06; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 40, 41, 44, and 45

[Notice No. 69; Re: Notice No. 65]

RIN 1513-AB34

Tax Classification of Cigars and Cigarettes

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

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: In response to an industry member request, the Alcohol and Tobacco Tax and Trade Bureau extends the comment period for Notice No. 65, Tax Classification of Cigars and Cigarettes, a notice of proposed rulemaking published in the **Federal Register** on October 25, 2006, for an additional 90 days.

DATES: Written comments on Notice No. 65 must now be received on or before March 26, 2007.

ADDRESSES: You may send comments to any of the following addresses—

- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 65, P.O. Box 14412, Washington, DC 20044-4412.

- 202-927-8525 (facsimile).
- nprm@ttb.gov (e-mail).
- http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.

An online comment form is posted with this notice on our Web site.

- <http://www.regulations.gov>. Federal e-rulemaking portal; follow instructions for submitting comments.

You may view copies of this extension notice, Notice No. 65, and any comments we receive by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202-927-2400. You may also access copies of this extension notice, Notice No. 65, and the related comments online at http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.

FOR FURTHER INFORMATION CONTACT:

Linda Wade Chapman, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20220; telephone 202-927-8210; or e-mail Linda.Chapman@ttb.gov.

SUPPLEMENTARY INFORMATION: On October 25, 2006, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published Notice No. 65, Tax Classification of Cigars and Cigarettes, in the **Federal Register** (71 FR 62506). In that notice of proposed rulemaking, TTB requested public comment on proposed amendments to our regulations regarding the classification of cigars and cigarettes for Federal excise tax purposes. As originally published, the comment period for Notice No. 65, was scheduled to close on December 26, 2006.

After publication of Notice No. 65, TTB received a request from the Cigar Association of America, Inc. (CAA) to extend the comment period for Notice No. 65 for 90 days beyond the December 26, 2006, closing date. In its letter to TTB, CAA lists three reasons for the extension request. First, CAA notes that Notice No. 65 raises numerous complex and important issues relating to the tax classification of cigars and cigarettes and the proposed method for measuring total reducing sugars. Second, CAA states that it requires additional time to coordinate with its domestic and foreign members to consider the impact of the

proposed regulatory changes on the industry and to evaluate the analytical method TTB used to measure total reducing sugars. Third, CAA notes that the December 26, 2006, deadline for comments falls over two major holidays, which will hinder its ability to collect data and comments from its members.

In response to this request, TTB extends the comment period for Notice No. 65 for an additional 90 days. Therefore, comments on Notice No. 65 are now due on or before March 26, 2007.

Dated: November 21, 2006.

John J. Manfreda,

Administrator.

[FR Doc. E6-20506 Filed 12-4-06; 8:45 am]

BILLING CODE 4810-31-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R07-OAR-2006-0900; FRL-8250-6]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) and operating permits program revision submitted by the State of Missouri to update the ambient air quality standards, sampling methods, definitions, and common reference methods and tables. The update also includes references to implement the 8-hour ozone and PM_{2.5} National Ambient Air Quality Standards that were finalized on July 18, 1997.

DATES: Comments on this proposed action must be received in writing by January 4, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2006-0900 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* algie-eakin.amy@epa.gov.

3. *Mail:* Amy Algie-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to: Amy Algie-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas

66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT:

Amy Algoe-Eakin at (913) 551-7942, or by e-mail at algoe-eakin.amy@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP and operating permits program revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant 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 action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: November 21, 2006.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E6-20445 Filed 12-4-06; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2006-25453]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking requesting that the agency amend Federal Motor Vehicle Safety Standard No. 208, "Occupant crash protection," to include belted test dummies in the rear seats of the dynamic crash tests, and to include a cargo test for occupant protection.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Christopher Wiacek, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366-4801, Facsimile: (202) 366-4329.

For legal issues, you may contact Edward Glancy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366-5263, Facsimile: (202) 366-3820.

SUPPLEMENTARY INFORMATION:

I. The Petition

On August 12, 2004, the agency received a petition from Larry E. Coben of the law firm Coben & Associates, and Alan Cantor of the consulting firm ARCCA, Inc. requesting two safety amendments to Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection." First, the petitioners requested an amendment to include belted test dummies in the rear seats of the dynamic crash tests. Second, the petitioners requested that the agency adopt an unrestrained cargo test, as defined by the United Nations under Economic Commission for Europe (ECE) Regulation 17, "Uniform provisions concerning the approval of vehicles with regard to the seats, their anchorages and any head restraints." In support of their position, the petitioners submitted test data to the agency on August 24, 2004.

A. Part 1—Rear Seat Occupant Protection

The first aspect of the petition requested amending the existing FMVSS No. 208 frontal barrier crash tests (or an equivalent sled test) to include new performance requirements for an assortment of belted test dummies positioned in rear seats. The petitioners recommended selecting amongst the 95th percentile male, 50th percentile male, 5th percentile female, and 6-year-old child dummy sizes, and adopting FMVSS No. 208 injury criteria for the head, neck, chest and femurs. They also recommended adopting a new method of assessing abdominal injury risk. The

petitioners noted that FMVSS No. 209, "Seat belt assemblies," FMVSS No. 210, "Seat belt assembly anchorages," and the equipment provisions of FMVSS No. 208 do not have dynamic performance requirements for rear seat restraints. The petitioners further stated that applying the same injury criteria to instrumented rear seat dummies that are applied to front seat dummies in frontal crashes is warranted, and would not cause any undue expense.

B. Part 2—Unrestrained Cargo Test

The second aspect of the petition requested that the agency amend FMVSS No. 208 to include an unrestrained cargo test, as specified in the European seat standard, ECE 17, and to adopt the pass/fail criteria employed in that standard. The petitioner noted that ECE 17 was adopted to ensure that vehicles maintain sufficient strength to protect occupants from displaced luggage that may be thrown into the back of vehicle seats in a frontal impact. The petitioners noted that FMVSS No. 208 (or any other standard) does not account for cargo that is regularly placed in the luggage/storage areas of passenger cars, vans, sport utility vehicles, and applicable trucks. The petitioners stated that the use of unrestrained cargo in FMVSS No. 208 tests would provide an assessment of the passive barrier that lies between the cargo compartment and rear seat occupants.

II. Discussion of Part 1—Rear Seat Occupant Protection

A. Data From Petitioner

On August 24, 2004, the petitioners provided frontal impact crash test data using a 1995 model year Hyundai Scoupe in conjunction with their petition.¹ Frontal impact crash tests were conducted at both 48 km/h and 64 km/h with a 5th percentile female Hybrid III dummy placed in the left rear seating position, restrained by a lap/shoulder belt. According to the petitioners' data, the dummy experienced injury measurements in excess of the maximum head injury measurements applicable under FMVSS No. 208 in both tests. Additionally, the dummy's chest acceleration measurement exceeded the criterion in the 48 km/h test and was nearly exceeded in the 64 km/h test. Examination of the films revealed that the 5th percentile female dummy's head contacted the dummy's knees in the 48 km/h test, and contacted the front driver seat back and later its own knees in the

¹ For the crash data, see the docket for this notice.

64 km/h test. In the 48 km/h test, the dummy was positioned in a normal seating position as described in FMVSS No. 208; however, in the 64 km/h test, the dummy's upper torso was positioned away from the seat back and the head was tilted downward. The petitioner did not provide any information on why the dummy positioning was different in the 64 km/h test.

B. Summary of Relevant Agency Actions

The dynamic performance of front outboard seats and restraint systems in light passenger vehicles (with a gross vehicle weight rating of 3,856 kilograms or less) is evaluated through dynamic crash tests in FMVSS No. 208. As the petitioner noted, rear seat belts are required to meet various component tests as prescribed in FMVSS Nos. 209 and 210, and the equipment provisions of FMVSS No. 208. Prior to 1989, only lap belts were required in rear outboard seating positions. On June 14, 1989, NHTSA published a final rule (54 FR 25275) that required the installation of lap and shoulder belts in rear outboard seats of passenger cars other than convertibles. NHTSA published a second final rule (54 FR 46257) on November 2, 1989 to extend the rear outboard lap/shoulder belt requirement to convertibles, light trucks, vans, and small buses, other than school buses. Over time, these rear lap/shoulder belts have been found to be 15 percent more effective than lap belts alone in all crashes, and 25 percent more effective in reducing the risk of death in frontal crashes.² More recently, on December 8, 2004, NHTSA published a final rule (69 FR 70910) requiring lap and shoulder belts in rear center seating positions in most passenger cars and light duty passenger vehicles. These rear center lap/shoulder belts were first required on September 1, 2005.

NHTSA has also evaluated the merits of including child dummies in the New Car Assessment Group (NCAP) program pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Section 14(b) of this Act directed the Secretary of Transportation to determine "whether to include child restraints in each vehicle crash tested under NCAP." Two notices have been published on the agency's efforts in this area: Notice of final decision on the NCAP programs for child safety, published in the **Federal Register** (70 FR 29815) on May 24, 2005,

and response to comments, notice of decision for NCAP, published in the **Federal Register** (70 FR 75536) on December 20, 2005. These documents discuss the agency's decision to maintain the current frontal impact test procedures while conducting the necessary research to evaluate if and how the program could be modified to include child dummies.

C. Analysis of Petition

NHTSA currently is continuing a research program to examine rear seat occupant protection. The program to advance rear seat occupant protection includes analytical and sled test simulations to determine advanced restraint system feasibility and improved restraint geometry in rear seats. Test dummies of different sizes are included in rear seats of frontal crash tests, when feasible.³ The objective of the program is to examine the performance of existing rear seat restraints, assess the effectiveness of advanced rear restraint systems and evaluate the biofidelity of various anthropomorphic test devices in the rear seat. NHTSA is collaborating with various restraint and vehicle manufacturers to develop and evaluate effective restraints for the rear seat. NHTSA's Special Crash Investigations and CIREN programs also plan to conduct detailed examination of select crashes involving rear seat occupants with serious to fatal injuries. The agency will use this data to assess the dynamic performance of rear seat restraints in real world crashes. We are also studying this data to establish a correlation between testing and real world crashes.

Implementation of the petitioners' request to amend FMVSS No. 208 at this time would be premature. As discussed in a **Federal Register** notice responding to a petition for rulemaking from Mr. James E. Hofferberth (71 FR 25130), NHTSA currently has an insufficient amount of data on child dummies in a FMVSS No. 208 crash environment to conduct a thorough crash test analysis. Also, the agency does not have sufficient research and testing that would be needed to incorporate the 95th percentile adult male dummy into the Federal motor vehicle safety standards. The information provided by the petitioners gave no new insight in this area.

At this point in time, the agency has concluded that further study is needed and research will continue in order to

make a definitive determination on potential requirements for rear seat occupant performance.

III. Discussion of Part 2—Unrestrained Cargo Test

A. Additional Data From Petitioner

On August 24, 2004, the petitioners provided sled test data using a model year 1995 Hyundai Scoupe in support of their petition. Tests were conducted at 48 km/h and 64 km/h following the ECE 17 protocol using unrestrained simulated luggage in the cargo area. Seat back deformation and locking mechanisms were monitored in the tests. The petitioner provided electronic video files⁴ showing unrestrained cargo contact with the seat back, seat latch failure, and forward movement of the seat back during the event.

B. Summary of Relevant Agency Actions

FMVSS No. 207, "Seating systems," establishes the minimum performance requirements for both the strength of seat backs and the seat attachment to the vehicle. The standard specifies that the seat restraining device shall not release or fail when the required load is applied to the seat back. Effectively, this provides occupants with some level of protection from loose cargo displaced during a crash. Alternatively, ECE 17 requires a dynamic impact test with simulated cargo. The requirement is deemed to be met if, during and after the dynamic impact test, the seat back remains in position and the locking mechanisms remain in place. However, during the test, deformation of the seat back and its fastenings is permitted provided that the forward contour of the seat back and/or head restraint does not move forward past specified limits. While FMVSS No. 207 and ECE 17 have distinct performance tests, we have no data at this time to suggest that the field-relevant performance of one approach is superior to the other.

To identify the current safety problem associated with loose cargo and seat performance in vehicles that comply with FMVSS No. 207 in the current fleet, NHTSA examined real world crash data from the 2000–2004 National Automotive Sampling System Crashworthiness Data System (NASS–CDS) where an occupant sustained an AIS 3+ injury from contact with an "interior loose object," in a frontal crash where there is a "seat performance failure." The NASS–CDS data collection term "interior loose object" includes any interior items that are not a direct

² "Effectiveness of Lap/Shoulder Belts in the Back Outboard Seating Positions," Pages 20 and 88, Evaluation Division, Plans and Policy, National Highway Traffic Safety Administration, Washington, DC, June 1999, DOT HS 808 945.

³ Feasibility considerations include, but are not limited to: additional cost, additional timing, added weight, data acquisition capabilities, and potential interference with other aspects of the test.

⁴ For the sled test data, see the docket for this notice. Reference: sled tests 24953, 24954 and 24955.

part of the vehicle; these items are not necessarily located in the rear cargo area. A "seat performance failure" includes seat hardware failure, seat deformed by intrusion or occupant impact or other failure mechanism. We identified one case where an AIS 3+ injury was reported from contact with "interior loose objects" and there was a "seat performance failure." We then manually reviewed the individual case file⁵ for accuracy in the reporting and relevancy to the frontal crash test procedure proposed. After a careful review of the relevant case file, it was concluded that this was not an incident where loose cargo from the luggage area of the vehicle compromised the seat performance, intruded into the passenger compartment, and caused a direct injury to the occupants in a frontal crash. This is not to say that there are not anecdotal cases that occur in the real world. However, our query of five years of NASS data yielded no cases matching the above criteria.

C. Analysis of Petition

Analysis of the available real world data does not indicate that the incidences and severity of motor vehicle occupants injured from unrestrained cargo as a direct result of a seat performance failure in motor vehicle crashes is a safety problem that would warrant an amendment to the Federal standard at this time. While there may be anecdotal cases of displaced cargo intruding into the passenger compartment and injuring occupants, the agency has not been able to quantify the safety problem beyond a review of the NASS data. More research would be needed to substantiate a correlation between cargo intrusion and occupant safety resulting from seat deformation or failure. The petitioners also did not provide any field data demonstrating such a problem. Furthermore, for the agency to pursue a rulemaking adopting the ECE 17 requirement, considerable research and testing would be needed on the effectiveness of a seat back deflection measurement to reduce occupant injury and the design and cost of potential countermeasures beyond the current requirements specified in FMVSS No. 207. The petitioners did not provide such information.

IV. Conclusion

After carefully considering all aspects of the petitions, the agency has decided to deny them. As stated above, the agency has undertaken research in some areas of concern identified by the petitioners. Making a determination to

amend the standards prior to the completion of this research would be premature. Additionally, other areas of concern identified by the petitioners would require substantial research to address. While the agency may in the future consider adding additional dummies or unrestrained cargo to its frontal crash test and/or other programs, it is not appropriate to consider rulemaking at this time. In accordance with 49 CFR part 552, this completes the agency's review of the petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30162; delegation of authority at 49 CFR 1.50.

Issued on: November 29, 2006.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E6-20487 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Sacramento Mountains Thistle (*Cirsium vinaceum*) and Initiation of 5-Year Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of 5-year status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the threatened Sacramento Mountains thistle (*Cirsium vinaceum*) (thistle) from the Federal List of Threatened and Endangered Plants, under the Endangered Species Act of 1973, as amended (Act). We find the petition does not present substantial information indicating that delisting of the thistle may be warranted. Therefore, we will not initiate a further 12-month status review in response to this petition under section 4(b)(3)(B) of the Act. However, we are initiating a 5-year review of this species under section 4(c)(2)(A) of the Act to consider information that has become available since we listed the species as threatened on June 16, 1987 (52 FR 22933). This will provide the public an opportunity to submit new information on the status of the species. We invite all interested parties to submit comments or information regarding this species.

DATES: The finding in this document was made on December 5, 2006. To be considered in the 5-year review, comments and information should be submitted to us (see **ADDRESSES** section) on or before March 5, 2007. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Data, comments, information, or questions concerning this petition finding and 5-year review should be submitted to the Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113. You may send your comments by electronic mail (e-mail) directly to the Service at thistlecomments@fws.gov. The petition, supporting data, and comments will be made available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** above) (telephone 505-346-2525, facsimile 505-346-2542).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial information" threshold. "Substantial information" is defined in 50 CFR 424.14(b) as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." Petitioners need not prove that the petitioned action is warranted to support a "substantial" finding; instead, the key consideration in evaluating whether or not a petition presents "substantial" information involves demonstration of the reliability and adequacy of the information supporting the action advocated by the petition.

⁵NASS-CDS case reference: 2004-049-105.

We have to satisfy the Act's requirement that we use the best available scientific and commercial information to make our decisions. However, we do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, at the 90-day finding stage, we accept the petitioner's sources and characterizations of the information, to the extent that they appear to be based on accepted scientific principles (such as citing published and peer reviewed articles, or studies done in accordance with valid methodologies), unless we have specific information to the contrary. Our finding considers whether the petition states a reasonable case for delisting on its face. Thus, our 90-day finding expresses no view as to the ultimate issue of whether the species should no longer be classified as a threatened species. We make no determinations as to the currency, accuracy, completeness, or veracity of the petition. The contents of this finding summarize that information that was available to us at the time of the petition review.

In making this finding, we relied on information provided by the petitioners and information available in our files at the time we reviewed the petition, and we evaluated that information in accordance with 50 CFR 424.14(b). Our process for making a 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information contained in the petition meets the "substantial information" threshold.

Species Information

The thistle is a stout plant, 3.3 to 5.9 feet (ft) (1 to 1.8 meters (m)) tall. Thistle stems are brown-purple and highly branched. The basal leaves are green, 12 to 20 inches (in) (30 to 50 centimeters (cm)) long, and up to 8 in (20 cm) wide, with ragged edges. The thistle presently occurs on both the eastern and western slopes of the Sacramento Mountains in Otero County, New Mexico. The thistle occurs primarily on National Forest System lands of the Lincoln National Forest in south-central New Mexico (Service 1993, p. 3). A few occupied sites lie on the extreme southern end of the Mescalero Apache Indian Reservation and a few private land inholdings within the Lincoln National Forest (Service 1993, p. 3). In this area, the thistle occurs within the mixed conifer zone, between 7,500 and 9,500 ft (2,300 and 2,900 m), in limestone substrate. The thistle is an obligate riparian species that requires saturated soils with surface or sub-surface water

flow. Waters at these sites are rich in calcium carbonate that often precipitates out to create large areas of travertine (calcium carbonate) deposits, which occasionally become large bluffs or hills. Travertine deposits are the most common habitats of the thistle.

On June 16, 1987, we listed the thistle as a threatened species based on threats from water development, grazing, recreation, logging, and the invasion of exotic plants (52 FR 22933). A recovery plan for the species was finalized on September 27, 1993 (Service 1993, pp. 1–23).

Review of the Petition

For this finding, the Service evaluated the statements and information in the petition by comparing these with information contained in our files. The Act identifies the five factors to be considered, either singly or in combination, to determine whether a species may be threatened or endangered or whether a listed species should be reclassified or removed from the list. The following discussion presents our evaluation of the petition, based on information provided in the petition, information available in our files, and our current understanding of the species.

On April 30, 2004, we received a petition from Mr. Doug Moore, Otero County Commissioner, New Mexico, to delist the thistle as a threatened species. In response to the petitioner's request to delist the thistle, we sent a letter to the petitioner dated August 31, 2005, explaining that the Service would review the petition and determine whether or not the petition presents substantial information indicating that delisting the thistle may be warranted.

The petition references the June 16, 1987, final listing rule (52 FR 22933) and lists the following threats for the species: (1) Loss of water; (2) trampling or ground disturbance by cattle, wildlife, or humans; (3) grazing of plants; and (4) logging. The supporting information provided by the petitioner includes only a portion of one recent biological assessment and a portion of one recent biological opinion conducted for a USDA Forest Service (Forest Service) grazing allotment (Forest Service 2003, pp. 1, 57–68; Service 2004, pp. 1, 25–27). The petition also provides the following summary statements regarding the thistle: (1) The range of the species is 500 percent greater than when it was listed in 1987; (2) the known population size is 2,800 percent greater than when it was listed; and (3) the known threats that can be managed have been virtually removed. The petitioner states that monitoring has

determined that grazing and disturbance no longer threaten the species, and that logging has never impacted the thistle. The petition also cites a biological assessment prepared by the Forest Service (Forest Service 2003, pp. 41–68) that indicates the thistle's abundance and range have increased since the species was listed.

Finally, the petitioner disagrees with the Recovery Plan's strategy of encouraging the State of New Mexico to adopt water law standards that recognize the need for preservation of in-stream flow to benefit plants, fish, and other wildlife (Service 1993, p. 9). The petitioner suggests that proactive watershed restoration would be a more effective strategy to insure the availability of water at the springs and bogs which provide habitat for the species. The Petitioner also suggests that the availability of water, air, and sunshine are aspects of the natural world which do not need to be guaranteed by the Service before a species can be delisted.

Conservation Status

Under section 4 of the Act, we may list or delist a species, subspecies, or Distinct Population Segment of vertebrate taxa on the basis of any of the following five factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. This 90-day finding is not a status assessment and does not constitute a status review under the Act. Therefore, what follows below is a preliminary review of the factors affecting this species.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The June 16, 1987, listing (52 FR 22933) and subsequent recovery plan (Service 1993, pp. 4–6) list habitat destruction or alteration by domestic livestock, water development (e.g., withdrawal from springs and reservoir construction), trampling by recreationists, road maintenance, and logging as threats to the species' habitat and range. The thistle also has been impacted by off-road vehicles (ORVs), motorcycles, road grading, and other activities (Service 1993, pp. 4–6; Forest Service 2004, pp. 625–629).

Information Provided in the Petition

The petitioner maintains that loss of water may threaten the thistle, but suggests that the availability of water, air, and sunshine are aspects of the natural world which do not need to be guaranteed by the Service. The petitioner notes that proactive watershed restoration would be more appropriate than acquiring water rights for the thistle. The petitioner also states that logging has not impacted the thistle because forest management discourages these activities near areas considered habitat (springs and bogs). Finally, the petitioner maintains that the plant's known population size is 2,800 percent greater than when it was listed.

Evaluation of Information in the Petition

We agree with the petitioner that reduction in the availability of water could threaten the species. As noted, the thistle is an obligate riparian species that requires surface or immediately sub-surface water flows. The loss of water can be: (1) Naturally caused due to drought conditions; (2) caused by other factors that may cause a spring to go dry (*i.e.*, rerouting of underground channels); or (3) caused by human impacts such as spring development or loss of water flow to an occupied site through diversion by roads or trails (Service 1993, pp. 4–5; Service 2004, p. 35). Since 1999, New Mexico has been in a drought (Piechota *et al.* 2004, pp. 303–305); however, the length or severity of the current drought cycle is not known, and the Southwest may be entering a period of prolonged drought (McCabe *et al.* 2004, pp. 4138–4140). Droughts of the 20th century are minor in comparison to droughts in the last 2000 years. For example, droughts prior to 1600 are characterized by longer duration (multidecadal) and greater spatial extent than droughts of today (Woodhouse and Overpeck 1998, pp. 2698–2706; Piechota *et al.* 2004, pp. 303–305). It is unknown how the springs in the Sacramento Mountains would respond to extended drought and an increase in the level of water withdrawals (*e.g.*, groundwater pumping). It is likely that the seasonal distribution of yearly precipitation also plays a role in water availability for the thistle. Spring desiccation at occupied sites has led to a reduction in the number of individual plants, and in some cases, caused a loss of all plants at previously occupied sites (Forest Service 2003, pp. 35–36). We will consider the petitioner's suggestion for alternative methods of providing water in future recovery planning efforts.

We generally agree with the statement that logging does not currently threaten the thistle. At present, the Forest Service applies a minimum 200 ft (60 m) protective buffer around thistle occurrences during forest management activities (Service 2002, p. 3; Service 2004, pp. 4–13; Service 2005a, p. 3). Still, the petition does not provide substantial scientific information that the present or threatened destruction, modification, or curtailment of habitat or range no longer threatens the thistle.

Information in our files indicates that at the time of listing, the range of the thistle consisted of approximately 20 known population areas (within 6 large canyon drainages) containing an estimated 10,000 to 15,000 sexually reproducing individuals (52 FR 22933; Service 1993, p. 2). Presently, the thistle occurs in small, dense populations at 86 sites on the Lincoln National Forest with an estimated population of 350,000 to 400,000 plants (Service 2005b, pp. 695–697). The extent of occupied sites and plant numbers fluctuates with rainfall and the amount of surface flow available. Populations generally expand in years of higher spring flows, with plants establishing farther downstream and scattered along the springs' outflow creeks. In years of lower flow, populations contract back to the wetter areas around the springs (Forest Service 2004, pp. 625–629).

As discussed above, information in our files indicates that the petitioner's claim that the number of populations and range of the thistle are greater than what was known in 1987 is reliable and accurate. However, the petitioner has presented no information or analysis to suggest these increased numbers would indicate that listing is no longer warranted, nor to suggest that threats under Factor A no longer impact the species. Impacts to habitat remain substantial factors impacting the long-term viability of this species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition provides no information addressing this factor. The original listing did not cite this factor as significant.

C. Disease or Predation

Information Provided in the Petition

The petition indicates that herbivory does not adversely affect the species because vigorous growth of thistle was observed in areas following heavy use.

Evaluation of Information in the Petition

The original listing suggested the amount of predation by herbivores was

minimal (52 FR 22933, June 16, 1987). Livestock can trample vulnerable seedlings, rosettes, and flowering stalks, as well as damage travertine and soft substrates in occupied and potential habitat (Thomson 1991, pp. 44–52; Service 2004, pp. 62–63). The petition includes information indicating that livestock use of occupied habitat results in trampling and herbivory, but reduced livestock stocking levels and fencing around springs has led to large increases in thistle abundance (Forest Service 2003, pp. 53–56; Service 2004, p. 35; Service 2005b, pp. 698–703). For example, more than 10-fold increases have been observed in some areas following the construction and maintenance of exclosures (Forest Service 2003, pp. 53–56). Grazing exclosures have protected thistles from trampling and herbivory, and allowed populations inside the exclosures to expand outside fenced areas (Forest Service 2003, pp. 53–56). Forty of the 86 population sites located within the Lincoln National Forest have been fenced to exclude livestock or are considered to be inaccessible (Service 2005b, p. 698). Exclosures total approximately 120 ha (290 ac), protecting occupied thistle habitat from the negative impacts associated with livestock use (Service 2005b, p. 698). Although thistles have been documented to recover within a few weeks from light grazing (*i.e.*, grazing impacting less than 10 percent of known plants), livestock grazing on the thistle's flowering stalks and the leaves of rosettes can contribute to the loss of the entire reproductive output of the plant (Forest Service 2003, p. 53, 59; Service 2005b, p. 697). The petitioner did present evidence that threats from grazing can be reduced by using exclosures but did not present evidence that grazing no longer is a threat to the species.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition does not discuss the adequacy of regulatory mechanisms. The original listing did not cite this factor as significant except to briefly mention that take was prohibited by existing Forest Service regulations and that no other State and Federal regulations protected the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The petition does not discuss other natural or manmade factors. The original listing discussed the impacts of livestock grazing on range and the impacts of competition from introduced exotic species. As livestock grazing was

also discussed under Factor C in the original listing, the petitioner's discussion of this issue and our response is covered under Predation above.

Finding

We have reviewed the petition and evaluated the information in relation to other pertinent literature and information available in our files. The thistle's population numbers and range are greater today than at the time of the June 16, 1987, listing. The petitioner states the threats are no longer significant, and requested that we delist the species. However, the petition does not analyze any new scientific information in relation to the five factors we must consider before proposing to delist a species. In addition, the petitioner includes very little detailed justification for the suggested delisting of the thistle, does not provide information regarding the status of the species over a significant portion of its range, does not describe or analyze how the threats relate to past or present numbers and distribution of the thistle, and includes only a small amount of supporting documentation. After this review and evaluation, we find the petition does not present substantial information to indicate that delisting the thistle may be warranted at this time.

5-Year Review

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our initiation of a 5-year review for the threatened thistle.

Why Is a 5-Year Review Conducted?

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B) of the Act, to determine, on the basis of such a review, whether or not any species should be removed from the List of Endangered and Threatened Wildlife (50 CFR 17.11) or the List of Endangered and Threatened Wildlife Plants (50 CFR 17.12) (delisted), or reclassified from endangered to threatened (downlisted), or from threatened to endangered (uplisted).

The 5-year review is an assessment of the best scientific and commercial data available at the time of the review. Therefore, we are requesting submission of any new scientific and commercial data on the thistle. Considering the best scientific and commercial information available, the Service will recommend whether or not a change is warranted in

the Federal classification of the thistle. Any change in Federal classification would require a separate rulemaking. As part of our 5-year review, we will ensure that the information used is complete, accurate, and consistent with the requirements of the Act, the Service's Policy on Information Standards under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

What Information Is Considered in the Review?

A 5-year review considers all new information available at the time of the review. This review will consider the best scientific and commercial data that has become available since we listed the species on June 16, 1987 such as: (A) Species biology, including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including but not limited to amount, distribution, and suitability; (C) conservation measures that have been implemented to benefit the species; (D) threat status and trends (see five factors under heading "How do we determine whether a species is endangered or threatened?"); and (E) other new information, data, or corrections, including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List of Endangered and Threatened Wildlife and Plants, and improved analytical methods.

How Is the Sacramento Mountains Thistle Currently Listed?

Under the Act, the Service maintains Lists of Endangered and Threatened Wildlife and Plant species (Lists) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Amendments to the Lists through final rules are published in the **Federal Register**. The Lists are also available on our Internet site at <http://endangered.fws.gov/wildlife.html>. The Sacramento Mountains Thistle (*Cirsium vinaceum*) is listed as threatened, with an historic range of U.S.A. (New Mexico), in the family Asteraceae. It does not have designated critical habitat, and no 4(d) special rules apply to this plant.

Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

(A) *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature; (B) *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range; (C) *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the five following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What Could Happen as a Result of This Review?

If we find that there is new information concerning the Sacramento Mountains thistle, indicating a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from threatened to endangered (uplist); or (b) remove the species from the List (delist). If we determine that a change in classification is not warranted, then the thistle will remain on the List under its current threatened status.

Public Solicitation of New Information

We request any new information concerning the status of the Sacramento Mountains thistle. See "What Information Is Considered in the Review?" heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, or copies of any pertinent publications, reports, or letters by knowledgeable sources. If you wish to submit information for the 5-year review, you may submit information to the Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES**).

Our practice is to make comments, including names and home addresses of respondents, available for public review

during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address under the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

References Cited

A complete list of all references cited in this notice is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES**).

Author

The primary authors of this rule are the New Mexico Ecological Services Field Office staff (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 14, 2006.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. E6-20317 Filed 12-4-06; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Tricolored Blackbird as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the tricolored blackbird (*Agelaius tricolor*) as threatened or endangered under the

Endangered Species Act of 1973, as amended. We find that the petition does not present substantial scientific or commercial information indicating that listing the tricolored blackbird may be warranted. Therefore, we will not be initiating a status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the tricolored blackbird or its habitat at any time.

DATES: The finding announced in this document was made on December 5, 2006. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: The complete file for this finding is available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W-2605, Sacramento, California 95825-1846. New information, materials, comments, or questions concerning this species may be submitted to us at any time.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Field Supervisor or Arnold Roessler, Listing Branch Chief of the Sacramento Fish and Wildlife Office (see **ADDRESSES**), by telephone at (916) 414-6600, or by facsimile to (916) 414-6712. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and the finding is to be published in the **Federal Register**.

This finding summarizes information included in the petition and information available to us at the time of the petition review. A 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the

information in the petition meets the "substantial information" threshold. Substantial information is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)).

Previous Federal Action

In 1990, the California Department of Fish and Game (CDFG) added the tricolored blackbird to its list of Bird Species of Special Concern. In 1991 the Yolo Chapter of the National Audubon Society submitted a petition to the Service and to the California Fish and Game Commission to list the tricolored blackbird as a threatened or endangered species. Researchers (Hamilton *et al.* 1995, p. 7) working on the species in 1992 found that the population had increased from the late 1980s; thus, the petitioners withdrew their petition based on new information that the population numbers had increased. The Service included this species as a candidate (Category 2) for Federal listing as either threatened or endangered in the 1991 and 1994 Candidate Notice of Review (CNOR) (59 FR 58981, p. 58990, issued November 15, 1994). Category 2 status included those taxa for which information in the Service's possession indicated that a proposed listing rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. In the CNOR published on February 28, 1996, the Service announced a revised list of plant and animal taxa that were regarded as candidates for possible addition to the List of Threatened and Endangered Species (61 FR 7595). The revised candidate list included only former Category 1 species. All former Category 2 species were dropped from the list in order to reduce confusion about the conservation status of these species, and to clarify that the Service no longer regarded these species as candidates for listing. Since the tricolored blackbird was a Category 2 species, it was no longer recognized as a candidate species as of the February 28, 1996, CNOR. The tricolored blackbird is now considered a U.S. Fish and Wildlife Service Bird of Conservation Concern (USFWS 2002). This designation is a result of mandates required through the Fish and Wildlife Conservation Act, which in part requires the Service to identify nongame migratory bird species that, without additional conservation actions, are likely to become candidates for listing under the Act. One of the goals of identifying species of conservation concern is to draw attention to the

species in greatest need of conservation action and to focus funding and efforts on conserving the species and preclude the need for listing.

On April 8, 2004, we received a petition to list the tricolored blackbird as a threatened or endangered species from the Center for Biological Diversity (Center for Biological Diversity 2004). The petitioner also requested an emergency listing of the species. The submission clearly identified itself as a petition and included the requisite identification information of the petitioner, as required in 50 CFR 424.14(a). In our May 25, 2004, response letter to the petitioner, we said that we had reviewed the petition and determined that an emergency listing was not warranted, and that because of other court-ordered listing and critical habitat actions and settlements, we would not be able to otherwise address the petition to list the tricolored blackbird at that time, but would complete the action when workload and funding allowed.

On July 15, 2005, we received a 60-day notice of intent to sue filed by the Center for Biological Diversity for lack of response to the petition to list the tricolored blackbird. On February 13, 2006, the Center for Biological Diversity filed a complaint for declaratory judgment and injunctive relief in Federal District Court for the Northern District of California (*Center for Biological Diversity v. Norton et al.*, No. C-06-0928), for our failure to issue a mandatory 90-day finding on the petition to list the tricolored blackbird. On May 11, 2006, we reached an agreement with the plaintiff to complete the 90-day finding by December 6, 2006, and if substantial, to complete the 12-month finding by October 18, 2007. This notice constitutes the 90-day finding for the April 8, 2004, petition to list the tricolored blackbird.

Species Information

Description and Taxonomy

The tricolored blackbird (*Agelaius tricolor*) is a medium-sized blackbird species in which males and females differ in plumage, size, and behavior. Adult male plumage is entirely black with a blue gloss in full sunlight. Adult males also have white and red wing plumage, are generally larger than females, and perform a display when breeding (Beedy and Hamilton 1999, pp. 1, 10). Immature male plumage is duller black than adult male plumage and is mottled with gray, eventually becoming mostly dull black with mixed black shoulder patch (Beedy and Hamilton 1999, p. 2). Adult female plumage is

primarily black, with grayish streaks. The chin and throat are relatively whitish, rarely with faint pinkish or peach wash and the shoulder patch is small and reddish. Immature female plumage is similar to that of the adult female, except the reddish shoulder patch is absent (Beedy and Hamilton 1999, p. 2). Individuals range from 18 to 24 centimeters (cm) (7 to 9 inches (in)) in length, and from 40 to 70 grams (g) (1 to 2 ounces (oz)) in body mass, depending on gender and season (Beedy and Hamilton 1999, p. 2).

The tricolored blackbird is a highly colonial species and forms the largest breeding colonies of any North American passerine (perching) bird species (Orians and Collier 1962, p. 450; Cook and Toft 2005, p. 74). Breeding colonies can attract thousands of birds to a single site. During a 1931–1936 study, Neff (1937, pp. 75, 76) described locating a colony of tricolored blackbirds in 1934 that was estimated to have more than 200,000 nests. If we take the number of nests reported, and multiply by 1.5 (mean estimated sex ratio of 2 females per male), we can calculate an estimated number of breeding adults (Orians 1961a, pp. 300, 308). Using this calculation, we estimate that Neff (1937, pp. 75, 76) documented about 300,000 breeding adults in the one colony. However, a breeding colony can also contain as few as six nests (about nine breeding adults), which Neff (1937, p. 79) described finding in 1932 in Solano County. The highly synchronized and colonial breeding behavior of the tricolored blackbird may have adapted to exploit a changing environment where the locations of secure nesting habitat and plentiful food supplies were variable from year to year (Orians 1961a, pp. 297, 305, 306; Orians and Collier 1962, p. 456; Payne 1969, p. 9).

Habitat

Breeding

Tricolored blackbirds have three basic requirements in selecting a breeding colony site: (1) Open and accessible water; (2) a protective nesting substrate, such as flooded, spiny, or thorny vegetation; and (3) a suitable foraging area within a few kilometers of the nesting site to provide adequate food such as insects (Hamilton *et al.* 1995, p. 25; Beedy and Hamilton 1997, p. 4).

Neff (1937, pp. 67, 73) documented that the majority of tricolored blackbird breeding colony sites he observed were in marsh habitat dominated with cattails (*Typha* spp.) or bulrushes (tules) (*Schoenoplectus* spp. and *Scirpus* spp), or both. Neff (1937, p. 78) also stated

that, while cattail and bulrushes were favored nesting substrates for the species, there was a surprising adaptability in the nest sites chosen. Vegetation such as barley (*Hordeum* spp.), mustard (*Brassica nigra*), blackberries (*Rubus* spp.), thistles (*Cirsium* and *Centaurea* spp.), nettles (*Urtica* sp.), and willows (*Salix* spp.) were used as nesting substrate, even when seemingly available cattail and bulrush marshes were nearby. These observations led Neff to conclude that marshes were not necessary for the continued existence of the tricolored blackbird, although he could not determine if there had been a change in habitat preference during the history of the species (Neff 1937, p. 78).

In recent decades many colonies of breeding tricolored blackbirds have been found to use nesting substrates such as giant cane (*Arundo donax*), safflower (*Carthamus tinctorius*), tamarisk (*Tamarix* spp.), mule fat (*Baccharis salicifolia*), Fremont cottonwood (*Populus fremontii*), California ash (*Fraxinus latifolia*), Himalayan blackberries (*Rubus discolor*), and wheat (*Triticum* spp.) (Beedy and Hamilton 1999, p. 5). The species has also been found in silage and grain fields in the San Joaquin Valley (Collier 1968, pp. 20, 21).

Dairies and feedlots have been recently documented as habitat components for many tricolored blackbirds. In 1994, approximately 55 percent of all observed breeding colonies were associated with dairies (Hamilton *et al.* 1995, pp. 5, 64). In some colonies, water source, nesting substrate, and foraging area were all available under the management of a single dairy operation.

Hamilton (1998, p. 218) extensively studied the breeding season movements of tricolored blackbirds in the Central Valley of California, from 1994 to 1997. Hamilton (1998, p. 218) concluded from his data that tricolored blackbirds nest again in the same year at different localities, a pattern called itinerant breeding. Initiation of nesting in tricolored blackbirds occurs in late March to early April throughout California, but primarily in the San Joaquin Valley. Nesting occurs again in May to June in the Sacramento Valley and foothill rice growing areas (Hamilton 1998, pp. 223, 224; Beedy and Hamilton 1999, p. 4). Subsequent nesting efforts for tricolored blackbirds at some colonies may result in producing as many fledglings as the initial effort, but the usual nesting success is only a fraction of the initial effort (Beedy and Hamilton 1999, p. 11).

Foraging

Tricolored blackbirds rapidly exploit any locally abundant insect prey, including grasshoppers (Orthoptera), beetles and weevils (Coleoptera), caddis fly larvae (Trichoptera), moth and butterfly larvae (Lepidoptera) (Grase and DeHaven 1978, p. 257), dragonfly nymphs (Odonata), and lakeshore midges (Diptera), as well as grains, snails, and small clams (Beedy and Hamilton 1999, p. 6). Tricolored blackbird foraging habitat during all seasons includes dry seasonal pools, pastures, rice fields, feedlots, dairies, and agricultural fields that are continuously mowed, such as alfalfa. The species is also known to forage in other areas, such as grasslands, marsh borders, and scrub, and saltbrush (*Atriplex* spp.), but rarely utilizes typically weed free areas such as vineyards, intensely managed orchards, and row crops (Beedy and Hamilton 1997, p. 5).

Nesting tricolored blackbirds usually forage within 5 kilometers (km) (3 miles (mi)) of the breeding colony site (Orians 1961b, p. 299). However, Beedy and Hamilton (1997, p. 5) observed tricolored blackbirds foraging up to 13 km (8 mi) from the breeding colony. Orians (1961a, p. 305) explained that the colonial structure of the tricolored blackbird is very energy demanding when compared to a similar species such as the red-winged blackbird, due to the large amount of energy expended while flying to and from distant feeding sites while providing forage for young. Food that can be rapidly exploited at the foraging site needs to meet the high energy requirement of the tricolored blackbird. Orians and Collier (1962, pp. 456–458) stated that because of the tricolored blackbird's high energy requirement, the species has an unpredictable breeding distribution and in unfavorable years has lower reproductive success than the red-winged blackbird. The presence of abundant and easily available food is a requirement for a successful tricolored blackbird colony and breeding location, and colony size can vary year to year depending on food availability and other environmental conditions (Orians 1961a, p. 308).

Range and Distribution

The tricolored blackbird is largely native to California, where more than 95 percent of the population occurs. Neff (1937, p. 63) described the range of the tricolored blackbird as largely endemic to the lowlands of California, west of the Sierra Nevada, but also sparsely occurring in southernmost Oregon and

northwestern Baja California. The elevational range of the tricolored blackbird was documented by Neff (1937, p. 80) as going from sea level in San Diego and Santa Cruz Counties to about 1,200 meters (m) (3,937 feet (ft)) at Klamath Lake, Oregon. High-elevation colonies have been found in California at 1,158 m (3,800 ft) near Tehachapi, Kern County (Collier 1968, pp. 9, 10). DeHaven *et al.* (1975, p. 171) stated that the overall geographic range of the species had not changed very much in the past 30 years, and that colonies were still found in southern Oregon through Shasta County, California, along the coast from Sonoma County, throughout the Central Valley, and south to northwestern Baja California, Mexico. Sparse colonies have also been documented in Washington and Nevada (Beedy and Hamilton 1999, p. 3).

United States

California. Active tricolored blackbird breeding colonies have been recorded in 46 counties in California since the 1980s, with the largest colonies being observed in the Central Valley (Beedy and Hamilton 1999, p. 3). The species currently breeds west of the Cascade Range, into the foothills east of the Sierra Nevada, north in Honey Lake basin in Lassen County, and in marshes of the Klamath basin in Siskiyou and Modoc Counties. The species also breeds from Humboldt to Shasta Counties, continuing south to southwestern San Bernardino County, western Riverside County, and western and southern San Diego County (Beedy and Hamilton 1999, p. 3).

Oregon. The most reoccurring breeding colonies in Oregon occur in southern Klamath and southern Jackson Counties. A few other isolated breeding occurrences have been documented in northeastern Multnomah County, John Day Fossil Beds National Monument in Wheeler County, Umatilla County, and Lake County in southern Oregon. Tricolored blackbird breeding colonies in Oregon range from dozens to a few thousand breeding adults (Beedy and Hamilton 1999, p. 3; Marshall *et al.* 2003, pp. 578–580).

Washington. A small breeding colony was reported in Grant County in 1998, the first recorded observation for the State (Beedy and Hamilton 1999, p. 3). Since 1999, the species has been recorded every month, except during the month of August, in Adams County (Seattle Audubon Society Web site 2006). A small breeding colony was discovered along Crab Creek, Grant County in 1998. In 2005, an additional larger colony was recorded near Texas

Lake in Whitman County (Seattle Audubon Society Web site, 2006).

Nevada. The first recorded breeding colony of tricolored blackbirds was documented in 1996, in Carson Valley, Douglas County, in western Nevada (Beedy and Hamilton 1999, p. 3). More recent observations have found a recurring colony in a small freshwater marsh in the Carson Valley that is not known to exceed 20 breeding pairs of tricolored blackbirds per year (Floyd *et al.* 2006).

Mexico

Baja California. Tricolored blackbirds breed primarily in emergent marsh from the central and western portions of Baja California Norte, south to El Rosario, Mexico (Beedy and Hamilton 1999, p. 3; Hamilton 2006). Tricolored blackbird breeding colonies on Baja range from a handful of breeding adults to a few thousand, with very few birds being observed in winter months (Erickson 2006).

Winter Range

In the winter, tricolored blackbirds reside within a portion of their breeding range, with concentrations in coastal areas such as Monterey, Marin, Sonoma, and Santa Cruz Counties, and in and around the Sacramento-San Joaquin River Delta in California (Beedy and Hamilton 1999, p. 3). Some small populations may remain during the winter within Oregon, Nevada, other portions of California, and Baja California, Mexico (Beedy and Hamilton 1999, p. 3).

Population Studies

Population studies on tricolored blackbirds began with the studies of Neff, who conducted observations on the species from 1931 through 1936 covering portions of the range (Neff 1937, p. 62). Location and level of survey effort varied from year to year. Neff (1937, pp. 61–80) found up to 491,000 nests and an estimated 737,000 breeding birds in 1934 within the Sacramento Valley.

While completing life history studies in Colusa and Yuba Counties, Orians (1961a, p. 285, 286, 297) located a colony in 1960 with more than 100,000 nests (estimated 150,000 breeding birds) in Colusa County, and several other colonies from 1957 through 1960 which contained nearly 100,000 nests each. Orians (1961a, p. 309) stated that tricolored blackbirds were in no threat of immediate extinction and that their ecology led them to be highly adaptable birds.

DeHaven *et al.* (1975 p. 166) completed a population survey in each

breeding season (April-June) from 1969 through 1972. DeHaven *et al.* (1975) estimated the population size of tricolored blackbird colonies using either of two methods: (1) Counting the number of breeding birds, or (2) Counting nests to estimate the number of breeding birds. In 1969 and 1970, the surveys were concentrated in the Central Valley, but there were also reports from Riverside and Siskiyou Counties (DeHaven *et al.* 1975, p. 166). In 1969, an estimated 181,000 breeding birds were located in the 19 counties surveyed. In 1970, an estimated 84,850 breeding birds were located in the 19 counties surveyed. In 1971, surveys attempted to include the entire breeding range, except Baja California, from San Diego to southern Oregon. An estimated 167,540 breeding birds were reported from 24 counties in California and Oregon. In 1972, an estimated 97,850 breeding birds were reported from 14 counties from the northern San Joaquin valley through to southern Oregon (DeHaven *et al.* 1975, pp. 169, 170, 177). DeHaven *et al.* (1975, p. 179) concluded the population had declined compared to the surveys conducted by Neff in the 1930s.

In 1994, the National Audubon Society, CDFG, the Service, University of California at Davis (UCD), and experienced volunteers initiated a one-day, rangewide population census in California of the tricolored blackbird (Beedy and Hamilton 1997, pp. 12, 13). Nearly all areas of the species' range were surveyed (Hamilton *et al.* 1995, p. 7). The survey was conducted from April 22 through April 24, 1994, with the assumption that the minimum number of birds entering the 1994 breeding season would be documented (Hamilton *et al.* 1995, pp. 14, 15). Census participants located an estimated 324,621 breeding birds across the range. This number was significantly higher than estimates of between 84,850 to 181,000 breeding birds reported by DeHaven *et al.* (1975).

In 1997, a CDFG-coordinated population survey was conducted following the methods in Hamilton *et al.* (1995) (Beedy and Hamilton 1997, p.13). On April 27, 1997, census participants located an estimated 217,696 breeding tricolored blackbirds as compared to an estimated 324,621 breeding birds in 1994.

In 2000, the Service sponsored a population estimate survey, which was coordinated by UCD and the California Audubon Society between April 21 and 24, 2000 (Hamilton 2000). The 2000 survey attempted to: (1) Locate all tricolored blackbird colonies throughout their current (April 21–24, 2000)

distribution in California; (2) Estimate their numbers; and (3) Determine the outcome of their nesting activity (Hamilton 2000, pp. 7–8). As in past surveys in 1994 and 1997, focus on a particular date avoided counting birds twice as they moved to different areas during the breeding season. Approximately 153,995 breeding birds were located throughout California during the April census (Hamilton 2000, p. 27). Hamilton (2000, p. 8) stated that this population estimate represented an uneven portion of the species' breeding range, because intensively farmed agricultural areas in the Central Valley are seldom surveyed, and as a result, colonies are likely not located.

In 2004, a survey was conducted in the Central Valley and four counties outside the Central Valley (Siskiyou, Santa Clara, Monterey, and Riverside) from April 16 to April 19, 2004 (Green and Edson 2004, p. 23). The goal of the 2004 survey was to visit all historical breeding colonies in the Central Valley where 2,000 or more birds were previously found. Of the 184 historic colony sites surveyed (out of 216 historic records), 28 sites surveyed supported active colonies (Green and Edson 2004, p. 25). Although no formal breeding population estimate was made for 2004, Green and Edson (2004, pp. 25, 27) reported that colony sizes recorded in 2004 were between 5 and 102,000 breeding adults.

Hamilton (2004, p. 32), using his own data and data collected by Green and Edson (2004), estimated that 223,069 young fledged from the entire breeding season in 2004 (Hamilton 2004, p. 39). Approximately 97,733 of the 223,069 fledged from a colony on Delevan National Wildlife Refuge (NWR) of an estimated 136,000 breeding birds (Hamilton 2004, p. 38). This colony is the largest documented since the 1960s. In 2005, Hamilton and Meese (2006, p. 6), using the same methods as in the 1994, 1997, and 2000 surveys, estimated 260,000 breeding birds in the population.

Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D)

Inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether threats to the tricolored blackbird as presented in the petition and other information available in our files at the time of the petition review may pose a concern with respect to the species' survival such that listing under the Act may be warranted. Our evaluation of these threats is presented below.

For the five-factor threats analysis, we have included the information submitted by the petitioner in its entirety for each factor, and then included our evaluation of the information provided by the petitioner and our evaluation of other information available to us regarding threats to the species.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided by the Petitioner Destruction of Native Habitats

The petitioner claims that loss and degradation of native breeding habitat for the tricolored blackbird threaten the species and have led to a significant decline in the overall population size throughout its range. The petitioner cites the studies conducted in the 1930s (Neff 1937) to support this claim. The population studies conducted by Neff (1937, p. 77) state that many favorable habitats of the tricolored blackbird, including emergent vegetation growth, have been destroyed by reclamation, drainage, dredging, reservoir construction, and clearing of marshes and canals.

According to the petition, only 560,000 acres (ac) (226,624 hectares (ha)) of the original 4 million ac (1.6 million ha) of wetlands in the Central Valley still existed by 1939, and by the mid 1980s only 243,000 ac (98,339 ha) of wetlands remained (Beedy and Hamilton 1997, pp. 10, 11). The petition further states that native perennial grasslands have been reduced by more than 99 percent in the Central Valley and surrounding foothills of California (Beedy and Hamilton 1997, p. 11). The petition claims that the remaining marsh nesting habitat for tricolored blackbirds has been reduced to small isolated patches, and these patches support high concentrations of tricolored blackbird predators (predation is addressed under Factor C, below).

The petition also discusses the loss of breeding habitat at sites where colonies once occurred, such as in Yolo County

during the 1930s. Colonies were not relocated due to little or no habitat remaining during subsequent studies between 1969 and 1972 (DeHaven *et al.* 1975, p. 179).

Colony Destruction by Agricultural Activities

The petition cites a white paper and briefing statement (USFWS 2000, p. 1) to claim that tricolored blackbirds nest in grain silage fields at the same time that forage is harvested for optimum moisture content. The petition asserts that harvesting of grain silage causes nest destruction and direct mortality and further claims that this threatens most of the remaining breeding population of the species. In addition, the petition cites Beedy and Hamilton (1997, p. 17) to support the claim that many agricultural areas within the range of the tricolored blackbird have been converted to urban uses and that the urbanization of agricultural lands will continue to result in loss of habitat used by the tricolored blackbird.

The petition states that tricolored blackbirds have been adaptive in their choice of nesting substrates and have shown an increasing trend towards use of upland substrates for nesting since the 1930s (Cook and Toft 2005, p. 75). The petition also states that use of silage fields at dairies is a relatively recent phenomenon and is a primary nest site selection substrate (Beedy and Hamilton 1997, pp. 4, 18; Beedy and Hamilton 1999, p. 5).

The petition provides data compiled from various surveys that provide examples of recent breeding failures because of silage harvest. The petition concedes that the list is not complete, and states that the concentration of most of the tricolored blackbird reproductive effort into a few large colonies that are selecting grain silage as a nesting substrate has greatly increased the risk of extinction should the annual destruction of such a large proportion of nests continue unabated (Cook and Toft 2005, p. 85).

Destruction of Other Suitable Upland Breeding Substrates and Surrounding Habitats

The petition claims that more recent important nesting substrates include agricultural fields (especially grain silage) and Himalayan blackberry (DeHaven *et al.* 1975, pp. 171, 172; Hamilton *et al.* 1995, p. 25; Cook 1996, pp. 23, 24). The petition claims that the lack of protection and loss of non-native nesting substrates such as Himalayan blackberry, thistle, and prickly lettuce are a threat to the tricolored blackbird. These non-native nesting substrates

occur on private property and are often subject to removal. The petition states that Himalayan blackberry supports the highest density of nesting tricolored blackbirds among all other substrates, and that reproductive success is higher than in other commonly used substrates such as emergent marsh and silage (Cook and Toft 2005, pp. 85–86).

Curtailement of the Species' Range

The petitioner contends that the loss of wetland and grassland habitats has led to tricolored blackbirds remaining in a few large but isolated population centers. However, the petitioner does not claim that the range of the species has declined significantly. The petition claims that the species is found throughout its former range, including small populations in Washington, Oregon, and Nevada, but that few if any reports of tricolored blackbird nesting have been confirmed since 1999.

Evaluation of Information in the Petition and Information Available to Us at the Time of Petition Review

Destruction of Native Habitats

The petitioner cited Neff (1937, p. 77) and Beedy and Hamilton (1997, pp. 10, 11) to support the claim that there has been significant native habitat loss for the tricolored blackbird. The petition claims this is a threat to the species and that by 1939, 86 percent of native marsh habitat had been reduced in the Central Valley. We agree with the petitioner that wetland loss has occurred for many decades in the Central Valley of California, resulting in loss of tricolored blackbird habitat. However, our review of the literature found that while Neff (1937, pp. 78–79) does discuss that habitat loss had occurred prior to and during his studies from 1931 to 1936, he did state that all of the threats to the species during his studies, such as human activities, predators, weather, or other factors, had only minimal impact on the species. Further, Neff (1937 p. 78) stated that tricolored blackbirds showed surprising adaptability in their choice of nesting substrates, even when seemingly favorable native wetland marshes were available, and that tricolored blackbirds were nesting in almost every county in which they had nested during the period 40–70 years prior to his studies (approximately 1867 to 1897).

Furthermore, Orians (1961a, p. 309) stated that Neff's (1937, p. 62) studies were initiated due to the concern that tricolored blackbirds may not adapt well to conditions such as water drainage and conversion of grasslands to cultivation. Orians (1961a, pp. 309, 310)

stated that tricolored blackbirds were not in danger of immediate extinction, but that they were highly adaptable in their choice of nesting substrate and in utilizing the abundant food supply of insects in agricultural lands of the California Central Valley. Because of the species' apparent ability to utilize a range of habitat types, we do not believe that historic habitat losses have been demonstrated to be a substantial threat to the species.

DeHaven *et al.* (1975, pp. 175, 176, 179) also state that suitable nesting habitat for the tricolored blackbird had been lost in some local areas. However, they also state that these local losses in habitat have not contributed significantly to any overall population decline of the species, and that tricolored blackbirds leave many apparently suitable nesting sites unused, likely because of yearly food availability and water supply and other potentially unknown factors. DeHaven *et al.* (1975, pp. 166–180) stated that more research was needed to help isolate a cause for the apparent decline from 1969 to 1972, as compared to Neff's (1937, pp. 66, 67) population estimates from 1931 to 1936. Because no complete surveys were conducted between 1937 and 1969, it is difficult to draw conclusions. Based on the limited number of surveys during this time period, it is possible that no decline did occur, and that population numbers are within a range of variability that would be expected for this species.

As stated earlier in the Population Studies section, status surveys for tricolored blackbirds began with the studies of Neff from 1931 to 1936 (Neff 1937, pp. 61–81), where Neff estimated between 95,000 and 737,000 breeding birds for the 5-year timeframe. DeHaven *et al.* (1975, pp. 166–180) estimated a rangewide population of between 84,850 and 181,000 breeding birds between 1969 and 1972. More recent surveys estimated 324,621 breeding birds in 1994; 217,696 in 1997; 162,000 in 2000; and 260,000 in 2005. Based on these population estimates, we do not agree with the petitioner's assertion that the population is in decline. That relatively low numbers were recorded since Neff's (1937) high estimate of 737,000 birds in the 1930s does not in our view provide substantial information that the species may warrant listing because of the uncertainty of Neff's estimating procedures and recent comparable studies show the species to be stable or increasing since the 1970s.

Colony Destruction by Agricultural Activities

The petition cites a Service white paper and briefing statement (Service 2000) stating that harvesting of grain silage causes nest destruction and direct mortality, which threatens most of the remaining breeding population of the species. We agree that active colonies nesting in silage should be protected, and that loss of tricolored blackbirds and reduction of nesting success occurs and may cause localized declines. The white paper and briefing statement was developed to inform and provide recommendations to Service management for managing tricolored blackbird use of dairy silage as a nesting substrate. The paper outlined concerns of using silage buyouts as a long-term solution to tricolored blackbird conservation. However, no information provided by the petitioners or other information otherwise available to us including the white paper or information cited in the paper (i.e. DeHaven 2000) suggests that silage harvest has or will contribute to a rangewide population decline. Population numbers since the 1970s, as discussed above, appear to be somewhat stable. Tricolored blackbirds may breed more than one time in the breeding season if a prior breeding effort failed (Hamilton 1998, pp. 223, 224). Although the subsequent breeding effort may be smaller than the initial effort (Beedy and Hamilton 1999, p. 11), the ability to re-nest probably mitigates the occasional loss of nests with silage cutting. Hamilton (2004, p. 43) also stated that the claim of declines in the tricolored blackbird population due to the harvesting of silage is not based upon a complete analysis of existing data.

Destruction of Other Suitable Upland Breeding Substrates and Surrounding Habitats

The petition cites Cook and Toft (2005, pp. 85, 86) as stating that Himalayan blackberry supports the highest density of tricolored blackbird nesting among all other substrates, and that therefore lack of protection of this habitat is a threat to the tricolored blackbird. We agree that tricolored blackbirds may nest in non-native substrates such as Himalayan blackberry, thistles, and prickly lettuce, as stated by the petition. However, we have no information and the petitioner provided no information to suggest that the lack of protection of non-native substrates such as Himalayan blackberry is a threat to the continued existence of the tricolored blackbird. Again, as stated above, the most recent surveys estimate

the tricolored blackbird population has increased from 162,000 to 260,000 breeding birds since 2000, and the number of birds appear to be consistent with, or higher than, the numbers of birds found in the 1970s. Further, no information is available to suggest that breeding habitat should be considered limiting, or that its loss should be considered a substantial threat. For these reasons, we reject the petitioner's assertions that lack of protection for breeding habitat should be considered a threat.

Range and Distribution

The petition does not specifically claim that a reduction in range has occurred for the species, but it does state that few if any breeding reports outside of California have been confirmed since 1999. We reviewed currently available information on tricolored blackbird breeding from Washington, Oregon, and Nevada, and found that this information supports the contention that the species continues to breed in these areas and documents new areas where it has been found between 2003 and 2006 (Marshall *et al.* 2003, pp. 578–580; Floyd *et al.* 2006; Seattle Audubon Society Web site, 2006). Based on this recent information we disagree with the petitioner that few if any breeding reports outside of California have been confirmed since 1999, but that the most current information shows new breeding colonies in all three states.

Summary of Factor A

To summarize Factor A, information included in the petition and information otherwise available to us demonstrate that destruction of native habitats, direct nest loss and mortality caused by agricultural activities, and destruction of other suitable breeding habitats has occurred and may continue to impact the local abundance and viability of tricolored blackbirds. Loss of wetlands has occurred in the Central Valley of California in tricolored blackbird habitat for many decades. However, the population has increased in recent survey years and appears to be stable since the 1970s. The petition has presented no information that suggests that the habitat loss experienced is having an impact on the population levels of the tricolored blackbird. Additionally, the harvesting of silage during the tricolored blackbird breeding period can have localized negative impacts on species habitat and populations due to direct mortality and nest destruction. However, we currently have no information and the petition provided no information on how the

loss of a local breeding effort affects the population in subsequent years, or to support a determination that silage harvesting is a substantial risk to the rangewide population and continued existence of the tricolored blackbird. The species is found throughout the majority of its historical range, with additional new breeding populations documented in Washington, Oregon, and Nevada. Therefore, we find that the petition and other information otherwise available to us does not contain substantial scientific or commercial information indicating that the continued existence of the species is threatened by the present or threatened destruction, modification, or curtailment of the species' habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided by the Petitioner

The petition claims that a history of widespread persecution of blackbird species has likely contributed to a decline in the tricolored blackbird. The petition cites Neff (1942, pp. 46, 47) who stated that in 1928 and 1929, market hunting for blackbirds in the Central Valley of California became a thriving business and a market was created in large cities by Italian produce firms. Market hunters killed thousands of blackbirds; it was reported that one group of market hunters shipped nearly 400,000 blackbirds from the Sacramento Valley in five seasons (Neff 1942, pp. 46). Market hunting started to decrease by 1936 and 1937, with an estimated 88,000 birds being shipped (Neff 1942, pp. 47).

The petition also cites Neff (1942, pp. 46, 47) as stating that numerous blackbirds were reportedly shot by ranchers, used by people as target practice, and poisoned to control damage to crops. The petitioners state that these killings were a source of high adult mortality. The petitioners also state that poisoning of thousands of blackbird species to control rice crop damage in the Central Valley of California continued until the 1960s (Beedy and Hamilton 1997, p. 18). The petition states that due to improved harvesting methods, rice varieties that ripen faster, and fewer individual blackbirds, extermination programs have ceased; however, the historic occurrence of blackbird poisoning has likely contributed to the species' population decline (Beedy and Hamilton 1997, p. 18).

Evaluation of Information in the Petition and Information Available to Us at the Time of Petition Review

We agree that tricolored blackbirds were deliberately killed historically for market use, sport hunting, or protection of crops by use of poisons or guns; however, we are not aware of a current market, sport hunting or protection of crops by the use of poison on the tricolored blackbird. No information was provided by the petitioners or was available to us that documents any historic or current information describing how poisoning or market hunting may have contributed to the overall decline of the species' population size or reduction in its range. Therefore, we find that the petition does not contain substantial scientific or commercial information to indicate that the tricolored blackbird is threatened by overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Information Provided by the Petitioner

The petition cites several papers (Hamilton *et al.* 1995, p. 21; Beedy and Hamilton 1997, p. 10; Hamilton 2000, p. 14) that describe predation as major cause of large-scale nesting failures in many tricolored blackbird colonies, especially those colonies that nest in native emergent marsh. The petition cites Hamilton *et al.* (1995, pp. 21, 35) and Hamilton (2000, pp. 13, 14) to claim that black-crowned night-heron and raccoon predation on tricolored blackbird colonies in marshes can destroy all or the majority of nests within such colonies, which results in nest failure of the entire colony. The petition states that tricolored blackbirds nesting at Kern NWR in Kern County and the Maxwell I and II colonies in Colusa County failed due to black-crowned night-heron predation. The petitioners also state that black-crowned night-heron predation on the tricolored blackbird is of special concern at National Wildlife Refuges, because the refuges are becoming more important nesting sites for black-crowned night-herons and tricolored blackbirds as private lands are converted to other uses, and as grain silage fields may be harvested during the tricolored blackbird nesting season. The petition cites Cook and Toft (2005, pp. 80–82) to claim that tricolored blackbird reproductive success was much lower in native emergent marsh than in any other nesting substrate, except for silage that was lost to harvesting operations.

The petition also cites a long list of historic, native predators that may have

preyed upon tricolored blackbirds, and claims there have been recent reports of predation on tricolored blackbird colonies by feral cats (*Felis catus*) (Beedy and Hamilton 1997, p. 17). The petition also states that tricolored blackbirds are not aggressive towards predators and will sit silently instead of attacking, unlike the behavior of red-winged blackbirds (Beedy and Hamilton 1997, p. 17, Beedy and Hamilton 1999, p. 12).

The petition does not discuss or provide any information on how disease threatens the tricolored blackbird.

Evaluation of Information in the Petition and Information Available to Us at the Time of Petition Review

The petition infers from Hamilton *et al.* (1999) that reproductive success of tricolored blackbirds in cattail marshes is low because of the high rate of predation that this nesting substrate endures due to high concentration of predators such as raccoons and black-crowned night-herons. Hamilton *et al.* (1999, p. 12) stated that expansion of large cattail nesting areas for tricolored blackbirds should be avoided, due to high predation of colonies in this type of nesting substrate. However, Hamilton (2000 p. 20) withdrew the previous statement made in 1999 due to observations made in 2000 of low or absent black-crowned night-heron predation on other tricolored blackbird colonies nesting in cattails. In 2000, Hamilton (2000, p. 28) observed large tricolored blackbird colonies in cattails which were not preyed upon by black-crowned night-herons. The large colonies include the two colonies on Delevan NWR that contained approximately 37,000 breeding adults and produced approximately 34,000 successful fledglings. In 2004 at Delevan NWR in Colusa County, a large colony (approximately 135,000 breeding adults) successfully nested in a cattail marsh, producing approximately 97,000 fledglings (Hamilton 2004, p. 35). While some predation probably occurs at all tricolored blackbird colonies, there is insufficient information to suggest or conclude that predation on nests in cattail marshes is a threat at the population level.

The petitioners cited an example that tricolored blackbirds nesting at Kern NWR in Kern County and at Maxwell I and II in Colusa County failed due to black-crowned night-heron predation. We presume that the petitioners used Hamilton (2000, pp. 28, 29) for the Maxwell example, since no reference was given. The data provided by Hamilton (2000, p. 28) indicate the Maxwell I nesting site produced

approximately 1,199 successful fledglings from about 5,000 breeding adults, while the Maxwell II nesting site only produced 38 successful fledglings from about 2,000 breeding adult tricolored blackbirds. No information was provided or available to determine why the fledgling rate at Maxwell II was low. We also could not determine what documentation the petitioners used to support their claim that a colony at Kern NWR failed due to predation. According to DeHaven (2000, pp. 17, 18), predation is reported by researchers about as frequently in the 1990s as it was in the 1970s, and it is not known if the losses to tricolored blackbird colonies from predation are within a historical and normal range that would be expected of a colonial nesting species.

Payne (1969, p. 26) states that the loss to any one breeding effort of a tricolored blackbird colony may be reduced due to the species' dense colony structure; a colony is likely to occur within the territory of only one predaceous raptor. Although tricolored blackbirds have demonstrated that they are not aggressive defenders against predators, there is no information available to us or submitted by the petitioner that shows that lack of aggression towards predators may threaten the continued existence of the tricolored blackbird.

The petitioner cited Beedy and Hamilton (1997, p. 17) as stating that predation on tricolored blackbird nests by feral cats is a recent phenomenon. We found that Beedy and Hamilton (1997, p. 17) cited Payne (1969, p. 25) who reported predation of tricolored blackbirds by feral cats. Payne (1969, p. 25) states that dozens of tricolored blackbird adults were found dead around a marsh in Marysville, California, and appeared to have been killed by numerous feral cats. While the Service agrees that predation on the species' nests by feral cats is a more recent occurrence than other predation reported in the early 1900s, there is no current evidence available to us or supplied by the petitioner to suggest that feral cat predation is significant range wide, or a threat to the continued existence of the tricolored blackbird.

Summary of Factor C

To summarize factor C, information provided in the petition and other available information suggests that predation on tricolored blackbird colonies does occur. Predation on tricolored blackbird colonies nesting in cattail marshes by black-crowned night-herons has been documented. While the Service agrees that predation occurrences may be the potential cause of some nesting failures, especially in

cattail marshes, evidence also demonstrates that tricolored blackbirds can breed successfully in cattail marshes. There is no evidence that predation has increased above natural levels and is often localized in nature. We are not aware of any information indicating that predation has caused a reduction in the range or population size of the species, or that a reduction in the population of this species is likely to occur in the future due to predation. Therefore, we find that the petition does not contain substantial scientific or commercial information to document disease or predation may be a factor that threatens the tricolored blackbird.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided by the Petitioner

The petition claims that the tricolored blackbird is not protected by existing regulatory mechanisms. The petition stated that the tricolored blackbird is considered a non-game bird of management concern by the Service. The petition also stated that the tricolored blackbird is considered a species of special concern by the CDFG. Additionally, the petition states that the tricolored blackbird is not listed under the Act or the California Endangered Species Act (California Fish and Game Code section 2070 *et seq.*). The petition claims that current designations do not provide specific legal protection to the species aside from the requirement that a project may trigger California Environmental Quality Act (CEQA) review where the impacts of the proposed action on the species must be analyzed. Actions that do not trigger CEQA would not require review. The petition also claims CEQA's mandates for environmental protection have not been implemented to protect the tricolored blackbird.

The petition states that the Migratory Bird Treaty Act (MBTA) should afford the species protection; however, the petition further states that the statute is rarely if ever enforced against private landowner violators, and that enforcement agencies have turned a "blind eye" to annual violations of the MBTA by private landowners. The petition states that the statute strictly prohibits all "taking" (to "pursue, hunt, shoot, wound, kill, capture, or collect," or attempt to do so) of migratory birds unless authorized by a permit issued under Department of the Interior regulations (16 U.S.C. 703) and under 50 CFR 10.12. The petition claims that private property owners who destroy tricolored blackbird nests are in clear

violation of the MBTA and its implementing regulations.

Additionally, the petition claims that private landowners with dairies or other commercial agricultural operations on their property are in violation of the California Business and Professions Code Section 17200, and the MBTA. The petition states that the code defines "unfair competition" to include "unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising." A business practice constitutes unfair competition if it is forbidden by any law, whether civil or criminal, whether Federal, State, or municipal, or whether statutory, regulatory, or court-made. The petition claims that private business owners who are destroying tricolored blackbird nests are vulnerable to enforcement actions under both the MBTA and the California Business and Professions code.

Evaluation of Information in the Petition and Information Available to Us at the Time of Petition Review

The tricolored blackbird is considered a U.S. Fish and Wildlife Service Bird of Conservation Concern (USFWS 2002). In general, species are classified as such because of (1) Documented or apparent population declines, (2) Small or restricted population, or (3) Dependence on restricted or vulnerable habitats. This designation is a result of mandates required through the Fish and Wildlife Conservation Act, which in part requires the Service to identify non-game migratory bird species that, without additional conservation actions, are likely to become candidates for listing under the Act. While all of the bird species included in the list are priorities for conservation action, the list makes no finding with regard to whether they warrant consideration for federal listing. The goal is to prevent or remove the need for additional listings by implementing proactive management and conservation actions.

In May 1990, the CDFG added the tricolored blackbird to its species of concern list. In general CDFG classifies species as such because they (1) Are declining at a rate that could result in listing, or (2) historically occurred in low numbers and known threats to their persistence currently exist. This classification offers no legal protection in itself, but encourages consideration of the species in impact analyses, mitigation planning, and other environmental documentation (Beedy *et al.* 1991, p. 5).

Local governments are typically the lead agency for conducting CEQA review of projects to convert native vegetation; thus, CDFG considers an

environmental document prepared by the lead agency. CDFG considers potential impacts of the proposed project and provides information to the lead agency about possible impacts to wildlife species and habitat. CDFG can provide advisory recommendations for avoiding, minimizing, and mitigating impacts of the project. Recommended measures to reduce or avoid impacts do not become mandatory, unless adopted by the lead agency. Changes in agricultural uses, including those that may result in impacts to tricolored blackbirds, do not typically trigger CEQA requirements or allow for CDFG review (Gustafson and Steele 2004, p. 31).

The Migratory Bird Treaty Act implements various treaties and conventions between the United States and Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Under the MBTA, taking, killing or possessing migratory birds is unlawful. Unless permitted by regulations, the MBTA provides that it is unlawful to pursue, hunt, take, capture or kill; attempt to take, capture, or kill; possess; offer to or sell, barter, purchase, or deliver; or cause to be shipped, exported, imported, transported, carried, or received, any migratory bird, part, nest, egg or product, manufactured or not (16 U.S.C. 703). According to the MBTA, a person, association, partnership, or corporation that violates the MBTA or its regulations is guilty of a misdemeanor and subject to a fine of up to \$15,000, jail up to 6 months, or both. Anyone who knowingly takes a migratory bird and intends to, offers to, or actually sells or barbers the bird is guilty of a felony, with fines up to \$2,000, jail up to 2 years, or both (16 U.S.C. 707).

Historically for the tricolored blackbird, the majority of breeding occurred in marshes and blackberry thickets. More recently, the species may nest in the grain silage fields associated with dairies. These grain silage fields are often harvested (when moisture content of the forage is optimal) while nesting species are still present (DeHaven 2000, p. 1). The Service agrees with the petitioner that harvesting of silage while the species is still nesting would be a violation of the MBTA if eggs and young are destroyed. We pursue investigation of such MBTA violations as we are made aware of their occurrence.

As stated in the petition, the MBTA is the current Federal regulatory mechanism in place to protect the tricolored blackbird throughout its range in the United States. The petition claims that the Service turns a "blind eye" to

violations of the MBTA. We are unaware of, and were not provided by the petitioners, with information that documents lack of enforcement of specific violations under the MBTA. Therefore, we believe that the MBTA provides protections for the species.

In an effort to conserve and protect the tricolored blackbird, the Service and CDFG have been cooperating with public and private stakeholders to address and prevent violations of the MBTA and CEQA. The petition acknowledges these efforts and cites a 2000 example of Tevelde Farm in which the agencies arranged to compensate the farm to delay harvesting of silage to allow approximately 20,000 tricolored blackbirds to fledge. The Service and CDFG have been funding private landowners for purchase of silage crops or delay of harvesting activities since 1993 to avoid taking of nesting tricolored blackbirds in silage and to enhance reproductive success. The Service recognizes that these silage purchases or reimbursements for delay of harvest are not long-term solutions, and will be used as a short-term approach until a long-term management strategy can be devised to increase protection of the tricolored blackbird.

Summary of Factor D

To summarize Factor D, existing Federal and State regulations currently provide protection for the tricolored blackbird through the Federal Migratory Bird Treaty Act and CEQA review process. The petitioners only provide speculation on the lack of regulatory enforcement of the MBTA and CEQA and do not mention specific instances where these Acts were not enforced. Further, there is no evidence that lack of regulatory mechanisms is causing a population decline. Due to this lack of information, we are unable to determine that the inadequacy of existing regulatory mechanisms has led to reduction in the population size across all or within the range of the species, or that a reduction in the population of this species is likely to occur in the future. Therefore, we find that the petition does not present substantial scientific or commercial information that lack of regulatory mechanisms may present a threat to the tricolored blackbird.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided by the Petitioner Chemical Contaminants

The petition claims that chemical contaminants are a threat to birds,

including the tricolored blackbird, and those contaminants can cause mortality and nesting failures. While the petition acknowledges that the "link between environmental contaminants and nesting failure of tricolor[ed]s is largely unstudied," the petition claims that some mortality of tricolored blackbirds has been documented due to chemical toxicity and this source of mortality could become more substantial if tricolored blackbird populations continue to decline. Citing Beedy and Hayworth (1992, pp. 33–35), the petition describes a complete nesting failure of approximately 50,000 tricolored blackbirds, at Kesterson Reservoir in Merced County in 1986. The petition also cites Beedy and Hayworth (1992, pp. 33–35), who collected dead nestlings, of which some had club feet, along with other species of birds that had similar deformities, and sampled tricolored blackbird nestlings and found them to have higher concentration of selenium in their livers than that of red-winged blackbirds sampled at a nearby location. The petition cites Beedy and Hamilton (1997, pp. 18, 19) who stated that the suspected cause of tricolored blackbird nestling deaths in 1986 was from selenium contamination.

The petition further cites Beedy and Hamilton (1999, p. 18): Reporting biologist William J. Hamilton III personally observed a tricolored blackbird colony that failed to hatch due to mosquito abatement spraying in Kern County. The petition also cites the California Department of Pesticide Regulation (CDPR) data (CDPR Web site data 2002) detailing types and quantities of chemicals used in Sacramento, San Joaquin, Merced, Fresno, and Tulare Counties. The petition cites EXOTOXNET (2004) to describe which chemicals are toxic to birds in general. The petition additionally states that although tricolored blackbirds were not studied directly, many of the chemicals listed by the CDPR data are highly toxic to birds and are used within the known breeding range of the species.

Evaluation of Information in the Petition and Information Available to Us at the Time of Petition Review

Beedy and Hayworth (1992, p. 42) describe that in April 1986, approximately 47,000 tricolored blackbirds tried to nest at Kesterson Reservoir. Surveys were conducted from April 18 to 23, 1986, of 162 tricolored blackbird nests. The study found that 84.6 percent of those nests were either empty or contained addled eggs or dead chicks, and 266 additional chicks were found dead on levee roads. Only 100

birds were fledged from the Kesterson Reservoir colony, which suggests a near nesting failure in the 1986 breeding season. Some of the dead nestlings from 1986, along with dead nestlings from further studies in 1987, were examined for deformities and their livers were screened for toxins, and some of the nestlings from both years were determined to have club feet and high levels of selenium in their livers. Beedy and Hayworth (1992, pp. 41, 42) state that more research was needed to determine if selenium contamination was the reason of nestling mortality, and if the nesting failures observed were an isolated incident or a widespread general decline of the tricolored blackbird, since the cause and magnitude of nestling mortality vary tremendously between colonies. Additionally, in 1986, the U.S. Department of the Interior decided to close the San Luis Drain, so selenium and salt no longer concentrate at Kesterson, and tricolored blackbirds no longer nest there. Aside from the nesting failure due to the potential selenium contamination in 1986, we were provided no information in the petition nor have we received any other information of other potential selenium-related nesting failures in tricolored blackbirds or any information supporting the idea that selenium contamination is currently a threat to the tricolored blackbird. There also was no information provided by the petition or otherwise available that describes what effect the nesting failure at Kesterson had on the tricolored blackbird population in 1986 or subsequent nesting seasons.

The petition did not provide, and we are not aware of, any information or data to support the observation William J. Hamilton III made in Kern County of a complete nesting failure due to the spraying of mosquito abatement. We are not aware of any information or data that documents this nesting failure or whether the nesting failure was due to chemical contamination or other factors. While providing information on pesticide use in five counties in California from the CDPR, the petition did not provide information beyond speculation regarding the effects of these chemicals on the tricolored blackbird. Hamilton *et al.* (1995, p. 38) stated that limited evidence shows that chemical use in agricultural areas causes some direct mortality, but the toxins do not seem to be creating a serious problem for tricolored blackbirds. Hamilton *et al.* (1995, p. 38) go on to state that there is no evidence to show that mortality caused by

agricultural chemical contamination has depressed tricolored blackbird numbers below a carrying capacity in any year. Hamilton (2000, p. 20) stated that there was no documented evidence, since the work of Beedy and Hayworth (1992), that toxic contaminants have adversely affected the tricolored blackbird, and those instances provided by the petitioners as documentation of nest failure due to chemical toxicity were not substantiated.

Summary of Factor E

To summarize factor E, we agree that high selenium concentrations have been documented in some of the dead nestlings at Kesterson Reservoir. However, whether the selenium toxicosis was the cause of death of these tricolored blackbird nestlings or cause for the complete nesting failure observed in 1986, or from other factors, is still unknown. No information was provided suggesting that there are ongoing dieoffs such as occurred in 1986. In addition, neither the petition nor other available information provides anything more than speculation on the types and magnitudes of effects these chemicals may have on the tricolored blackbird. Due to this lack of information, we are unable to determine that use of toxic chemicals within the range of the species has led to reduction in the population size of the species, or that a reduction in the population of this species is likely to occur in the future. Therefore, we find the petition does not contain substantial scientific or commercial information that other natural or manmade factors may be a factor threatening the continued existence of the tricolored blackbird.

Finding

We evaluated each of the five listing factors individually, and because the threats to the tricolored blackbird are not mutually exclusive, we also evaluated the collective effect of these threats. The petition focused on all five listing factors. We have reviewed the petition and supporting literature, as well as other information in our files on the tricolored blackbird. After our review we find that the petition did not present substantial information that indicates rangewide declines, a substantial reduction in population numbers, or substantiated threats to existing populations that rise to the level that would indicate the listing of the tricolored blackbird is warranted or likely to become so in the foreseeable future. Threats to the tricolored blackbird, as described by the petition, included loss of native habitats, agricultural activities causing nest

destruction and direct mortality of birds, destruction of other suitable breeding substrates and surrounding habitats, overutilization of the species, predation, lack of existing regulatory mechanisms, and chemical contamination.

While these threats may affect local populations of tricolored blackbirds, the information provided in the petition was speculative in nature. The petition did not provide specific information to document the degree that the species has been affected by these threats, or that these threats have led to a significant decline in the range or distribution of the species or are likely to do so in the future.

Surveys conducted for the tricolored blackbird that we are aware of and that were discussed in the petitioner's information did not use a consistent level of effort in surveying and the petitioners did not base their conclusion on the most current population information available. Therefore, population and distribution trends have varied throughout survey years due to survey methods in addition to the likely natural population fluctuations. At present the most recent studies indicate that, since 2000, the rangewide population of tricolored blackbirds has increased regardless of any potential habitat loss, predation, or chemical contamination.

We have reviewed the petition and supporting information provided with the petition and evaluated that information in relation to other pertinent literature and information available to us at the time of the petition review. Based on this review and evaluation, we find that the petition and other available information does not present substantial information demonstrating that listing the tricolored blackbird as threatened or endangered may be warranted at this time. We encourage interested parties to continue to gather data that will assist with the conservation of the tricolored blackbird.

References Cited

A complete list of all references cited herein is available, upon request, from the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary authors of this notice are staff of Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, CA 95825.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 28, 2006.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E6-20547 Filed 12-4-06; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 061124308-6308-01; I.D. 101906C]

RIN 0648-AV02

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Atlantic; Commercial King Mackerel Fishery of the Atlantic; Consideration of a Control Date

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: This notice announces that the South Atlantic Fishery Management Council (SAFMC) is considering additional management measures to further limit the number of participants or levels of participation in the commercial fishery for Atlantic group king mackerel in the exclusive economic zone (EEZ) of the South Atlantic and Mid-Atlantic region. If such management measures are implemented, the SAFMC is considering June 15, 2004, as a possible control date where anyone who entered the fishery after that date would not be assured of future access.

DATES: Comments must be received by January 4, 2007.

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

- E-mail: 0648-AV02.ANPR@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: "0648-AV02".
- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

- Fax: 727-824-5308.

FOR FURTHER INFORMATION CONTACT:

Steve Branstetter, 727-824-5305.

SUPPLEMENTARY INFORMATION:

The commercial fishery for Atlantic group king mackerel in the South Atlantic and Mid-Atlantic EEZ is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic Region (FMP). The SAFMC has approval from the Mid-Atlantic Fishery Management Council (MAFMC) to manage Atlantic group king mackerel in the Mid-Atlantic region. The FMP was prepared jointly by the SAFMC and the Gulf of Mexico Fishery Management Council (GMFMC), with the approval of the MAFMC, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

The SAFMC anticipates that future action may be necessary to further control effort or participation in the Atlantic group king mackerel fishery through additional management actions. The SAFMC has concerns about future shifts in fishing effort that would increase catches of Atlantic group king mackerel in the South Atlantic and Mid-Atlantic EEZ, and wants to prevent the possibility of excess harvesting capacity developing for the Atlantic group king mackerel fishery. Should the SAFMC and GMFMC take future action to restrict participation in the fishery for Atlantic group king mackerel, they may use June 15, 2004, as a possible control date. This control date replaces an existing control date of October 16, 1995 (60 FR 53567, October 16, 1995). Implementation of any program to restrict access in the Atlantic group king mackerel fishery would require: preparation of an amendment to the FMP and publication of a notice of availability of the amendment with a comment period, publication of a proposed rule with a public comment period, approval of the amendment, and issuance of a final implementing rule.

Consideration of a control date does not commit the SAFMC, the GMFMC, or NMFS to any particular management regime or criteria for entry into the commercial Atlantic group king mackerel fishery. Fishermen are not guaranteed future participation in a fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. Use of the June 15, 2004 control date in future management actions would mean anyone entering the fishery after that date would not be assured of future access. Nevertheless, even fishermen who are permitted prior

to the June 15, 2004 control date are not guaranteed future participation in the fishery. The SAFMC may choose to give variably weighted consideration to fishermen active in the fishery before and after the control date. Other qualifying criteria, such as documentation of landings and sales, may be applied for entry into the fishery. The SAFMC subsequently may choose a different control date or they may choose a management regime without using a control date. The SAFMC also may choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded.

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

Dated: November 29, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E6-20588 Filed 12-4-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 061124307-6307-01; I.D. 112106A]

RIN 0648-AT65

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes 2007 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB). This action also proposes to modify existing management measures to improve the monitoring and management of the squid fisheries. Specifically, trimester quota allocations for the *Loligo* squid fishery and an increased *Loligo* squid incidental catch limit for *Illex* squid moratorium vessels are proposed for 2007. This action also requests public comment concerning the possibility of an inseason adjustment to increase the mackerel harvest, if landings approach proposed harvest limits. Lastly, this action would clarify, update, and correct existing regulatory language that

is misleading or incorrect. These proposed specifications and management measures promote the utilization and conservation of the MSB resource.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on January 4, 2007.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.nmfs.gov>.

Written comments on the proposed rule may be sent by any of the following methods:

- E-mail to the following address: 2007MSBSpex@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: "Comments on 2007 MSB Specifications";

- Electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>;

- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on 2007 MSB Specifications"; or

- Fax to Patricia A. Kurkul, (978) 281-9135.

FOR FURTHER INFORMATION CONTACT:

Carrie Nordeen, Fishery Policy Analyst, 978-281-9272, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:**Background**

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at §§ 648.21 and 600.516(c), require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a proposed rule specifying the amounts of the initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), and domestic annual processing (DAP), as well as, where applicable, the amounts for total allowable level of foreign fishing (TALFF) and joint venture processing

(JVP) for the affected species managed under the FMP. In addition, these regulations allow *Loligo* squid specifications to be specified for up to 3 years, subject to annual review. The regulations found in § 648.21 also specify that IOY for squid is equal to the combination of research quota (RQ) and DAH, with no TALFF specified for squid. For butterflyfish, the regulations specify that a butterflyfish bycatch TALFF will be specified only if TALFF is specified for Atlantic mackerel.

For 2007, the Council recommended the consideration of RQ of up to 3 percent of the IOY for *Loligo* and *Illex* squid. The RQ would fund research and data collection for those species. A Request for Research Proposals was published to solicit proposals for 2007 based on research priorities previously identified by the Council (70 FR 76253, December 23, 2005). The deadline for submission was February 21, 2006. On May 2, 2006, NMFS convened a Review Panel to review the comments submitted by technical reviewers. Based on discussions between NMFS staff, technical review comments, and Review Panel comments, two project proposals requesting *Loligo* squid set-aside landings were recommended for approval and will be forwarded to the NOAA Grants Office for award, for a total RQ of up to 510 mt. The commercial *Loligo* squid quota in this proposed rule has been adjusted to allow for RQ. If the award is not made by the NOAA Grants Office for any reason, NMFS will give notice of an adjustment to the annual quota to return the unawarded set-aside amount to the fishery.

At its June 20–22, 2006, meeting in Wilmington, DE, the Council recommended 2007 MSB specifications. The recommended specifications for *Loligo* squid, *Illex* squid, and butterflyfish are the same as those implemented in 2006. For mackerel, the Council recommended a reduced ABC, based on re-estimated biological reference points from the most recent stock assessment and increasing Canadian catch. The IOY, DAH, DAP, JVP, and TALFF are the same as those implemented in 2006. To improve monitoring and management of the squid fisheries, the Council also recommended modifying existing management measures. In brief, it recommended that the 2007 commercial *Loligo* squid quota be divided into trimesters, rather than into quarters as it has been since 2001, and that the *Loligo* squid incidental catch limit for *Illex* squid moratorium vessels fishing seaward of the *Loligo* squid exemption line (approximately the 50–fm (91–m) depth contour) during an

August closure of the *Loligo* squid fishery would increase from 2,500 lb (1.13 mt) up to 10,000 lb (4.54 mt). The Council delayed recommending trimester quota allocations until its August 2006 meeting, when additional information on the seasonality of historic *Loligo* squid landings was presented by the Council staff. The Council also discussed the possibility of an inseason adjustment to the mackerel harvest, if landings approach the proposed IOY. Finally, the Council recommended that up to 3 percent of the ABC, IOY, DAH, and DAP for *Loligo* and *Illex* squid be set aside for scientific research in 2007.

At its August 1–3, 2006, meeting in Philadelphia, PA, the Council recommended trimester quota allocations for the *Loligo* squid fishery and clarified the *Loligo* squid incidental catch limit for *Illex* squid vessels. The Council recommended the following *Loligo* squid trimester allocations: Trimester I (January–April), with 43 percent of the quota; Trimester II (May–August), with 17 percent of the quota; and Trimester III (September–December), with 40 percent of the quota. Because the increased *Loligo* squid limit for *Illex* squid vessels, during an August closure of the directed *Loligo* squid fishery, is intended to be an incidental catch limit, the Council also recommended that the increased limit would only be available to *Illex* squid vessels that had a minimum of 10,000 lb (4.54 mt) of *Illex* squid on board.

Issue of Concern; Incidental *Loligo* Squid Possession Limit for the *Illex* Squid Vessels

The issue of incidental catch of *Loligo* squid in the *Illex* squid fishery was identified several years ago when large amounts of *Loligo* squid discards were reported in vessel trip reports by *Illex* squid vessels during closures of the directed *Loligo* squid fishery in the summer and fall of 2000. Analyses developed for Amendment 9 to the FMP indicated that the *Illex* squid fishery occurs primarily during June–November in offshore waters and that both squid species can co-occur during September–November on the *Illex* squid fishery grounds when the *Loligo* squid begin to move offshore. Because of the seasonal co-occurrence of the two squid species, members of the directed *Illex* squid fishery testified at Council meetings that the 2,500–lb (1.13–mt) incidental *Loligo* squid possession limit during closures of the *Loligo* squid fishery creates compliance problems for the *Illex* squid fishery because vessels catch more than 2,500 lb (1.13 mt) of *Loligo* squid when the species mix. In an effort to reduce

regulatory discarding and allow more accurate quantification of the removals of *Loligo* squid taken in the directed *Illex* squid fishery, the Council recommends increasing the incidental *Loligo* squid possession limit for vessels engaged in the directed *Illex* squid fishery during *Loligo* squid fishery closures. Specifically, for 2007 only, during August closures of the *Loligo* squid fishery, *Illex* squid moratorium vessels fishing seaward of the small mesh exemption line (approximately the 50–fm (91–m) depth contour) would be permitted to possess and land up to 10,000 lb (4.54 mt) of *Loligo* squid, provided they possess a minimum of 10,000 lb (4.54 mt) of *Illex* squid on board. This measure is recommended for 1 year only, and the Council intends to re-assess it next year.

The purpose of this proposed measure is to allow *Loligo* squid that would otherwise become regulatory discards to be landed. The Council recommended an increase in the incidental *Loligo* squid trip limit from 2,500 lb (1.13 mt) to 10,000 lb (4.54 mt) because analyses prepared for Amendment 9 suggest a 10,000–lb (4.54–mt) limit would account for 92 percent of observed *Illex* squid trips during which *Loligo* squid were discarded. While *Loligo* and *Illex* squid primarily co-occur during September–November, the Council specified the increased incidental *Loligo* squid trip limit for August because, under the trimester allocations, the directed *Loligo* squid fishery is more likely to be closed in August than during September–November. Additionally, the Council recommends allowing this increased limit only for vessels fishing seaward of the 50–fm (91–m) line that defines the current small mesh exemption area for the *Illex* squid fishery.

Despite the Council's efforts to address regulatory discards of *Loligo* squid in the *Illex* squid fishery, NMFS is concerned about the enforceability of the measure. The small mesh exemption line, which approximates the 50–fm (91–m) depth contour, was implemented for the *Illex* squid fishery because *Illex* squid are not generally available to the fishery shoreward of this line. The *Illex* squid fishery is exempt from the 1–7/8 inch (48–mm) minimum mesh requirement for the *Loligo* squid fishery in the exemption area. However, *Loligo* squid are widely distributed shoreward of this line. The Council recommended no mechanisms to assure that NMFS could determine if vessels issued *Illex* squid permits fish for *Loligo* squid shoreward of the small mesh exemption line (e.g., Vessel Monitoring Systems or trip

declarations). In addition, analyses presented in the development of Amendment 9 suggest that increasing the incidental trip limit to 10,000 lb (4.54 mt) could encourage the targeting of *Loligo* squid, because *Loligo* squid are more valuable than *Illex* squid.

In a letter dated June 13, 2006, NMFS urged the Council to carefully consider implementation aspects associated with this measure, such as monitoring and enforcement. NMFS is including the measure in this proposed rule, but continues to have serious concerns

about the proposal. NMFS will review public comment and make a final determination about the proposed measure in the final specifications.

2007 Proposed Specifications and Management Measures

TABLE 1. PROPOSED SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2007 FISHING YEAR.

Specifications	<i>Loligo</i>	<i>Illex</i>	Mackerel	Butterfish
Max OY	26,000	24,000	N/A	12,175
ABC	17,000	24,000	186,000	4,545
IOY	16,490 ¹	24,000	115,000 ²	1,681
DAH	16,490	24,000	115,000 ³	1,681
DAP	16,490	24,000	100,000	1,681
JVP	0	0	0	0
TALFF	0	0	0	0

¹ Excludes 510 mt for Research Quota (RQ)

² IOY may be increased during the year, but the total ABC will not exceed 186,000 mt.

³ Includes 15,000 mt of Atlantic mackerel recreational allocation.

Atlantic Mackerel

The status of the Atlantic mackerel stock was most recently assessed at the 42nd Stock Assessment Review Committee (SARC) in late 2005. SARC 42 reconsidered the biological reference points (BRP) for Atlantic mackerel specified in Amendment 8 to the FMP and provided new estimates for these reference points, including the fishing mortality rate (F) that produces maximum sustainable yield (MSY), or F_{msy} , the spawning stock biomass that produces MSY (SSB_{msy}), and the target F to be used in establishing the annual quota. These reference points were re-estimated to be $F_{msy} = 0.16$ (previously 0.45), $SSB_{msy} = 644,000$ mt (previously 890,000 mt), and $F_{target} = 0.12$ (previously 0.25). F for Atlantic mackerel in 2004 was estimated to be 0.05, and spawning stock biomass was estimated at 2.3 million mt.

Overfishing for Atlantic mackerel is defined by the FMP to occur when the catch associated with F_{MSY} is exceeded. SARC 42 concluded that the Atlantic mackerel stock is not overfished and overfishing is not occurring. When SSB is greater than SSB_{msy} , the target F is 0.12. To avoid low levels of recruitment, the FMP contains a control rule whereby the threshold F decreases linearly from F_{msy} at SSB_{msy} to zero at 161,000 mt SSB (1/4 of SSB_{msy}), and the target F decreases linearly from F_{target} at SSB_{msy} to zero at 1/2 SSB_{msy} . Annual quotas are to be specified that correspond to the target F resulting from this control rule.

Based on the most recent stock assessment, the Atlantic mackerel SSB is currently above 644,000 mt, so the target F for 2007 is 0.12. According to

the FMP, mackerel ABC must be calculated using the formula $ABC = T - C$, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the yield associated with a fishing mortality rate that is equal to the target F. The yield associated with the target $F=0.12$ is 238,000 mt. Canadian catch of mackerel has been increasing in recent years; therefore, the estimate of Canadian catch for 2007 has been increased from the 2006 estimate of 34,000 mt to 52,000 mt. Thus, 238,000 mt minus 52,000 mt results in a proposed 2007 mackerel ABC of 186,000 mt.

The Council recommended, and NMFS is proposing, an IOY of 115,000 mt. The Council believes that this level of harvest would provide the greatest overall benefit to the Nation with respect to food production and recreational opportunities, and would allow for an increase in domestic landings. In recent years, domestic mackerel landings have been increasing due to major investments in the domestic mackerel processing sector. Mackerel landings in 2003 totaled 34,298 mt, while preliminary landings for 2006 total 58,857 mt. The 115,000 mt IOY is consistent with mackerel regulations at § 648.21(b)(2)(ii), which state that IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

The Council expressed its concern, supported by industry testimony, that an allocation of TALFF would threaten the expansion of the domestic industry. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides that the specification of TALFF, if any, shall be that portion of the optimum yield

(OY) of a fishery that will not be harvested by vessels of the United States. TALFF catches would allow foreign vessels to harvest U.S. fish and sell their product on the world market, in direct competition with the U.S. industry efforts to expand exports. The Council noted that this would prevent the U.S. industry from taking advantage of declines in the European production of Atlantic mackerel that have resulted in an increase in world demand for U.S. fish. The only economic benefit associated with a TALFF is the foreign fishing fees it generates. On the other hand, there are economic benefits associated with the development of the domestic mackerel fishery. Increased mackerel production generates jobs both for plant workers and other support industries. More jobs generate additional sources of income for people resident in coastal communities and generally enhance the social fabric of these communities.

For these reasons, the Council concluded, and NMFS proposes, to specify IOY at a level that can be fully harvested by the domestic fleet, thereby precluding the specification of a TALFF, in order to assist the U.S. mackerel industry to expand. This will yield positive social and economic benefits to both U.S. harvesters and processors. Given the trends in landings, and the industry's testimony that the fishery is poised for significant growth, NMFS concurs that it is reasonable to assume that, in 2007, the commercial fishery will harvest 100,000 mt of mackerel. Thus DAH would be 115,000 mt, which is the commercial harvest plus the 15,000 mt allocated for the recreational fishery. Because IOY = DAH, this

specification is consistent with the Council's recommendation that the level of IOY should not provide for a TALFF.

NMFS also concurs with the Council's recommendation to maintain JVP at zero (the most recent allocation was 5,000 mt of JVP in 2004). In previous years, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the capability to process the total amount of mackerel that U.S. harvesters could land. However, for the past 2 years, the Council has recommended zero JVP because the surplus between DAH and DAP has been declining as U.S. shoreside processing capacity for mackerel has expanded. The Council received testimony from processors and harvesters that the shoreside processing sector of this industry has continued to expand since 2002–2003. Subsequent industry testimony estimated current processing capacity at 2,500 mt per day. In addition, industry members anticipate that an at-sea processing vessel will enter the mackerel fishery in 2007. The Council also heard from the industry that the availability of mackerel to the fishery, rather than processing capacity, has curtailed catch in recent years. Based on this information, the Council concluded that processing capacity is no longer a limiting factor relative to domestic production of mackerel. Furthermore, the Council concluded that the U.S. mackerel processing sector has the potential to process the DAH, so JVP would be specified at zero.

Inseason Adjustment of the Mackerel IOY

Regulations at § 648.21(e) specify that specifications may be adjusted inseason during the fishing year by the Regional Administrator, in consultation with the Council, by publishing a notice in the **Federal Register** and providing a 30-day public comment period. At the June 2006 Council meeting, in response to recent growth in the domestic harvesting and processing sectors of the mackerel fishery, both the mackerel industry and the Council voiced interest in increasing the 2007 mackerel IOY if landings approach 115,000 mt during

the most active part of the fishing year (January–April). However, the mackerel fishing season is short. To facilitate a timely inseason adjustment to the mackerel IOY, if necessary, this action is proposing and seeking comment on such an inseason adjustment. In 2007, NMFS's Northeast Fishery Statistic Office (FSO) will summarize mackerel landings from dealer reports on a weekly basis and post this information on the Northeast Regional Office website (<http://www.nero.noaa.gov/>). NMFS staff will closely monitor these landings and industry trends to determine if an inseason adjustment is necessary. If using landings projections and all other available information, the Regional Administrator determines that 70 percent of the Atlantic mackerel IOY will be landed during the 2007 fishing year, to ensure continued fishing opportunities during the 2007 fishing year, the Regional Administrator will make available additional quota for a total IOY of 186,000 mt of Atlantic mackerel for harvest during 2007. Additionally, if an inseason adjustment of the IOY is warranted, the Regional Administrator will notify the Council and the inseason adjustment will be published in the **Federal Register**.

Atlantic Squids

Loligo squid

While the annual quota and other measures for *Loligo* squid can be specified for up to 3 years, the Council chose to recommend *Loligo* specifications and management measures for 1 year only. After a review of available information, the Council recommended no change to the *Loligo* squid Max OY and ABC from 2006; NMFS concurs with this recommendation. Therefore, the proposed 2007 *Loligo* squid Max OY is 26,000 mt and the proposed ABC is 17,000 mt. The Council recommended that the *Loligo* squid RQ for 2007 be up to 3 percent (510 mt) of the ABC. Two scientific research project proposals requesting *Loligo* squid RQ were recommended for approval and will be forwarded to the NOAA Grants Office for award. The proposed *Loligo* squid

IOY, DAH, and DAP were adjusted to reflect the RQ and equal 16,490 mt. The FMP does not authorize the specification of JVP and TALFF for the *Loligo* squid fishery, because of the domestic industry's capacity to harvest and process the OY for this fishery; therefore, JVP and TALFF are zero.

Distribution of the *Loligo* Squid DAH

Prior to 2000, the DAH for *Loligo* was specified as an annual quota. In 2000, the quota was subdivided into three trimester allocations. Since 2001, the annual DAH for *Loligo* squid has been allocated into four quarter allocations, as follows: Quarter I (January–March) with 33.23 percent of the quota, Quarter II (April–June) with 17.61 percent of the quota, Quarter III (July–September) with 17.30 percent of the quota, and Quarter IV (October–December) with 31.86 percent of the quota. In an effort to improve the monitoring and management of the *Loligo* squid fishery, the Council recommended, and NMFS proposes, that the 2007 DAH be allocated into trimesters. Managing the DAH by trimesters, rather than quarters, results in allocations that are the same or higher than the quarterly allocations. Higher allocations may increase the length of time the fishery is open and allow closure projections to be based on more information and, perhaps, to be more accurate. Additionally, managing by trimesters rather than quarters is administratively streamlined because only three, rather than four, closures of the directed fishery could occur during a fishing year. For these reasons, this action proposes that the 2007 *Loligo* squid DAH be allocated into trimesters.

Previously, the allocation of *Loligo* squid DAH into quarters (2001–2006) and trimesters (2000) was based on landings data for the period of 1994–1998. Trimester allocations for 2007 were based on the same data as the 2000 *Loligo* squid trimester allocation (1994–1998), but the landings data had been updated since 2000 to remove any landings of squid categorized as “unclassified.” The proposed 2007 trimester allocations would be as follows:

TABLE 2. PROPOSED TRIMESTER ALLOCATION OF *Loligo* SQUID QUOTA IN 2007

Trimester	Percent	Metric Tons ¹	RQ (mt)
I (Jan-Apr)	43.0	7,090.7	NA
II (May-Aug)	17.0	2,803.3	NA
III (Sep-Dec)	40.0	6,596.0	NA
Total	100	16,490	510

¹ Trimester allocations after 510 mt RQ deduction.

For 2007, the Council recommended that the percentage at which the directed *Loligo* squid fishery would close and the handling of quota overages and underages would be the same as in 2000. Therefore, this action proposes the regulatory language that was in effect in 2000, such that the directed *Loligo* squid fishery would close when 90 percent of the DAH is harvested in Trimesters I and II, and when 95 percent of the DAH is harvested in Trimester III, as was done in 2000. Additionally, it proposes that any underages from Trimesters I and II would be applied to Trimester III, and any averages from Trimesters I and II would be subtracted from Trimester III. This language is consistent with the Council motion, but the measure is incorrectly described in the EA for this action, which states that underages from Trimesters I and II would be applied to the next trimester. The Council is encouraged to comment on this inconsistency during the comment period.

During the Council discussion about trimester allocations, some members of the *Loligo* squid industry expressed concern about quota availability during summer months, especially July. Under the 2006 quarterly quota allocation, Quarter III started on July 1. As a result, the directed fishery during the month of July was important to the *Loligo* squid industry, because a new allocation of *Loligo* squid became available on July 1. Under the proposed trimesters, the Trimester II allocation of 17 percent would be available to the directed fishery from May-August, or until the allocation is harvested. Some industry representatives believe that Trimester II's allocation will likely be harvested before July 1. If that were to occur, the directed fishery would close and there would be no directed *Loligo* squid fishery during the month of July. In an effort to ensure that some of the Trimester II quota is available to the directed fishery during the month of July, the Council recommended a measure to suspend the availability of a portion of the quota until July 1. Specifically, the Council proposed that if 45 percent of Trimester II's quota was projected to be landed prior to July 1, then the Regional Administrator would close the directed fishery until July 1, and the fishery would operate under incidental trip limits. On July 1, the remaining Trimester II quota would once again be available to the directed fishery until 90 percent of the quota is projected to be landed. If 45 percent of the Trimester II quota was not projected to be landed prior to July 1, then the directed fishery would close when 90

percent of the quota was projected to be landed.

When the Council discussed this proposed measure, NMFS informed the Council that a closure of the directed *Loligo* squid fishery when Trimester II landings are at 45 percent (i.e., approximately 1,300 mt) could not be effectively administered because of the small size of the quota and the sizable landings that can be made per trip. NMFS representatives explained that it is not possible to monitor landings in near real-time and accurately project closure dates in this type of high-volume fishery. NMFS, therefore, is not proposing this measure, because the proposed quota for Trimester II is small, and the fishing activity is likely to be intense during Trimester II, and there is little likelihood that such small quotas could be effectively monitored in a time frame to prevent significant underages or overages. This proposed measure is also inconsistent with the intent of the trimester approach to quota monitoring.

Landing Frequency of Incidental *Loligo* Squid Possession Limit

The Council clarified the landing requirements for vessels issued an open access permit which is subject to a 2,500-lb (1.13 mt) incidental catch *Loligo* squid possession limit specified at § 648.22(c). The Council voted to clarify permanently that this permit authorizes the landing of an incidental *Loligo* squid possession limit once per calendar day. In previous years, because vessels were landing multiple possession limits per day during closures of the directed fishery, the Council recommended, and NMFS implemented, regulatory language clarifying that only one landing per day was allowed during closures of the directed *Loligo* squid fishery (66 FR 13024, March 2, 2001). At its June 2006 meeting, the Council discussed the fact that vessels issued incidental catch permits were making multiple landings per day when the directed *Loligo* squid fishery was open. The Council recommended, and NMFS proposes, to clarify that vessels subject to the incidental *Loligo* squid possession limits may only land once per calendar day, whether the directed *Loligo* squid fishery is open or closed.

Illex squid

The Council recommended, and NMFS proposes, to maintain the *Illex* squid specifications in 2007 at the same levels as they were for the 2006 fishing year. Specifically, this action proposes that the specification of Max OY, IOY, ABC, and DAH would be 24,000 mt. The overfishing definition for *Illex* squid

states that overfishing for *Illex* squid occurs when the catch associated with a threshold fishing mortality rate of F_{MSY} is exceeded. Max OY is specified as the catch associated with a fishing mortality rate of F_{MSY} , while DAH is specified as the level of harvest that corresponds to a target fishing mortality rate of 75 percent F_{MSY} . The biomass target is specified as B_{MSY} . The minimum biomass threshold is specified as $1/2 B_{MSY}$. The FMP does not authorize the specification of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's capacity to harvest and to process the OY from this fishery.

Butterfish

The Council recommended, and NMFS proposes, to maintain the butterfish specifications in 2007 at the same levels as they were for the 2006 fishing year. Therefore, the proposed specifications would set the IOY, DAH, and DAP at 1,681 mt to achieve the target fishing mortality rate (75 percent of F_{MSY}) specified in the FMP based on the most recent stock assessment for the species (SARC 38) and would set ABC at 4,545 mt. Allowable butterfish landings equals ABC less estimated discards, which are roughly twice landings. Assuming that biomass in 2007 will be similar to biomass during 2000–2002 and that the discard-to-landing ratio remains constant, then landings associated with the target F would be 1,681 mt. Consistent with MSB regulations, the Council recommended, and NMFS is proposing, zero TALFF for butterfish in 2007 because zero TALFF is proposed for mackerel.

NMFS notified the Council in February 2005 that the butterfish stock is overfished. The rebuilding plan for butterfish is being developed in Amendment 10 to the FMP.

Modifications to Existing Regulatory Language

NMFS proposes in this action to permanently update, clarify, and correct existing regulatory language that is misleading or incorrect. As discussed previously, biological reference points for mackerel were re-estimated in the most recent stock assessment and the updated reference points were used to calculate the mackerel ABC proposed for 2007. It is appropriate to use the most recent information when developing annual specifications. To clarify this issue, this action proposes that regulatory language describing the procedure for calculating mackerel ABC (at § 648.21(b)(2)) would describe the reference points and formula, but would

not include any values. This makes it clearer that the values from the most recent stock assessment are to be used to calculate mackerel ABC.

In § 648.21, there are two references to the guidelines used to determine annual initial amounts of harvest. The references cite paragraph (a), but the guidelines are actually located at paragraph (b) of that section. This action proposes to correct those citations.

As discussed previously, the Council explicitly requested action to clarify that the landing frequency for vessels subject to the incidental *Loligo* squid possession limit is once per calendar day. This applies to vessels during closures of the directed *Loligo* squid fishery that participate in the directed fishery and to vessels issued *Loligo* squid incidental catch permits at all times. The regulations at § 648.22(c) specify the incidental possession limits for *Loligo* squid, *Illex* squid, and butterfish. While the Council did not explicitly recommend clarifying the landing frequency for *Illex* squid or butterfish, this action proposes to make the same clarification for those species.

The regulations defining how to obtain incidental catch permits for *Loligo* squid, *Illex* squid, and butterfish are located at § 648.4(a)(5). However, regulations at § 648.21(c)(3) only reference *Loligo* squid and butterfish when describing incidental catch permits. Therefore, this action proposes to list *Illex* squid along with *Loligo* squid and butterfish at § 648.21(c)(3).

Beginning in 2007, the NEFSC Director, rather than the Regional Administrator, will provide final approval for research projects requesting RQ. Therefore, this action proposes that regulations at § 648.21(g) be updated to reflect that change.

Lastly, this action proposes to clarify the reporting requirements for at-sea processors. Regulations at § 648.7(f)(3) describe reporting requirements for at-sea purchases and processors. To clarify that at-sea processors in the Exclusive Economic Zone (EEZ) are bound by the same reporting requirements as shore-based processors, this action proposes removing language suggesting that these reporting requirements only apply if the product is landed in a port in the United States.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866 (E.O. 12866).

The Council prepared an initial regulatory flexibility analysis (IRFA), 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 analysis follows:

Statement of Objective and Need

This action proposes 2007 specifications and management measures for Atlantic mackerel, squid, and butterfish, and modification of existing management measures to improve the monitoring and management of these fisheries. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to this proposed rule and is not repeated here.

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

Based on permit data, the number of potential fishing vessels in the 2007 fisheries are as follows: 383 for *Loligo* squid/butterfish, 77 for *Illex* squid, 2,528 for mackerel, and 2,016 vessels with incidental catch permits for squid/butterfish. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

Proposed Actions

The mackerel IOY proposed in this action (115,000 mt, with 15,000 mt allocated to recreational catch) represents no constraint on vessels in this fishery. This level of landings has not been achieved by vessels in this fishery in recent years. Mackerel landings for 2001–2003 averaged 24,294 mt. Landings in 2004 were 54,296 mt, landings in 2005 were 43,244 mt, and preliminary landings for 2006 were 68,298 mt. Additionally, this action proposes an inseason adjustment, if landings approach the IOY early in the fishing year, to increase the IOY up to

the ABC (186,000 mt). Therefore, no reductions in revenues for the mackerel fishery are expected as a result of this proposed action, in fact, an increase in revenues as a result of the proposed action is possible. Based on preliminary 2006 data, the mackerel fishery could increase its landings by 46,702 mt in 2007, if it takes the entire IOY. In 2005, the last year with complete financial data, the average value for mackerel was \$261 per mt. Using this value, the mackerel fishery could see an increase in revenues of \$12,189,222 as a result of the proposed 2007 IOY (115,000 mt) and an additional increase in revenues of \$18,531,000 as a result of the proposed adjustment to increase the IOY up to the ABC (186,000 mt).

The *Loligo* squid IOY (17,000 mt) proposed in this action represents status quo as compared to 2006. *Loligo* squid landings for 2001–2003 averaged 14,092 mt. Landings in 2004 were 13,322 and landings in 2005 were 16,765 mt. In 2005, the last year with complete financial data, the average value for *Loligo* squid was \$1,703 per mt. Implementation of this proposed action would not result in a reduction in revenue or a constraint on restraint on the fishery in 2007.

The *Illex* squid IOY (24,000 mt) proposed in this action represents status quo as compared to 2006. *Illex* squid landings for 2001–2003 averaged 4,350 mt. Landings in 2004 were 25,059, and landings in 2005 were 11,719 mt. In 2005, the last year with complete financial data, the average value for *Illex* squid was \$715 per mt. Implementation of this proposed action would not result in a reduction in revenue or a constraint on restraint on the fishery in 2007.

The butterfish IOY (1,681 mt) proposed in this action represents no constraint to vessels relative to the landings in recent years. During the period 2001–2004, butterfish landings averaged 1,535 mt. Compared to the most recent 2 years for which complete information is available, 2004 and 2005, when landings were 422 mt and 393 mt, respectively, the proposed action is not expected to reduce revenues in this fishery, but may increase those revenues. Based on 2005 data, the value of butterfish was \$1,803 per mt.

Alternatives to the Proposed Rule

The Council analysis evaluated three alternatives for mackerel, and all of them would have set IOY at 115,000 mt. This IOY does not represent a constraint on vessels in this fishery, so no impacts on revenues in this fishery is expected as a result of these alternatives. If landings approach the IOY during the early part of the fishing year, the

preferred alternative contains the option of increasing the IOY up to ABC (186,000 mt). Therefore, this action may result in an increase in revenue for this fishery. One of these alternatives (status quo) would have set the ABC at 335,000 mt, and the other could have set the ABC at 204,000 mt. These alternatives were not adopted by the Council because that level of ABC is not consistent with the overfishing definition in the FMP, as updated by the most recent stock assessment. Furthermore, alternatives that would set a higher harvest were not adopted because they proposed harvest that was too high in light of social and economic concerns relating to TALFF. The specification of TALFF would have limited the opportunities for the domestic fishery to expand, and therefore would have resulted in negative social and economic impacts to both U.S. harvesters and processors (for a full discussion of the TALFF issue, see the earlier section on Atlantic mackerel).

For *Loligo* squid, all alternatives set Max OY at 26,000 mt and ABC, IOY, DAH, and DAP at 17,000 mt. While the annual quota under all alternatives represents status quo, alternatives differ in their allocation of the annual quota. Two alternatives allocate quotas by trimester. Of these, a closure/re-opening provision, to ensure quota is available to the directed fishery in July, is specified in one alternative but not the other. The third alternative allocates quota by quarters (status quo). These differences in seasonal quota distribution may have distributive effects on seasonal participants in the fishery. Additionally, the proposed incidental *Loligo* squid possession limit for *Illex* squid moratorium vessels (up to 10,000 lb (4.54 mt)) during August could, under certain conditions, result in a reduction in the amount of *Loligo* squid quota available during Trimester III. All alternatives are expected to result in the same total landings for 2007.

For *Illex* squid, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt. This alternative would allow harvest far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with this alternative. However, the Council considered this alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid.

For butterfish, one alternative considered would have set IOY at 5,900 mt, while another would have set it at

9,131 mt. These amounts exceed the landings of this species in recent years. Therefore, neither alternative represents a constraint on vessels in this fishery or would reduce revenues in the fishery. However, neither of these alternatives were adopted because they would likely result in overfishing and the additional depletion of the spawning stock biomass of an overfished species.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 29, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.7, paragraph (f)(3) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(3) *At-sea purchasers and processors.*

With the exception of the owner or operator of an Atlantic herring carrier vessel, the owner or operator of an at-sea purchaser or processor that purchases or processes any Atlantic herring, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea must submit information identical to that required by paragraph (a)(1) of this section and provide those reports to the Regional Administrator or designee by the same mechanism and on the same frequency basis.

* * * * *

3. Section 648.21 is amended as follows:

a. Paragraphs (b)(1) introductory text, (b)(2)(i), and (b)(2)(iii) introductory text are revised;

b. Paragraphs (c) introductory text and (c)(3) are revised;

c. Paragraph (f)(3) is removed and paragraphs (f)(1) and (f)(2) are revised; and

d. Paragraphs (g)(2)(ii) and (g)(5) introductory text are revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(b) * * *

(1) *Loligo* and/or *Illex* Squid.

* * * * *

(2) * * *

(i) Mackerel ABC must be calculated using the formula $ABC = T - C$, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the catch associated with a fishing mortality rate that is equal to F_{target} at B_{MSY} or greater and decreases linearly to zero at $1/2 B_{MSY}$ or below. Values for F_{target} and B_{MSY} are as calculated in the most recent stock assessment.

* * * * *

(iii) IOY is composed of RQ, DAH and TALFF. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH, DAP, and JVP will be set after deduction for RQ, if applicable, and must be projected by reviewing data from sources specified in paragraph (b) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY is based on the criteria set forth in the Magnuson-Stevens Act, specifically section 201(e), and on the following economic factors:

* * * * *

(c) *Recommended measures.* Based on the review of the data described in paragraph (b) of this section and requests for research quota as described in paragraph (g) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures from the following list that it determines are necessary to ensure that the specifications are not exceeded:

* * * * *

(3) The amount of *Loligo*, *Illex*, and butterfish that may be retained, possessed and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5)(ii).

* * * * *

(f) * * *

(1) A commercial quota will be allocated annually for *Loligo* squid into trimester periods, based on the following percentages:

Trimester	Percent
I. January-April	43.0
II. May-August	17.0
III. September-October	40.0

(2) Any underages of commercial period quota for Trimester I and II will be applied to Trimester III of the same year and any overages of commercial quota for Trimesters I and II will be subtracted from Trimester III of the same year.

* * * * *

(g) * * *

(2) * * *

(ii) The NEFSC Director and the NOAA Grants Office will consider each panel member's recommendation, provide final approval of the projects and the Regional Administrator may, when appropriate, exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

* * * * *

(5) If a proposal is disapproved by the NEFSC Director or the NOAA Grants Office, or if the Regional Administrator determines that the allocated research quota cannot be utilized by a project, the Regional Administrator shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the **Federal Register** in compliance with the Administrative Procedure Act, provided:

* * * * *

4. In § 648.22, paragraphs (a) and (c) are revised and paragraph (d) is added to read as follows:

§ 648.22 Closure of the fishery.

(a) *Closing Procedures.* (1) NMFS shall close the directed mackerel fishery in the EEZ when the Regional Administrator projects that 80 percent of the mackerel DAH is landed, if such a closure is necessary to prevent the DAH from being executed. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Administrator projects that the DAH will be landed for mackerel, NMFS will close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section will be prohibited.

(2) NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that 90 percent of the quota is harvested in Trimesters I and II, and when 95 percent of DAH has been harvested in Trimester III. The closure of the directed fishery shall be in effect for the remainder of the fishing period, with incidental catches allowed as specified in paragraph (c) of this section.

(3) NMFS shall close the directed *Illex* or butterfish fishery in the EEZ when the Regional Administrator projects that 95 percent of the *Illex* or butterfish DAH is landed. The closure of the directed fishery will be in effect for the remainder of the fishing year, with

incidental catches allowed as specified in paragraph (c) of this section.

* * * * *

(c) *Incidental catches.* During a closure of the directed mackerel fishery, the possession limit for mackerel is 10 percent, by weight, of the total amount of fish on board. For vessels that have been issued a *Loligo* or butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)) or during a closure of the directed fishery for *Loligo* or butterfish, the possession limit for *Loligo* and butterfish is 2,500 lb (1.13 mt) each. For vessels that have been issued an *Illex* incidental catch permit (specified at § 648.4(a)(5)(ii)) or during a closure of the directed fishery for *Illex*, the possession limit for *Illex* is 10,000 lb (4.54 mt). Vessels may not land more than these limits and may only land once during any single calendar day, which is defined as the 24 hr period beginning at 0001 hours and ending at 2400 hours.

(d) *Incidental Loligo Limit for Illex Moratorium Vessels.* During August closures of the directed *Loligo* fishery, *Illex* vessels with moratorium permits fishing seaward of the small mesh exemption line (coordinates found at § 648.23 (a)(3)) may possess and land up to 10,000 lb (4.54 mt) of *Loligo* squid, provided they possess a minimum of 10,000 lb (4.54 mt) of *Illex* squid on board.

[FR Doc. E6-20578 Filed 12-4-06; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 71, No. 233

Tuesday, December 5, 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 30, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Homeowner Risk Reduction Behaviors Concerning Wildfire Risks.

OMB Control Number: 0596-NEW.

Summary of Collection: The threat of wildfire to residents located in areas next to forested public lands has increased significantly during the last decade. As homeowners migrate to areas that are at increasing risk from wildfire they face important decisions regarding how much risk to accept from various sources. An important component of making decisions regarding risk is to understand the behaviors that are effective at reducing the risk and the information sources that are considered reliable for risk reduction information. To gain a better insight into homeowners' perceptions of wildfire risk, behaviors that reduce wildfire, it is important to collect information directly from the homeowners that are at risk. The information will be collected using a survey instrument that is administered via the U.S. Postal Service. The type of information collected will include: (1) Risk perceptions regarding wildfire, (2) risk reduction behaviors associated with wildfire, (3) desired treatment options for forest management, and (4) socio-demographic information.

Need and Use of the Information: The data collected from the survey will benefit Forest Service (FS) and the communities that are surveyed. The data will be used to generate reports that are targeted toward FS personnel that are responsible for working with communities and homeowners in order to reduce the risks associated with wildfires. Without the information FS land managers and the public will continue to interact on the issues of wildfire risk without a broad-based understanding of the factors that lessen wildfire risk, factors that are important to homeowners.

Description of Respondents: Individuals or households.

Number of Respondents: 1,571.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 538.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6-20533 Filed 12-4-06; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent To Extend a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations at 5 CFR part 1320, this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to revise and extend the currently approved information collection for the CSREES Current Research Information System (CRIS).

DATES: Written comments on this notice must be received by February 5, 2007, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments by any of the following methods: Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. E-mail: jhitchcock@csrees.usda.gov; Fax: 202-720-0857; Mail: Information Systems and Technology Management, CSREES, USDA, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250-2216; Hand Delivery/Courier: 800 9th Street, SW., Waterfront Centre, Room 4217, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jason Hitchcock, 202-720-4343.

SUPPLEMENTARY INFORMATION:

Title: CSREES Current Research Information System.

OMB Number: 0524-0042.

Expiration Date of Current Approval: 05/31/2007.

Type of Request: Intent to seek approval to revise and extend an information collection for three years.

Abstract: The United States Department of Agriculture (USDA), Cooperative State Research, Education, and Extension Service (CSREES) administers several competitive, peer-reviewed research, education, and extension programs, under which awards of a high-priority are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 *et seq.*); the Smith-Lever Act (7 U.S.C. 341 *et seq.*); and other legislative authorities.

CSREES also administers several formula funded research programs. The programs are authorized pursuant to the authorities contained in the McIntire-Stennis Cooperative Forestry Research Act of October 10, 1962 (16 U.S.C. 582a–582a–7); the Hatch Act of 1887, as amended (7 U.S.C. 361a–i); Section 1445 of Public Law 95–113, the Food and Agriculture Act of 1977, as amended (7 U.S.C. 3222); and Section 1433 of Subtitle E (Sections 1429–1439), Title XIV of Public Law 95–113, as amended (7 U.S.C. 3191–3201). Each formula funded program is also subject to requirements, which were revised in March 2000, and set forth in the “Administrative Manual for the McIntire-Stennis Cooperative Forestry Research Program,” the “Administrative Manual for the Hatch Research Program,” the “Administrative Manual for the Evans-Allen Cooperative Agricultural Research Program,” and the “Administrative Manual for the Continuing Animal Health and Disease Research Program.” Copies of the administrative manuals are available online at: <http://www.csrees.usda.gov/business/awards/formula.html> under Regulations, Guidelines, and Policies for each formula funded research program. The Current Research Information System (CRIS) is the USDA’s documentation and reporting system for ongoing agricultural, food science, human nutrition, and forestry research. CRIS forms AD–416, AD–417, AD–419, and AD–421 constitute a necessary information collection for publicly-supported research projects as set forth in requirements established in 7 CFR Parts 3400–3419 pertaining to the aforementioned authorities. This information collection is necessary in order to provide descriptive information regarding individual research activities, integrated activities, and extension activities to document expenditures and staff support for the activities, and to

monitor the progress and impact of such activities.

The historical mission of CRIS, broadly stated, is to document the research activities of USDA and the State agricultural research system partners, to satisfy a variety of reporting requirements, and to provide access to research information. This mission supports one of CSREES’ primary functions, as stated in the agency strategic plan, of providing program leadership to identify, develop, and manage programs to support university-based and other institutional research. The boundaries and scope of the CRIS mission are being expanded each year toward a more comprehensive purpose of documenting all of the research, education, and extension activities funded or managed by CSREES. As such, the information collected for CRIS can be utilized in an essentially unlimited number of ways for a wide array of purposes. In anticipation of the Office of Science and Technology Policy research and non-research business model requirements, CSREES is working to align this collection activity with that effort. CSREES is also revising this information collection to include the reporting information on the following Extension Activities to report using the CRIS forms: Pest Management, Farm Safety, New Technologies for Ag Extension, Youth Farm Safety Education and Certification, Federally Recognized Tribes Extension Program, Renewable Resources Extension Act, and Federal Administration. Generally, CRIS provides ready access to information through public web accessible data as well as individually requested, customized reports and services for agency officials, program leaders, administrators, and managers. The information provided helps users to keep abreast of the latest developments in agricultural, food science, human nutrition and forestry research and education; track resource utilization in specific target areas of work, plan for future activities; plan for resource allocation to research, education, and extension programs; avoid costly duplication of effort; aid in coordination of efforts addressing similar problems in different locations; and aid research, education, and extension workers in establishing valuable contacts within the agricultural community.

Descriptive information pertaining to documented projects is available to the general public as well as the research, education, and extension community contributing to CRIS. Limited financial information is available on individual grants and cooperative agreements as well as summary financial information

through the CRIS Web site. A cooperating institution, including a state agricultural experiment station, state forestry school, 1862 land grant institution, or 1890 land grant institution has access to all of the data pertaining to that institution. Many institutions take advantage of this access utilizing CRIS system facilities to manage the research programs at their institution. In addition, CSREES staff members can request specialized reports directly from the CRIS staff. These requests can include financial disclosure pertaining to a particular subject area or targeted program. The nature of this type of request characterizes one of the strengths of the CRIS information collection. The system collects obligations and expenditures on individual projects; however, information can be retrieved and aggregated based on subject areas or targeted programs, and corresponding financial information can be tabulated accordingly. The inclusion of subject-based classifications and subject specific descriptive fields supports a unique retrieval capability in this system. The information can be utilized nationally, regionally, or at more detailed levels, by program leaders, budget officials, and administrators to identify resource utilization, monitor research, education, and extension activity in specific target areas, and support decision making and resource allocation, not just on individual projects, but also for specific program areas. This combination of system capabilities facilitates program evaluation, accountability, and decision making processes.

Estimate of Burden: CSREES is increasing the number of respondents from the previous approved collection by 500 for each component to account for the use of this system by several education and extension programs. No changes have been made to the burden per response from the previous approval. CSREES estimates the number of respondents for the AD–416 form will be 3,758 with an estimated response time of 3.9 hours per form, representing a total annual burden of 14,656 hours for this form. It is estimated for the AD–417 there will be 3,758 respondents with an estimated response time of .7 hours per form, representing a total annual burden of 2,631 hours. CSREES estimates that the number of respondents for the AD–419 form will be 12,267 with an estimated response time of 1.4 hours per form, representing a total annual burden of 17,174 hours. The AD–421 form is estimated to have 12,658 respondents and an estimated

response time of 2.7 hours per form, representing a total annual burden for this form to be 34,177 hours. Thus, for this CRIS information collection CSREES estimates a total of 68,638 annual burden hours.

Comments: 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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) the expanded use of CRIS forms for education and extension programs, particularly programs that are competitive, project-based, and funded under section 3(d) of the Smith-Lever Act (7 U.S.C. 341).

Dated: November 24, 2006.

Gale Buchanan,

Under Secretary, Research, Education, and Economics.

[FR Doc. E6-20555 Filed 12-4-06; 8:45 am]

BILLING CODE 3410-22-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS 2006-0040]

Product Labeling: Definition of the Term "Natural"

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of petition and public meeting; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing receipt of a petition from Hormel Foods to establish a definition for the voluntary claim "natural" and to delineate the conditions under which the claim can be used on the labels of meat and poultry products. The use of the claim "natural" is an issue of significant interest to the Agency, to industry, and to the public. Therefore, the Agency is inviting comments on the issue generally and on the petition and, to facilitate the comment process, is announcing that it will hold a public meeting to discuss the petition. After the comment period closes, FSIS will initiate rulemaking on the claim

"natural." The Agency has decided to initiate rulemaking because it is the most appropriate, open, and transparent method to deal with issues surrounding the definition and use of the claim "natural."

DATES: The public meeting will be held on Tuesday, December 12, 2006, from 9 a.m. to 1 p.m. Comments on this notice must be received by January 11, 2007.

ADDRESSES: The public meeting will be held in the rear of the Cafeteria, South Agriculture Building, United States Department of Agriculture (USDA), 1400 Independence Avenue, SW., Washington, DC 20250.

FSIS invites interested persons to send comments on this notice. FSIS will finalize an agenda on or before the meeting date and will post it on the FSIS Internet Web page http://www.fsis.usda.gov/News?Meetings_&Events/. The petition discussed in this notice is available for viewing by the public in the FSIS Docket Room (see address below) and on the FSIS Web site at: http://www.fsis.usda.gov/News?Meetings_&Events/. The official transcript of the meeting will be available for viewing by the public in the FSIS docket room and on the FSIS Web site http://www.fsis.usda.gov/News?Meetings_&Events/ when it becomes available.

Comments on this notice may be submitted by any of the following methods:

- Mail, including floppy disks or CD-ROM's, and hand-or courier-delivered items: Send to FSIS Docket Room, Docket Clerk, USDA, FSIS, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

- Electronic mail: fsis.regulationscomments@fsis.usda.gov.

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to <http://www.regulation.gov> and in the "Search for Open Regulations" box, select "Food Safety and Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select FDMS Docket Number 2006-0040 to submit or view public comments and to view supporting and related materials available electronically.

All submissions received by mail or electronic mail must include the Agency name and docket number 2006-0040. All comments sent in response to this document, as well as research and background information used by FSIS in developing this document, will be

available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. Comments will also be posted on the Agency's Web site at http://www.fsis.usda.gov/regulations_&_policies/regulations_directives_&_notices/index.asp.

FOR FURTHER INFORMATION CONTACT: For technical information: Dr. Robert C. Post, Director, Labeling and Consumer Protection Staff, Office of Policy, Program, and Employee Development, USDA, FSIS, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 205-0279, FAX: (202) 205-3625, e-mail: Robert.Post@fsis.usda.gov.

Pre-registration for this meeting is recommended. To pre-register, please contact Diane Jones by telephone at (202) 720-9692 or be e-mail at Diane.Jones@fsis.usda.gov. Persons requiring a sign language interpreter or special accommodations should contact Ms. Jones as soon as possible.

SUPPLEMENTARY INFORMATION:

Background

FSIS is the public health regulatory agency in the USDA responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and truthfully labeled and packaged. In particular, FSIS develops and implements national policies to ensure that meat, poultry, and egg product labeling is truthful and non-misleading.

Labeling Guidance on the Voluntary Claim "Natural"

To guide manufacturers in the development of labeling that FSIS was likely to determine to be truthful and not misleading with regard to the voluntary claim "natural," FSIS published policy guidance in the form of Standards and Labeling Policy Memorandum (Memo) 055, dated November 22, 1982. The policy guide states that the term "natural" may be used on labeling for meat products and poultry products provided that the applicant for such labeling demonstrates that:

(1) The product does not contain any artificial flavor or flavoring, coloring ingredient, or chemical preservative (as defined in 21 CFR 101.22), or any other artificial or synthetic ingredient; and (2) the product and its ingredients are not more than minimally processed. Minimal processing may include: (a) Those traditional processes used to make food edible or to preserve it or to make it safe for human consumption, e.g., smoking, roasting, freezing, drying,

and fermenting, or (b) those physical processes that do not fundamentally alter the raw product or that only separate a whole, intact food into component parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits to produce juices. Relatively severe processes, e.g., solvent extraction, acid hydrolysis, and chemical bleaching, would clearly be considered more than minimal processing. Thus, the Policy Memo explained, the use of a flavor or flavoring, for example, that has undergone more than minimal processing would, in general, mean that a product in which the ingredient is used could not be called "natural."

The Policy Memo acknowledged, however, that there are exceptions to this general view, and that the presence of an ingredient that has been more than minimally processed would not necessarily preclude a product from being promoted as "natural." The Policy Memo stated that exceptions of this type would be granted on a case-by-case basis if it could be demonstrated that the use of such an ingredient would not significantly change the character of the product to the point that it could no longer be considered a "natural" product. In such cases, the "natural" claim would have to be qualified to clearly and conspicuously identify the ingredient, e.g., "all natural ingredients except dextrose, modified food starch, etc."

Policy Memo 055 further stated that all products claiming to be "natural" or a "natural" food should be accompanied by a brief statement that explains what is meant by the term "natural," i.e., that the product is a "natural" food because it contains no artificial ingredients and is only minimally processed. This statement should appear directly beneath or beside all "natural" claims or, if elsewhere on the principal display panel of the label, an asterisk should be used to tie the explanation to the claim.

According to the 1982 policy, the decision of the Agency to approve or deny the use of a "natural" claim may be affected by the specific context in which the claim is made. For example, claims indicating that a product is "natural" food, e.g., "natural" chili or "chili—a "natural" product" would be unacceptable for a product containing beet powder which artificially colors the finished product. However, "all natural ingredients" might be an acceptable claim for such a product.

Since 1982, except for the conditions in points (1) and (2) of the Policy Memo stated above, FSIS modified the guidance on occasion to make it consistent with prevailing policies, to

reflect case-by-case decisions made by the Agency, and to update references to regulations. In August 2005, FSIS modified the guidance by acknowledging that sugar, sodium lactate (from a corn source), and natural flavorings from oleoresins or extractives could be acceptable for products bearing "natural" claims.

The Agency has come to recognize, based on the controversy that has arisen about "natural" in recent months, that there is significant disagreement about aspects of the August 2005 policy modification, particularly the recognition of sodium lactate as an ingredient that could be included in products that bear a "natural" claim. The Agency has received information that raises questions about when, and if, a food to which sodium lactate has been added would be fairly characterized as "natural." The Agency has come to believe that this question, like numerous others alluded to in this document, is best resolved through a rulemaking process. Therefore, FSIS has removed the reference to sodium lactate from the 2005 modification. As the Agency moves through the stages of rulemaking on "natural," "natural" claims for foods in which sodium lactate is used will continue to be considered by FSIS on a case-by-case basis, in light of factors such as the level used, the claimed technical effect of the sodium lactate, and the actual effect that it is having on the product.

Advances in Food Processing

In recent years, the longstanding policy on "natural" has been challenged by advances in food processing and in packaging methods, e.g., the use of techniques such as high pressure processing, food ingredients that are regulated to provide multiple technical effects, and modified atmosphere packaging. The value and integrity of the 1982 policy is challenged further by new uses of ingredients that have previously been used for flavoring purposes, for example, as antimicrobial agents. While the food safety purpose of using antimicrobial agents is important, their effects raise questions as to whether they can be used in products labeled "natural."

Petition

On October 9, 2006, Hormel Foods submitted a petition to FSIS for rulemaking to codify in the Federal meat and poultry inspection regulations a definition of "natural." The petitioner requested that FSIS begin rulemaking procedures to clarify the circumstances in which the claim may be used on the labeling of a meat or poultry product.

The petition states that, consistent with FSIS's longstanding policy, a meat or poultry product should not be labeled as "natural" unless (1) It does not contain artificial flavorings, artificial coloring ingredients, other artificial or synthetic ingredients, or chemical preservatives; and (2) it is not more than minimally processed. The petition further states that consumer confidence and consistency in labeling dictate that exceptions for specific chemical preservatives and synthetic ingredients should not be allowed.

In support of the need for a regulatory definition of "natural," the petition explains that consumer interest and concern in natural products are rising. Meat and poultry food manufacturers are seeking to establish marketing presence in this growing area of labeling. The petitioner cites the difficulty in maintaining a level playing field among manufacturers wishing to establish a marketing presence with FSIS's acceptance of ingredients such as sodium lactate and the AMS National Organic Program "national list" of food substances as a reference to support that such ingredients may be considered "natural." According to the petition, as a result, there is a significant likelihood of inconsistent guidance that provides an opportunity for food manufacturers to manipulate exceptions in the policy and to undercut the intent for "natural" labeling. The petitioner requests that the Agency conduct rulemaking regarding the claim "natural" to provide clarity and certainty in its use of product labeling in the interest of consumer protection and consumer confidence in labeling.

Public Meeting

FSIS is holding a public meeting in order to gain public input on the use of the "natural" claim and the points raised by the petition, the ideas set out in this notice, and the impact of possible changes discussed herein. Following the public meeting, the Agency intends to initiate rulemaking on "natural" claims.

In order to benefit from this public meeting, FSIS seeks input on the following questions concerning the petition discussed above:

1. Considering the types of food processing methods that are commonplace today, as opposed to 24 years ago when the policy on "natural" claims was established, is it reasonable to include as part of the definition of "natural" a stipulation that products, to be eligible to bear the claim, can be no more than minimally processed? Are there any accommodations necessary to allow for certain operations because

food processing and packaging techniques for enhancing safety may disqualify a product as “natural?”

2. What are the implications and conflicts that exist with regard to using current and new food processing methods, e.g., chlorine in poultry chillers; steam pasteurization of carcasses; high pressure processing; and modified atmosphere packaging and uses of certain classes of ingredients, e.g., antimicrobial agents, and the meaning of the claim “natural” on the labels of meat and poultry products?

3. Are there available data, in addition to the data provided in the petition, from consumer studies on views, perceptions, and beliefs about what the claim “natural” means on the labels of food products, including meat and poultry products? What do consumers think that the terms “minimal processing,” “artificial and synthetic,” and “preservatives” mean?

4. Do food safety and consumer protection benefits of using what historically may have been considered more than minimal processing techniques and antimicrobial agents outweigh conflicts with the meaning of “natural?” In recent years, FSIS has put a great deal of emphasis on improving food safety. In some ways, however, some definitions of “natural” might unnecessarily undercut this objective. For example, some definitions of “natural” could discourage the use of antimicrobials, which are used to reduce and prevent the growth of *Listeria monocytogenes* in foods. The Agency seeks comment on how it best determines an appropriate and rational balance between the need to ensure the safety of the food supply and the need to ensure that labels are truthful and not misleading.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of

this notice, FSIS will announce it on-line through the FSIS Web page located at http://www.fsis.usda.gov/regulations/2006_Notices_Index/. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at http://www.fsis.usda.gov/news_and_events/email_subscription/. Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on: December 1, 2006.

Barbara J. Masters,
Administrator.

[FR Doc. 06-9546 Filed 12-1-06; 2:25 pm]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed Fee Changes; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108-447)

AGENCY: Malheur National Forest, USDA Forest Service.

ACTION: Notice of Proposed Fee Changes.

SUMMARY: The Malheur National Forest is planning to increase fees at numerous campgrounds as well as begin charging fees at other campgrounds. Funds from fees collected will be used for the continued operation and maintenance of fee campgrounds on the Malheur National Forest.

DATES: Fees will be charged beginning on: May 28, 2007.

ADDRESSES: Forest Supervisor, Malheur National Forest, 431 Patterson Bridge Road, John Day, OR 97845.

FOR FURTHER INFORMATION CONTACT: Jennifer Harris, Recreation Fee Coordinator, 541-575-3008.

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. These new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

The Malheur National Forest currently has 35 campgrounds. Of these 35 campgrounds, the Malheur National Forest is proposing modest increases in fees at 15 sites where fees are currently charged and to begin charging fees at 8 additional sites. A market analysis indicates that the proposed increases and fees are both reasonable and acceptable for this sort of recreation experience. The following is being proposed:

Proposed Increases:

Parish Cabin Campground	Increase fee to \$8.
Starr Campground	Increase fee to \$6.
Delintment Lake Campground	Increase fee to \$10.
Emigrant Campground	Increase fee to \$8.
Falls Campground	Increase fee to \$8.
Idlewild Campground	Increase fee to \$10.
Joaquin Miller Campground	Increase fee to \$8.
Yellowjacket Campground	Increase fee to \$10.
Deerhorn Forest Camp	Increase fee to \$8.
Dixie Campground	Increase fee to \$8.
Magone Lake Campground	Increase fee to \$13.
Middle Fork Campground	Increase fee to \$8.
Big Creek Campground	Increase fee to \$8.
Strawberry Campground	Increase fee to \$8.
Trout Farm Campground	Increase fee to \$8.

Proposed Charging Fees:

Wickiup Campground	Charge fee of \$8.
Buck Spring Campground	Charge fee of \$6.
Rock Springs Campground	Charge fee of \$6.
Tamarack Forest Camp	Charge fee of \$6.
Tip Top Campground	Charge fee of \$6.
Lower Camp Creek Forest Camp	Charge fee of \$6.
Murray Campground	Charge fee of \$8.
Slide Horse Camp	Charge fee of \$8.

Dated: November 29, 2006.

Gary "Stan" Benes,

Malheur National Forest Supervisor.

[FR Doc. 06-9520 Filed 12-4-06; 8:45 am]

BILLING CODE 3410-11-M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Wednesday, November 29, 2006 3:30 p.m.-4:30 p.m.

PLACE: Cohen Building, Room 3360, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in a special session to review and discuss budgetary issues relating to U.S. Government-funded non-military international broadcasting. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2)and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Carol Booker at (202) 203-4545.

Dated: November 29, 2006.

Carol Booker,

Legal Counsel.

[FR Doc. 06-9536 Filed 11-31-06; 10:10 am]

BILLING CODE 8230-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

(A-357-814, A-570-865, A-533-820, A-560-812, A-834-806, A-485-806, A-791-809, A-583-835, A-549-817, A-823-811)

Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2006, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"), the Department of Commerce (the "Department") initiated sunset reviews of the antidumping duty orders on certain hot-rolled carbon steel flat products from Argentina, the People's Republic of China ("PRC"), India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine (collectively, the "Orders"). The Department has conducted expedited sunset reviews of the Orders and has determined that revocation of the Orders would be likely to lead to continuation or recurrence of dumping, in accordance with section 752(c) of the Act. The dumping margins likely to prevail are identified in the "Final Results of Sunset Reviews" section of this notice.

EFFECTIVE DATE: December 5, 2006.

FOR FURTHER INFORMATION CONTACT: Malcolm Burke (202) 482-3584, Office 4 (Argentina, the PRC, India, Indonesia, and Romania), Martha Douthit (202) 482-5050, Office 6 (Kazakhstan, South Africa and Ukraine), Deborah Scott (202) 482- 2657, Office 7 (Taiwan and Thailand), or Dana Mermelstein (202) 482-1391, Office 6, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background:

In August 2006, pursuant to section 751(c) of the Act, the Department

published a notice of initiation of the sunset reviews of the Orders, among others.¹ The Department received notices of intent to participate from: United States Steel Corporation, Mittal Steel USA Inc., Nucor Corporation, Gallatin Steel Company, Steel Dynamics Inc., IPSCO Steel Inc., and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW"), within the deadline specified in 19 CFR § 351.218(d)(1)(i). These parties claimed interested party status under sections 771(9)(C) or (D) of the Act, as producers of a domestic like product, or as a union whose members are engaged in the production of a domestic like product.

The Department received complete substantive responses from the parties identified above, except for USW, within the deadline specified in 19 CFR § 351.218(d)(3)(i). The Department received no responses from respondent interested parties with respect to any of the Orders. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR § 351.218(e)(1)(ii) (C)(2), the Department has conducted expedited sunset reviews of the Orders.²

Scope of the Orders

The products covered by the Orders are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Further particulars of the scopes of the Orders may be found in the following **Federal Register** notices as indicated for the country of production: for Argentina

¹ *Initiation of Five-year ("Sunset") Reviews*, 71 FR 43,443 (Aug. 1, 2006).

² See Letter to Mr. Robert Carpenter, Director, Office of Investigations, U.S. International Trade Commission, "Expedited and Full Sunset Reviews of the Antidumping and Countervailing Duty Orders Initiated in August 2006" (September 20, 2006).

and South Africa,³ the PRC,⁴ India,⁵ Indonesia,⁶ Kazakhstan,⁷ Romania,⁸ Taiwan,⁹ Thailand,¹⁰ and Ukraine.¹¹ The merchandise is currently classified under the item numbers of the Harmonized Tariff Schedule of the United States (“HTSUS”) listed in the respective **Federal Register** notices identified above. Although the HTSUS item numbers are provided for convenience and customs purposes, the written descriptions of the scope of the Orders remain dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the “Issues and Decision

Memorandum for the Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People’s Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner Assistant Secretary for Import Administration, dated concurrently herewith (the “Decision Memorandum”), which is hereby adopted by this notice. A complete discussion of all issues raised in these reviews, including the likelihood of

continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the Orders were revoked, and the corresponding recommendations, may be found in the Decision Memorandum on file in Room B–099 of the Department of Commerce building. In addition, the Decision Memorandum may be viewed via the internet at <http://ia.ita.doc.gov/frn>.

Final Results of Sunset Reviews

We determine that revocation of the Orders would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Country	Producer/Exporter	Weighted Average Margin
Argentina	Siderar SAIC	44.59%
	All others	40.60%
PRC	Angang Group International Trade Co. Ltd., New Iron & Steel Co., Ltd., and Angang Group Hong Kong Co., Ltd.	31.09%
	Shanghai Baosteel Group Corporation, Baoshan Iron & Steel Co., Ltd., and Baosteel Group International Trade Corporation	12.39%
	Benxi Iron & Steel Group International Economic & Trade Co., Ltd., Bengang Steel Plates Co., Ltd., and Benxi Iron & Steel Group Co., Ltd.	57.19%
	Panzhuhua Iron and Steel (Group) Co.	65.59%
	Wuhan Iron and Steel Group Corporation	65.59%
	PRC-wide	90.83%
India	Ispat Industries Ltd.	44.40%
	Essar Steel Ltd.	36.53%
	All others	38.72%
Indonesia	PT Krakatau Steel Corporation	47.86%
	All others	47.86%
Kazakhstan	Ispat Karmet	243.46%
	All others	243.46%
Romania	Sidex, S.A., Sidex Trading SRL, and Sidex International Plc.	16.34%
	Metalexportimport S.A.	18.04%
	Metanef S.A.	21.59%
	Metagrimex Business Group S.A.	16.29%
	All others	88.62%
South Africa	Highveld Steel and Vanadium Corporation Limited	9.28%
	Iscor Limited/Saldanha Steel Limited	9.28%
	All others	9.28%
Taiwan	An Feng Steel Co., Ltd	29.14%
	China Steel Corporation/Yieh Loong	29.14%
	All others	20.28%
Thailand	Siam Strip Mill Public Co., Ltd.	20.30%
	All others	4.44%
Ukraine	All others	90.33%

In accordance with section 752(c)(3) of the Act, we will notify the International Trade Commission of the final results of these expedited sunset reviews. This notice also serves as the only reminder to parties subject to

administrative protective orders (“APO”) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR § 351.305. Timely notification of the

return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

³ Notice of Antidumping Duty Orders: Certain Hot-Rolled Carbon Steel Flat Products From Argentina and the Republic of South Africa, 66 FR 48,242 (Sept. 19, 2001).

⁴ Notice of Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From the People’s Republic of China, 66 FR 59,561 (Nov. 29, 2001).

⁵ Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled

Carbon Steel Flat Products From India, 66 FR 60,194 (Dec. 3, 2001).

⁶ Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia, 66 FR 60,192 (Dec. 3, 2001).

⁷ Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan, 66 FR 58,435 (Nov. 21, 2001).

⁸ Notice of Amended Final Antidumping Duty Determination and Antidumping Duty Order:

Certain Hot-Rolled Carbon Steel Flat Products From Romania, 66 FR 59,566 (Nov. 29, 2001).

⁹ Notice of Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Taiwan, 66 FR 59,563 (Nov. 29, 2001).

¹⁰ Notice of Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 59,562 (Nov. 29, 2001).

¹¹ Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Ukraine, 66 FR 59,559 (Nov. 29, 2001).

This notice is published in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: November 28, 2006.

David M. Spooner,
Assistant Secretary for Import
Administration.

[FR Doc. E6-20553 Filed 12-4-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-905

Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Polyester Staple Fiber from the People's Republic of China

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

EFFECTIVE DATE: December 5, 2006.

FOR FURTHER INFORMATION CONTACT:
Michael Holton or Paul Walker, Import
Administration, International Trade
Administration, U.S. Department of
Commerce, 14th Street and Constitution
Avenue, NW., Washington, DC 20230;
telephone: (202) 482-1324 or (202) 482-
0413, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On July 13, 2006, the Department of Commerce ("Department") initiated the antidumping duty investigation of certain polyester staple fiber from the People's Republic of China. See *Initiation of Antidumping Duty Investigation: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 41201 (July 20, 2006) ("Initiation Notice"). The Initiation Notice stated that the Department would make its preliminary determination for this antidumping duty investigation no later than 140 days after the date of issuance of the initiation (*i.e.*, November 30, 2006).

We have determined that this investigation is extraordinarily complicated within the meaning of section 733(c)(1)(B)(i) of the Tariff Act of 1930, as amended ("the Act"). On November 16, 2006, the Department notified parties to the investigation that it intended to postpone the preliminary determination for reasons provided in this notice. See Memorandum to the file, from Michael Holton, *Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Polyester Staple*

Fiber from the People's Republic of China, dated November 16, 2006.

Specifically, we find that the Department requires additional time to gather more information from all the mandatory respondents regarding market-economy inputs, affiliations, establishing the proper date of sale and the allocation methodology used to report certain factors of production. In addition, the Department also requires additional time to evaluate the separate-rate applications.

Therefore, it is the Department's decision to postpone the current preliminary determination so that all of the issues currently under investigation at this time can be addressed in the most complete manner possible. For the reasons identified above, we are postponing the preliminary determination under section 733(c)(1)(B) of the Act by fifteen days to December 15, 2006. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 28, 2006.

David M. Spooner,
Assistant Secretary for Import
Administration.

[FR Doc. E6-20566 Filed 12-4-06; 8:45 am]

Billing Code: 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-823-810

Solid Agricultural Grade Ammonium Nitrate from Ukraine; Final Results of the Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

SUMMARY: On August 1, 2006, the Department of Commerce ("Department") initiated a sunset review of the antidumping duty order on solid agricultural grade ammonium nitrate from Ukraine pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and a complete substantive response filed on behalf of the domestic interested parties and an inadequate response from respondent interested parties, the Department conducted an expedited sunset review of the antidumping duty order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B).

As a result of this sunset review, the Department finds that revocation of the order would likely lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: December 5, 2006.

FOR FURTHER INFORMATION CONTACT:
Audrey 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 initiated a sunset review of the antidumping duty order on solid agricultural grade ammonium nitrate ("ammonium nitrate") from Ukraine pursuant to 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 Committee for Fair Ammonium Nitrate Trade ("COFANT") and its individual producer members, El Dorado Chemical Company and Terra Industries, Inc. (also known as "domestic interested parties") within the deadline specified in 19 CFR 351.218(d)(1)(I). COFANT claims interested party status under section 771(9)(C) of the Act as domestic manufacturers of ammonium nitrate for its members.

The Department received a complete substantive response collectively from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department also received a substantive response from respondent interested party, Open Joint Stock Company "Azot," within the deadline specified in 19 CFR 351.218(d)(3)(i). On September 7, 2006, the domestic interested parties submitted a rebuttal to Azot's substantive response. On September 20, 2006, the Department determined that the respondent interested party did not account for more than 50 percent of exports by volume of the subject merchandise, because it reported that it had no exports during the 2001-2005 sunset review period. Therefore, the Department concluded that the respondent interested party did not submit an adequate response to the Department's *Notice of Initiation*. See Memorandum to Susan H. Kuhbach entitled, "Adequacy Determination in

Antidumping Duty Sunset Review of Solid Agricultural Grade Ammonium Nitrate from Ukraine," (September 20, 2006). On October 10, 2006, the domestic interested parties submitted comments supporting the Department's adequacy determination.

Pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted an expedited sunset review of this antidumping duty order.

Scope of the Order

The merchandise covered by this order are solid, fertilizer grade ammonium nitrate ("ammonium nitrate" or "subject merchandise") products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 3102.30.00.00. 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 these reviews are addressed in the "Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Solid Agricultural Grade Ammonium Nitrate from Ukraine; Final Results" ("Decision Memo") from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration (November 29, 2006), 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 margins likely to prevail if the order were to be revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum 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.

Final Results of Review

The Department determines that revocation of the antidumping duty order on ammonium nitrate from Ukraine would be likely to lead to continuation or recurrence of dumping at the rates listed below:

Producers/Exporters	Margin (percent)
J.S.C. "Concern" Stiroil	156.29
All Others rate ¹	156.29

¹ 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*, February 24, 2006 (71 FR 9520)). As a result, the Ukraine-wide rate is now the All Others rate. See *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 12651 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 2.

Notification regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: November 29, 2006.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6-20551 Filed 12-4-06; 8:45 am]

Billing Code: 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-822-804, A-570-860, A-560-811, A-841-804, A-455-803, A-580-844

Steel Concrete Reinforcing Bars from Moldova, the People's Republic of China, South Korea, Indonesia, Poland, and Belarus; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2006, the Department of Commerce ("the

Department") initiated sunset reviews of the antidumping duty orders on steel concrete reinforcing bars from Moldova, the People's Republic of China, South Korea, Indonesia, Poland, and Belarus pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). The Department has conducted expedited (120-day) sunset reviews for these orders pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: December 5, 2006.

FOR FURTHER INFORMATION CONTACT: Audrey 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) 482-4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2006, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on steel concrete reinforcing bars ("rebar") from Moldova, the People's Republic of China ("PRC"), South Korea, Indonesia, Poland, and Belarus pursuant to section 751(c) of the Act. See *Initiation of Five-year ("Sunset") Reviews*, 71 FR 43443 (August 1, 2006) ("Notice of Initiation").

On August 11, 2006, 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.

On August 31, 2006, 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.

We received no responses from respondent interested parties with respect to any of the orders covered by these sunset reviews except Moldova. On August 31, 2006, the Department received a substantive response from respondent interested party, JSCC Moldova Steel Works, which was within the deadline specified in 19 CFR 351.218(d)(3)(i). On September 20, 2006, the Department determined that JSCC Moldova Steel Works did not account for more than 50 percent of exports by volume of the subject merchandise, because it reported that it had no exports during the 2001–2005 sunset review period. Therefore, the Department found that JSCC Moldova Steel Works did not submit an adequate substantive response to the Department’s *Notice of Initiation*. See Memorandum to Susan H. Kuhbach entitled, “Adequacy Determination in Antidumping Duty Sunset Review of

Steel Concrete Reinforcing Bars from Moldova,” (September 20, 2006).

As a result of an inadequate response from Moldova and no substantive response from the PRC, South Korea, Indonesia, Belarus, and Poland, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of these orders.

Scope of the Orders

The product covered by these orders 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 these reviews are addressed in the “Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Steel Concrete Reinforcing

Bars from Moldova, the People’s Republic of China, South Korea, Indonesia, Poland, and Belarus; Final Results” from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration (November 29, 2006), which is hereby adopted by this notice (“Decision Memo”). The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were to be revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum 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.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on rebar from Moldova, the PRC, South Korea, Indonesia, Poland, and Belarus would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted Average Margin (percent)
<i>Moldova.</i>	
Moldova–Wide Rate	232.86
<i>PRC.</i>	
Laiwu Steel Group	133.00
PRC–Wide Rate	133.00
<i>South Korea.</i>	
Dongkuk Steel Mill Co., Ltd./Korea Iron & Steel Co., Ltd.	22.89
Hanbo Iron & Steel Co., Ltd.	102.28
All Others	22.89
<i>Indonesia.</i>	
PT Gunung Gahapi Sakti	71.01
PT Bhirma Steel	71.01
Krakatau Wajatama	71.01
PT Jakarta Steel Perdana Industri	71.01
PT Hanil Jaya Metal Works	71.01
PT Pulogadung Steel	71.01
PT Jakarta Cakra Tunggal	71.01
PT The Master Steel Manufacturing Co.	71.01
All Others	60.46
<i>Poland.</i>	
Stalexport	52.07
All Others	47.13
<i>Belarus.</i>	
Belarus–Wide Rate	114.53

This notice also serves as the only reminder to parties subject to administrative protective orders (“APO”) of their responsibility

concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the

return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms

of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: November 29, 2006.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6-20549 Filed 12-4-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Jointly Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce

ACTION: Notice.

SUMMARY: The invention listed below is jointly owned by the U.S. Government, as represented by the Department of Commerce, and Cree Inc. The Department of Commerce's interest in the invention is available for licensing, in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 222, Room A155, Gaithersburg, MD 20899. Information is also available via telephone: 301-975-4188, fax 301-869-2751, or e-mail: mary.clague@nist.gov. Any request for information should include the NIST Docket number or Patent number and title for the invention as indicated below.

The invention available for licensing is:

[DOCKET NUMBER 06-008US]

Title: Power Switching Semiconductor Devices Including Rectifying Junction-Shunts.

Abstract: A semiconductor device includes a drift layer having a first conductivity type and a body region adjacent the drift layer. The body region has a second conductivity type opposite the first conductivity type and forms a p-n junction with the drift layer. The device further includes a contactor region in the body region and having the first conductivity type, and a shunt channel region extending through the body region from the contactor region to

the drift layer. The shunt channel region has the first conductivity type. The device further includes a first terminal in electrical contact with the body region and the contactor region, and a second terminal in electrical contact with the drift layer. The shunt channel region has a length, thickness and doping concentration selected that: (1) The shunt channel region is fully depleted when zero voltage is applied across the first and second terminals, (2) the shunt channel becomes conductive at voltages less than the built-in potential of the drift layer to body region p-n junction, and/or (3) the shunt channel is not conductive for voltages that reverse bias the p-n junction between the drift region and the body region.

Dated: November 29, 2006.

James E. Hill,

Acting Deputy Director.

[FR Doc. E6-20582 Filed 12-4-06; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Fisheries Certificate of Origin

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 5, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to William G. Jacobson, 562-980-4035 or Bill.Jacobson@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information required by the International Dolphin Conservation

Program Act, amendment to the Marine Mammal Protection Act, is needed: To document the dolphin-safe status of tuna import shipments; to verify that import shipments of fish were not harvested by large scale, high seas driftnets; and to verify that imported tuna was not harvested by an embargoed nation or one that is otherwise prohibited from exporting tuna to the United States. Forms are submitted by importers and processors.

II. Method of Collection

Forms may be submitted by mail or electronically.

III. Data

OMB Number: 0648-0335.

Form Number: NOAA Form 370.

Type of Review: Regular submission.

Affected Public: Business or other for-profits organizations.

Estimated Number of Respondents: 350.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 3,663.

Estimated Total Annual Cost to Public: \$3,397.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 30, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-20513 Filed 12-4-06; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[DOD-2006-0S-0216]

Limitations on Terms of Consumer Credit Extended to Service Members and Dependents**AGENCY:** Department of Defense (DOD).**ACTION:** Notice with request for comments.

SUMMARY: The Department of Defense is preparing to draft new consumer protection rules. Public Law 109-364, the John Warner National Defense Authorization Act for Fiscal Year 2007, § 670, "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents," (October 17, 2006), created 10 U.S.C. 987 and requires the Secretary of Defense to prescribe regulations to implement the protections covered by the law. The Department of Defense views this requirement as an opportunity to ensure the protections included in the statute do not create unintended limitations on Service members and their families obtaining favorable credit products. Submitted comments and recommendations will be carefully considered as the regulation is being drafted. An opportunity to review the proposed regulation will be provided during a subsequent period for public comment.

DATES: Comments must be received no later than February 5, 2007.**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: Mr. George Schaefer, (703) 588-0876.

Dated: November 29, 2006.

L.M. Bynum,*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 06-9518 Filed 12-4-06; 8:45 am]

BILLING CODE 5001-06-M**ELECTION ASSISTANCE COMMISSION****Sunshine Act Notice****AGENCY:** United States Election Assistance Commission.**ACTION:** Notice of public meeting (amended).**DATE AND TIME:** Thursday, December 7, 2006, 10 a.m.-3:30 p.m.**PLACE:** U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 150, Washington, DC 20005. (Metro Stop: Metro Center).

AGENDA: The Commission will receive presentations on public comments received for the DRAFT Procedural Manual for Voting System Testing and Certification Program and the proposed final document will be considered for approval. The Commission will receive presentations from election officials, community interest groups, academicians and technology experts regarding the 2006 election. The Commission will elect officers for 2007 and consider other administrative matters. In addition, the Commission will consider the adoption of a voter fraud and intimidation report and the adoption of an administrative policy and procedures manual.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566-3100.**Donetta L. Davidson,***Commissioner, U.S. Election Assistance Commission.*

[FR Doc. 06-9547 Filed 12-1-06; 1:22 pm]

BILLING CODE 6820-KF-M**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8251-3]

Protection of Stratospheric Ozone: Request for Applications for Essential Use Exemptions for 2008 and 2009**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.**SUMMARY:** The Environmental Protection Agency (EPA) is requesting applications

for essential use allowances for calendar years 2008 and 2009. Essential use allowances provide exemptions from the production and import phaseout of ozone-depleting substances (ODSs) and must be authorized by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol). The U.S. Government will use the applications received in response to this notice as the basis for its nomination of essential use allowances at the Nineteenth Meeting of the Parties to the Protocol, to be held in 2007.

DATES: Applications for essential use exemptions must be submitted to EPA no later than January 4, 2007 in order for the U.S. Government to complete its review and to submit nominations to the United Nations Environment Programme and the Protocol Parties in a timely manner.

ADDRESSES: Send two copies of application materials to: Kirsten Cappel, Stratospheric Protection Division (6205J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. For applications sent via courier service, use the following direct mailing address: 1310 L Street, NW., Washington, DC, 20005, room 1047C.

Confidentiality: Application materials that are confidential should be submitted under separate cover and be clearly identified as "trade secret," "proprietary," or "company confidential." Information covered by a claim of business confidentiality will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart B, and will be disclosed only to the extent and by means of the procedures set forth in that subpart. Please note that data will be presented in aggregate form by the United States as part of the nomination to the Parties. If no claim of confidentiality accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the company (40 CFR 2.203).

FOR FURTHER INFORMATION CONTACT: Kirsten Cappel at the above address, or by telephone at (202) 343-9556, by fax at (202) 343-2363, or by e-mail at cappel.kirsten@epa.gov. General information may be obtained from EPA's stratospheric protection Web site at <http://www.epa.gov/ozone>.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Background on the Essential Use Nomination Process
- II. Information Required for Essential Use

Applications for Production or Importation of Class I Substances in 2008 and 2009

I. Background—The Essential Use Nomination Process

The Parties to the Protocol agreed during the Fourth Meeting in Copenhagen on November 23–25, 1992, that non-Article 5 Parties (that is, developed countries) would phase out the production and consumption of halons by January 1, 1994, and the production and consumption of other class I substances (under 40 CFR part 82, subpart A), except methyl bromide, by January 1, 1996. The Parties also reached decisions and adopted resolutions on a variety of other matters, including the criteria to be used for allowing “essential use” exemptions from the phaseout of production and importation of controlled substances. Decision IV/25 of the Fourth Meeting of the Parties details the specific criteria and review process for granting essential use exemptions.

Decision IV/25, paragraph 1(a), states that “* * * a use of a controlled substance should qualify as “essential” only if: (i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and (ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health.” In addition, the Parties agreed “that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: (i) All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and (ii) the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances * * *.” Decision XII/2 of the Twelfth Meeting of the Parties states that any CFC metered dose inhaler (MDI) product approved after December 31, 2000, is nonessential unless the product meets the criteria in Decision IV/25, paragraph 1(a).

The first step in obtaining essential use allowances is for the user to consider whether the use of the controlled substance meets the criteria of Decision IV/25. If the essential use request is for an MDI product, the user should also consider whether the product meets the criteria of Decision XII/2.

In addition, the user should consult the final rule promulgated by the Food and Drug Administration (FDA) on April 4, 2005 (70 FR 17168), which

removed the essential use designation for albuterol MDIs effective December 31, 2008. Albuterol MDIs containing ODSs may not be marketed after that effective date. Users may wish to consider the impact of that action on their need for essential use CFCs in 2008.

Users should send a completed application to EPA on the candidate use and provide information for U.S. Government agencies and the Protocol Parties to evaluate the candidate use according to the criteria in the Decisions noted above.

Upon receipt of the essential use exemption application, EPA reviews the information provided and works with other interested Federal agencies to determine whether the use meets the essential use criteria and warrants being nominated by the United States for an exemption. In the case of multiple exemption requests for a single use, such as for MDIs, EPA aggregates exemption requests received from individual entities into a single U.S. request. An important part of the EPA review of requests for CFCs for MDIs is to determine that the aggregate request for a particular future year adequately reflects the total market need for CFC MDIs and expected availability of CFC substitutes by that point in time. If the sum of individual requests does not account for such factors, the U.S. government may adjust the aggregate request to better reflect true market needs.

Nominations submitted by the United States and other Parties are forwarded from the United Nations Ozone Secretariat to the Montreal Protocol’s Technical and Economic Assessment Panel (TEAP) and its Technical Options Committees (TOCs), which review the submissions and make recommendations to the Protocol Parties for essential use exemptions. Those recommendations are then considered by the Parties at their annual meeting for final decision. If the Parties declare a specified use of a controlled substance as essential, and authorize an exemption from the Protocol’s production and consumption phaseout, EPA may propose regulatory changes to reflect the decisions by the Parties, but only to the extent such action is consistent with the Clean Air Act (the Act). Applicants should be aware that essential use exemptions granted to the United States under the Protocol in recent years have been limited to CFCs for MDIs to treat asthma and chronic obstructive pulmonary disease, and methyl chloroform for use in manufacturing solid rocket motors.

The timing of the process described above is such that in any given year the Parties review nominations for essential use exemptions from the production and consumption phaseout intended for the following year and subsequent years. This means that, if nominated, applications submitted in response to today’s notice for an exemption in 2008 and 2009 will be considered by the Parties in 2007 for final action. The quantities of controlled substances that are requested in response to this notice, if approved by the Parties to the Montreal Protocol, will then be allocated as essential use allowances to the specific U.S. companies through notice and comment rulemaking, to the extent that such allocations are consistent with the Act.

II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2008 and 2009

Through this action, EPA requests applications for essential use exemptions for all class I substances, except methyl bromide, for calendar years 2008 and 2009. This notice is the last opportunity to submit new or revised applications for 2008. This notice is also the first opportunity to submit requests for 2009. Companies will have an opportunity to submit new, supplemental, or amended applications for 2009 next year. All requests for exemptions submitted to EPA must present information as requested in the current version of the TEAP *Handbook on Essential Use Nominations*, which was updated in 2005. The handbook is available electronically on the web at http://ozone.unep.org/teap/Reports/TEAP_Reports/EUN-Handbook2005.pdf.

In brief, the TEAP Handbook states that applicants should present information on:

- Role of use in society;
- Alternatives to use;
- Steps to minimize use;
- Recycling and stockpiling;
- Quantity of controlled substances requested; and
- Approval date and indications (for MDIs).

First, in order to obtain complete information from essential use applicants for CFC MDIs, EPA requires that entities (such as the International Pharmaceutical Aerosol Consortium) who request CFCs for multiple companies make clear the amount of CFCs requested for each member company. Second, all essential use applications for CFCs must provide a breakdown of the quantity of CFCs necessary for each MDI product to be produced. This detailed breakdown will

allow EPA and FDA to make informed decisions on the amount of CFC to be nominated by the U.S. Government for the years 2008 and 2009. Third, all new drug application (NDA) holders for CFC MDI products produced in the United States must submit a complete application for essential use allowances either on their own or in conjunction with their contract filler. In the case where a contract filler produces a portion of an NDA holder's CFC MDIs, the contract filler and the NDA holder must determine the total amount of CFCs necessary to produce the NDA holder's entire product line of CFC MDIs. The NDA holder must provide an estimate of how the CFCs would be split between the contract filler and the NDA holder in the allocation year. This estimate will be used only as a basis for determining the nomination amount, and may be adjusted prior to allocation of essential use allowances. Since the U.S. Government does not forward incomplete or inadequate nominations to the Ozone Secretariat, it is important for applicants to provide all information requested in the Handbook, including the information specified in the supplemental research and development form (page 46).

The accounting framework matrix in the Handbook (Table IV) entitled, "Reporting Accounting Framework for Essential Uses Other Than Laboratory and Analytical Applications" requests data for the year 2006 on the amount of ODS exempted for an essential use, the amount acquired by production, the amount acquired by import and the country(s) of manufacture, the amount on hand at the start of the year, the amount available for use in 2006, the amount used for the essential use, the quantity contained in exported products, the amount destroyed, and the amount on hand at the end of 2006. Because all data necessary for applicants to complete Table IV will not be available until after January 1, 2007, companies should not include this chart with their essential use applications in response to this notice. Instead, companies should provide the required data as specified at 40 CFR 82.13(u)(2). To assist companies in reporting this data, EPA will provide MDI manufacturers with a template to use. EPA will then compile companies' responses to complete the U.S. Accounting Framework for Essential Uses for submission to the Parties to the Montreal Protocol by the end of January 2007. EPA may also request additional information from companies to support its nomination using its information

gathering authority under Section 114 of the Act.

EPA anticipates that the Parties' review of MDI essential use requests will focus extensively on the United States's progress in phasing out CFC MDIs, including education programs to inform patients and health care providers of the CFC phaseout and the transition to alternatives, particularly in the case of albuterol MDIs where a phaseout date has been set by FDA. Accordingly, applicants are strongly advised to present detailed information on these points, including the scope and cost of such efforts and the medical and patient organizations involved in the work. Applicants should submit their exemption requests to EPA as noted in the **ADDRESSES** section above.

Dated: November 28, 2006.

Brian J. McLean,

Director, Office of Atmospheric Programs.

[FR Doc. E6-20541 Filed 12-4-06; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 20, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *The Davis Trusts*, co-trustees Pioneer Bank & Trust, Belle Fourche, South Dakota, and Earl A. Davis, Rapid City, South Dakota; Earl A. Davis individually; the Florence E. Davis Credit Equivalency Trust, co-trustees Pioneer Bank & Trust and Arthur H. Davis, Rapid City, South Dakota; the E.L. Davis Trust, co-trustees Earl A. Davis and Loretta L. Davis, both of

Rapid City, South Dakota; Terry C. Davis, Fair Oaks, California, and Elly R. Davis, Fair Oaks, California; to acquire voting shares of Belle Fourche Bancshares, Inc., Spearfish, South Dakota, and thereby indirectly acquire voting shares of Pioneer Bank & Trust, Belle Fourche, South Dakota.

2. *Walter G. Fries*, Wabasha, Minnesota; Raymond B. Pinson, Del Ray Beach, Florida; Kenneth D. Myers, Apple Valley, Minnesota; GLA Investments, L.L.C., Lakeville, Minnesota; Gary Anderson as general partner; AMSIE Enterprise, LLC, Minnetonka, Minnesota; Donald Eisma as general partner; Nancy Ludwig and Francis N. Ludwig, Apple Valley, Minnesota; Richard B. Lambert, Jr., Apple Valley, Minnesota; Russell S. Sampson, Prior Lake, Minnesota; Curtis A. Sampson, Hector, Minnesota; Craig Potts, Henderson, Nevada; Brett D. Reese, Northfield, Minnesota; S & L Investments, LLP, Bloomington, Minnesota; David Stueve as general partner; Savage Capitalists, LLP, Bloomington, Minnesota; David Stueve as general partner; Pershing LLC FBO Richard D. Estenson IRA, Northfield, Minnesota; Charles and Cindy Beske, Lakeville, Minnesota; Brian Bauer, Garvin, Minnesota; and Severson Family Limited Partnership, Lakeville, Minnesota; Larry Severson as general partner, acting as a group in concert to acquire voting shares of L&M Bancshares, Inc., Shakopee, Minnesota, and thereby indirectly acquire voting shares of Northwest Community Bank, Champlin, Minnesota.

Board of Governors of the Federal Reserve System, November 30, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6-20526 Filed 12-4-06; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Greene Investment Co.*, Jefferson, Iowa; to acquire 100 percent of the voting shares of Dunlap Corporation, Slater, Iowa, and thereby indirectly acquire voting shares of South Story Bank & Trust, Slater, Iowa.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *First Independent Bancorp, Inc.*, Chickasha, Oklahoma; to acquire 100 percent of the voting shares of Cyril State Bank, Cyril, Oklahoma.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Gulfport Bancshares of Delaware, Inc.*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Gulfport Bancshares, Inc., Clute, Texas, and thereby indirectly acquire voting shares of Brazos National Bank, Richwood, Texas.

Board of Governors of the Federal Reserve System, November 30, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6-20527 Filed 12-4-06; 8:45 am]

BILLING CODE 6210-01-S

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of a New System of Records

AGENCY: General Services Administration

ACTION: Notice of a new system of records.

SUMMARY: The General Services Administration (GSA) is providing notice of a new record system, Excluded Parties List System (GSA/GOVT-8). The system contains information entered by Federal agencies that identifies individuals excluded from Federal Government procurement and nonprocurement programs and the applicable authority for the exclusion. System functions include Web Service capability, ad hoc search and report capabilities, integration with the Central Contractor Registration system to allow Data Universal Numbering System (DUNS) and data sharing capabilities for Debar Maintenance users, and a new data field to accept the reporting of cage codes.

EFFECTIVE DATE: The system of records will become effective without further notice on January 4, 2007 unless comments received on or before that date result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202-501-1452/202-208-1317; e-mail gsa.privacyact@gsa.gov.

ADDRESSES: Comments may be submitted to the Program Manager, Integrated Acquisition Environment Program, Office of the Chief Acquisition Officer, General Services Administration, 2011 Crystal Drive, Suite 911, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: This system of records is used to maintain a Governmentwide system that identifies individuals and businesses that have been excluded from participating in Federal procurement and nonprocurement programs throughout the Government. The purpose of these exclusions is to prevent the Federal government from conducting business with nonresponsible contractors and to protect the integrity of the Government's procurement activities.

Dated: November 28, 2006.

Cheryl M. Paige,

Acting Director, Office of Information Management.

GSA/GOV-8

SYSTEM NUMBER:

GSA/GOVT-8

SYSTEM NAME:

Excluded Parties List System (EPLS).

SYSTEM LOCATION:

The General Services Administration's (GSA) Office of the Chief Acquisition Officer (OCAO) is the owner of the system. The system of records is maintained by a contractor. Contact the system manager for additional information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals excluded or disqualified under a Federal agency's codification of the Common Rules on Nonprocurement suspension and debarment, or otherwise declared ineligible from receiving certain Federal assistance and/or benefits.

b. Individuals debarred, suspended, proposed for debarment, or otherwise declared ineligible from participating in Federal procurement programs.

c. Individuals barred or suspended from acting as sureties for bid and performance bond activity in procurement programs.

d. Individuals barred from entering the United States.

e. Individuals that may be subject to sanctions pursuant to 31 CFR Parts 500-599 and subparts there under.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information entered by Federal agencies that identifies excluded individuals and the applicable authority, in the form of cause and treatment (CT) codes, under which the exclusion was made.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

The authorities for maintaining the system are the Federal Acquisition Regulation Subparts 9.4 and 28.2; Executive Order 12549 (February 18, 1986); Executive Order 12689 (August 16, 1989); and 31 U.S.C. § 6101, note.

PURPOSE:

To maintain a Governmentwide system of records that identifies individuals who have been excluded from participating in Federal procurement and nonprocurement (financial or non-financial assistance and benefits programs), throughout the Federal government. In some instances a record may demonstrate that an exclusion applies only to the agency taking the action, and therefore, does not have Governmentwide effect. The purpose of these exclusions is to protect the Government from nonresponsible contractors and individuals, ensure proper management throughout the Federal government, and protect the integrity of Federal activities.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING THE TYPES OF USERS AND THEIR PURPOSES FOR USING THE RECORDS:

a. To contracting officers and other Federal, State, and local government employees involved in procuring goods and services with Federal funds or administering Federal financial assistance programs or benefits to determine a party's eligibility status to participate in Federal procurement and nonprocurement programs.

b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order where the records clearly indicate, or when seen with other records indicate, a violation of civil or criminal law or regulation, when the information is needed to perform a Federal duty or to decide the issues.

c. To a Federal, State or local agency, financial institution or a healthcare or industry provider that administers Federal financial or non-financial assistance programs or benefits, when the information is needed to determine eligibility.

d. To an expert, consultant, contractor, Federal, State or local agency, or financial institution, when the information is needed to perform a Federal duty.

e. To an appeal, grievance, or formal complaints examiner, an equal employment opportunity investigator, an arbitrator, a union representative, or other official engaged in investigating or settling a grievance, complaint, or appeal filed by an employee, when the information is needed to decide the issues.

f. To a requesting Federal, State or local agency, financial institution, or a healthcare or industry provider in connection with hiring or retaining an employee, issuing a security clearance, investigating an employee, clarifying a job, letting a contract, or issuing a license, grant, or other benefit by the requesting agency where the information is needed to decide on a Federal financial or non-financial assistance program or benefit.

g. To a member of Congress or to a congressional staff member in response to a request from the person who is the subject of the record, when the information is needed to perform a Federal duty.

h. To the Department of Justice when an agency, an agency employee, or the United States is a party to or has an interest in litigation, and the records are needed to pursue the litigation.

i. To a court or judicial body when an agency, an agency employee, or the United States is a party to or has an

interest in litigation, and the records are needed to pursue the litigation.

j. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Government Accountability Office (GAO) or the Interagency Suspension and Debarment Committee (ISDC) when the information is required for program evaluation purposes.

k. To the National Archives and Records Administration (NARA) for records management purposes.

POLICIES AND PRACTICES FOR STORING, ACCESSING, RETRIEVING, MAINTAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are stored on readily accessible servers and backed up to tape media. Paper records are stored in file folders.

RETRIEVABILITY:

Electronic records are retrieved by Exact Name, Partial Name, Action Dates, Termination Dates, Create Dates, Data Universal Numbering System (DUNS), Classification, Exclusion Type, CT Code, Agency, U.S. State, Country, Cage Code, verification of Name with the Social Security Number (SSN) or the Tax Identification Number (TIN), and verification of Name with residential street address.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act of 1974, as amended, the Computer Security Enhancement Act of 1997, and the EPLS Security Plan. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data that is stored, processed, and transmitted. Paper records are stored in locked filing cabinets when not in use or are kept in secured rooms, accessible to authorized users only. The Debar Maintenance and Administration portals are ID and password protected. The public portal does not require ID and passwords because privacy protected information is not available on the public site.

RETENTION AND DISPOSAL:

Electronic records of past exclusions are maintained permanently in the archive list for historical reference. Federal agencies reporting exclusion information in the EPLS should follow their agency's guidance and policies for disposition of paper records.

SYSTEM MANAGER(S) AND ADDRESS:

Integrated Acquisition Environment Program Manager, Office of the Chief

Acquisition Officer, General Services Administration, 2011 Crystal Drive, Suite 911, Arlington, VA 22202.

NOTIFICATION PROCEDURE:

Individuals receive prior notification that their names will be contained in the EPLS from the Agency that takes the action to exclude them from Federal procurement and nonprocurement programs. An individual may retrieve system records by accessing the EPLS public portal, which displays publicly available information only.

RECORD ACCESS PROCEDURE:

Requests from individuals to determine the specifics of a record included in the EPLS should be addressed to the Agency Point of Contact (POC) identified in the record.

CONTESTING RECORD PROCEDURE:

The procedures for contesting the content of a record and appealing an initial decision may be found in 41 CFR Part 105-64. Individuals should contact the Agency Point of Contact (POC) identified in the record to commence a record contest or appeal.

RECORD SOURCES:

Federal agencies are the source for entering record information in the EPLS. [FR Doc. E6-20484 Filed 12-04-06; 8:45 am]

BILLING CODE 6820-34-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-07-0600]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

Proposed Project

Performance Evaluation Program for *Mycobacterium Tuberculosis* and Non-Tuberculous *Mycobacterium* (NTM) Drug Susceptibility Testing (0920-

0600)—Extension—National Center for Health Marketing (NCHM), Coordinating Center for Health Information and Service (COCHIS), Centers for Disease Control and Prevention.

Background and Brief Description

While the overall number of cases of TB in the U.S. has decreased, rates still remain high among foreign-born persons, prisoners, homeless populations, and individuals infected with HIV in major metropolitan areas. The rate of TB cases detected in foreign-born persons has been reported to be almost nine times higher than the rate among the U.S. born population. CDC's goal to eliminate TB will be virtually impossible without considerable effort in assisting heavy disease burden countries in the reduction of tuberculosis. As part of the continuing effort to support both domestic and global public health objectives for treatment of tuberculosis (TB),

prevention of multi-drug resistance and surveillance programs, the National Center for Health Marketing, Division of Laboratory Systems (DLS) seeks to continue to collect information from domestic private clinical and public health laboratories twice per year. Participation and information collections from international laboratories are limited to those which have public health responsibilities for tuberculosis drug susceptibility testing and approval by their national tuberculosis program. The *M. tuberculosis*/NTM program supports this role by monitoring the level of performance and practices among laboratories performing *M. tuberculosis* susceptibility within the U.S. as well as internationally to promote high-quality laboratory testing, resulting in accurate and reliable results.

Information collected in this program includes the susceptibility test results of

primary and secondary drugs, concentrations, and test methods performed by laboratories on a set of challenge isolates sent twice yearly. A portion of the response instrument collects demographic data such as laboratory type and the number of tests performed annually. By providing an evaluation program to assess the ability of the laboratories to test for drug resistant *M. tuberculosis* and selected strains of NTM, laboratories have a self-assessment tool to aid in maximizing their skills in susceptibility testing. Information obtained from laboratories on susceptibility testing practices and procedures assists with determining variables related to good performance, with assessing areas for training and with developing practice standards.

There are no costs to respondents other than their time. The estimated annualized burden hours are 165.332.

Estimate of Annualized Burden Hours

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Laboratories U.S. and foreign	Enrollment	2	1	(5/60) 0.0833
	Information change	2	1	(5/60) 0.0833
	Results Form	165	2	(30/60) 0.5

Dated: November 29, 2006.

Deborah Holtzman,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6-20535 Filed 12-4-06; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-07-0670]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of Efficacy of Household Water Filtration/Treatment Devices in Households with Private Wells—Revision (OMB No. 0920-0670)—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Approximately 42.4 million people in the United States are served by private wells. Unlike community water systems, private wells are not regulated by the U.S. Environmental Protection Agency's (EPA) Safe Drinking Water Act (SDWA). Under the SDWA, EPA sets maximum contaminant levels (MCLs) for contaminants in drinking water. A 1997 U.S. General Accounting Office (GAO) report on drinking water concluded that users of private wells may face higher exposure levels to groundwater contaminants than users of community water systems. Increasingly, the public is concerned about drinking water quality, and the public's use of water treatment devices rose from 27% in 1995 to 41% in 2001 (*Water Quality Association, 2001 National Consumer Water Quality Survey*). Studies evaluating the efficacy of water treatment devices on removal of pathogens and other contaminants have

assessed the efficacy of different treatment technologies.

The purpose of the proposed study is to evaluate how water treatment device efficacy is affected by user behaviors such as maintenance and selection of appropriate technologies. Working with public health authorities in Colorado, Maine, Missouri, Nebraska, North Carolina, and Wisconsin, NCEH will recruit 600 households to participate in a study to determine whether people using water treatment devices are protected from exposure to contaminants found in their well water. We plan to recruit households on private well water that use water filtration/treatment devices to treat tap water for drinking and cooking. Study participants will be selected from geographical areas of each state where groundwater is known or suspected to contain contaminants of public health concern. We will administer a questionnaire at each household to obtain information on selection of water treatment type, adherence to suggested maintenance, and reasons for use of treatment device. We will also obtain samples of treated water and untreated well water at each household to analyze for contaminants of public health concern. There is no cost to respondents

other than their time. The total estimated annual burden hours are 300. *Estimated Annualized Burden Hours*

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Participant Solicitation Telephone Screening Questionnaire	1200	1	5/60
Household Survey Questionnaire	600	1	20/60

Dated: November 28, 2006.
Joan F. Karr,
Acting Reports Clearance Officer, Centers for Disease Control and Prevention.
 [FR Doc. E6-20539 Filed 12-4-06; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Anti-Infective Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of joint meeting of the Anti-Infective Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee. This meeting was announced in the **Federal Register** of November 15, 2006 (71 FR 66545). The amendment is being made to reflect a change in the *Location* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Sohail Mosaddegh, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301-827-7001, fax: 301-827-6776, e-mail: sohail.mosaddegh@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington DC area), codes 301-451-2530 or 301-451-2535. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 15, 2006,

FDA announced that a joint meeting of Anti-Infective Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee would be held on December 14 and 15, 2006. On page 66545, in the first column, the *Location* portion of document is amended to read as follows:

Location: Hilton, Maryland Ballrooms, 8727 Colesville Road, Silver Spring, MD. The hotel phone number is 301-589-5200.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: November 29, 2006.
Randall W. Lutter,
Associate Commissioner for Policy and Planning.
 [FR Doc. E6-20538 Filed 12-5-06; 8:45 am]
BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Advanced Education Nursing Traineeship (AENT) and Nurse Anesthetist Traineeship (NAT): In Use Without Approval

The Health Resources and Services and Administration (HRSA) provides training grants to educational institutions to increase the numbers of advanced education nurses through the Advanced Education Nursing Traineeship (AENT) program and the Nurse Anesthetist Traineeship (NAT) program.

HRSA developed the AENT and NAT tables for the guidance applications for the two nursing traineeship programs. The AENT and NAT tables are used annually by grant applicants that are applying for AENT and NAT funding. The funds appropriated for the AENT and NAT programs are distributed among eligible institutions based on a formula. Award amounts are based on enrollment and graduate data reported on the tables and two funding factors (Statutory Funding Preference and Statutory Special Consideration) to those institutions which the criteria for one or both of the funding factors.

The AENT/NAT tables include information on program participants such as the number of enrollees, number of graduates and the types of programs they are enrolling into and/or from which they are graduating. These tables will be available electronically through Grants.gov. AENT and NAT applicants will have a single access point to submit their grant applications and AENT/NAT Traineeship tables.

Data from the tables will be used in the award determination and validation process. Additionally, the data will be used to ensure programmatic compliance, report to Congress and policymakers on the program accomplishments, and formulate and justify future budgets for these activities submitted to OMB and Congress.

The burden estimate for this project is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
AENT	500	1	500	1	500

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
NAT	100	1	100	1	100
Total	600	.....	600	.....	600

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 22, 2006.

Caroline Lewis,

Acting, Associate Administrator for Administration and Financial Management.
[FR Doc. E6-20531 Filed 12-4-06; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the following meeting:

Name: National Advisory Council on Nurse Education and Practice (NACNEP).

Dates and Times: December 11, 2006, 9 a.m.-5 p.m. December 12, 2006, 7:30 a.m.-3 p.m.

Place: The Madison Hotel, 1177 15th Street, NW., Washington, DC 20005.

Status: The meeting will be open to the public.

Agenda: Agency and Bureau administrative updates will be provided. The purpose of the meeting will be to discuss the role of nursing in developing surge capacity, with a series of panel discussions relating to the nursing workforce, integration of health information technology, providing care to special populations, and integrating surge capacity into the nursing curriculum. Representatives from the Department of Health and Human Services, Department of Homeland Security, Centers for Disease Control and Prevention, Department of Veteran's Affairs, American Hospital Association, INOVA Health Systems, and American Red Cross will be presenting. During this meeting, Council workgroups will deliberate on content presented and formulate recommendations to the Secretary of Health and Human Services and the Congress on role of nursing in developing surge capacity. This meeting will form the

basis for NACNEP's mandated Seventh Annual Report.

For Further Information Contact: Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Dr. Joan Weiss, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9-35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-5688.

Dated: November 29, 2006.

Caroline Lewis,

Acting Associate Administrator for Administration and Financial Management.
[FR Doc. E6-20532 Filed 12-4-06; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Response to Solicitation of Comments on Professional Organizations and State Governments Requirements for Poison Control Center Certification

A notice was published in the **Federal Register** by the Health Resources and Services Administration (HRSA) on April 8, 2005 (Volume 70, No. 67 pp. 18036-18037), soliciting public comment regarding the guidelines by which the Secretary shall approve professional organizations and State governments as having in effect standards for Poison Control Center (PCC) certification. Respondents were asked to submit recommended guidelines for approving professional organizations and State governments' standards per Public Law 108-194 section 1273 (c). Written comments were to be post marked no later than June 5, 2005 for consideration.

The HRSA was seeking comment on the following issues:

1. Modeling the guidelines after certification requirements that are currently being used to certify PCCs;
2. Elements of approval that the guidelines should include and justification of the elements;
3. Guidelines applying to all State governments;
4. Guidelines applying to all professional organizations; and
5. Inclusion or re-certification as an element of certification.

Fifty-two (52) comments were received. Fifty-one (51) comments were submitted by poison control centers (PCCs), 15 of which came from the same center. All of the poison centers are members of the American Association of Poison Control Centers (AAPCC) and certified by this association. One (1) comment was also submitted from a professional organization whose membership includes staff from poison control centers. Following is a summary of the comments received and the HRSA's recommendations.

While the HRSA did not receive any specific comments on the issues requested in the **Federal Register** Notice cited above, 50 comments indicated a strong advisement for the HRSA to continue to accept the present certification process instituted by the AAPCC as the single certifying body for poison control centers. These respondents concurred that the current certification structure is "fair, cost-efficient and already subscribed to by nearly all of poison centers in the United States." Additional responses concluded that resources used to develop, implement and maintain a new certification process would be duplicative and costly. Comments also suggested that the current certification process is used as a mechanism to maintain quality poison prevention education and treatment services.

The legislation does not call for the HRSA to change the certification process, but does require the Secretary to approve standards for certification. Therefore, the HRSA was seeking public comment on what guidelines the HRSA should use for approving professional organizations and State governments' standards for certification.

Of these 50 comments, an additional response indicated that if a State certification system were to be developed it should meet or exceed the certification criteria established by the AAPCC. There was one commenter in support of a State certification process. This commenter indicated that many States currently determine the healthcare standards of their residents and have the ability to employ certification standards for PCCs. In this response, it was also communicated that a State certification process should be developed and modeled after the

current certification process with the exception of the requirement "for nurse/pharmacist certification through AAPCC."

From the comments received, there is consensus support for the AAPCC certification program. The guidelines by which the Secretary shall approve a professional organization and/or State government as having standards for certification will be that any certification program must meet or exceed current certification standards being used by AAPCC to certify PCCs.

Send comments to Maxine Jones, HRSA, HSB, Division of Healthcare Preparedness, Healthcare Systems Bureau, Room 13-103, 5600 Fishers Lane, Rockville, MD 20857. Comments should be received within 60 days of this notice.

Dated: November 28, 2006.

Elizabeth M. Duke,
Administrator.

[FR Doc. E6-20564 Filed 12-4-06; 8:45 am]
BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Second Annual Philip S. Chen, Jr. Distinguished Lecture on Innovation and Technology Transfer

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Office of the Director, NIH, invites you to the second annual Philip S. Chen, Jr., Ph.D. Distinguished Lecture on Innovation and Technology Transfer.

DATES: Friday, January 26, 2007, at 1 p.m.

ADDRESSES: NIH campus, 9000 Rockville Pike, Bethesda MD, NIH Clinical Center (Building 10), Lipsett Auditorium.

FOR FURTHER INFORMATION CONTACT: For additional information, sign language interpretation or accommodation for disabilities, please contact Colleen Crone at 301-496-1921 or cronec@od.nih.gov.

SUPPLEMENTARY INFORMATION: Dr. Douglas R. Lowy will present "The Science, Technology and Promise of Preventive HPV Vaccines." Dr. Lowy is Chief of the Basic Research Laboratory and the Laboratory of Cellular Oncology at the NCI Center for Cancer Research, where he also serves as deputy director. With colleagues at NIH, he developed

the original technology on which the Merck HPV vaccine, Gardasil®, is based.

This annual series honors Dr. Philip S. Chen, Jr. for his almost 50 years of service to the National Institutes of Health. Dr. Chen established NIH's Office of Technology Transfer in 1986 to implement the Federal Technology Transfer Act. The inventions in the Office of Technology Transfer's intellectual property portfolio are crucial in advancing the NIH mission—making important discoveries that improve health and save lives.

Dated: November 27, 2006.

Bonny Harbinger,

Deputy Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6-20577 Filed 12-4-06; 8:45 am]
BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Research in Severe Asthma.

Date: December 12, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Valerie L. Prenger, PhD, Health Scientist Administrator, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, MSC 7924, Room 7214, Bethesda, MD 20892-7924, (301) 435-0270. prengerv@nhlbi.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for

Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 28, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-9525 Filed 12-4-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Development of State-of-the-Art Mechanisms for Epidemiological Research.

Date: December 6, 2006.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, (301) 435-1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Develop a Real-Time fMRI Feedback System that Allows Drug Abusers to Control Cravings and Urges and/or Increase Their Self-Control of Their Drug Taking.

Date: December 20, 2006.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, (301) 435-1439, lf33c.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: November 29, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-9524 Filed 12-4-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: January 26, 2007.

Closed: 8:30 a.m. to 10:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Open: 10:45 a.m. to 2:30 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Director, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892-7180, 301-496-8693, jordanc@nidcd.nih.gov.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nidcd.nih.gov/about/groups/ndcdac/>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: November 28, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-9526 Filed 12-4-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trial Methods in Neurology.

Date: December 14, 2006.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: Westin Embassy Row, 2100 Massachusetts Ave., NW., Washington, DC 20008.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard, MSC 9529, Neuroscience Center, Room 3203, Bethesda, MD 20892-9529, (301) 496-5388, wiethorp@ninds.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 28, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-9528 Filed 12-4-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Udall Centers Review.

Date: December 7, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529. (301) 496-4056.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Brain Trauma & Imaging.

Date: December 11, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529. 301-594-0635. rc218u@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Cognition and Imaging.

Date: December 18, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529. 301-594-0635. rc218u@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Epilepsy Clinical Trial.

Date: December 20, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529. 301-496-5980. kw47o@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 28, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-9529 Filed 12-4-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vitamin D and Colon Cancer.

Date: December 5, 2006.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Sally A. Mulhern, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892. (301) 435-5877. mulherns@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Neurophysiology devices Neuroprosthetics.

Date: December 13, 2006.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892. (301) 435-0902. charlesvi@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review Member Applications on Neurodegeneration.

Date: December 18, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Toby Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892. (301) 435-4433. behart@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Continued Development and Maintenance of Software.

Date: January 8, 2007.

Time: 8:45 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Malgorzata Klosek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892. (301) 435-2211. klosekm@csr.nih.gov.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.

Date: January 24-25, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Weihua Luo PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114 MSC 7854, Bethesda, MD 20892. 301-435-1170. luow@csr.nih.gov.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Enabling Bioanalytical and Biophysical Technologies Study Section.

Date: January 31-February 1, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott, 299 Second Street, San Francisco, CA 94105.

Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892. 301-435-1789. smithvo@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 28, 2006.
Anna Snouffer,
*Acting Director, Office of Federal Advisory
 Committee Policy.*
 [FR Doc. 06-9527 Filed 12-4-06; 8:45 am]
BILLING CODE 4140-01-M

**DEPARTMENT OF HEALTH AND
 HUMAN SERVICES**

**Substance Abuse and Mental Health
 Services Administration**

**Agency Information Collection
 Activities: Submission for OMB
 Review; Comment Request**

Periodically, the Substance Abuse and
 Mental Health Services Administration
 (SAMHSA) will publish a summary of
 information collection requests under
 OMB review, in compliance with the
 Paperwork Reduction Act (44 U.S.C.
 Chapter 35). To request a copy of these
 documents, call the SAMHSA Reports
 Clearance Officer on (240) 276-1243.

Project: Regulations to Implement
 SAMHSA's Charitable Choice
 Statutory Provisions—42 CFR parts 54

and 54a (OMB No. 0930-0242)—
 Revision

Section 1955 of the Public Health
 Service Act (42 U.S.C. 300x-65), as
 amended by the Children's Health Act
 of 2000 (Pub. L. 106-310) and Sections
 581-584 of the Public Health Service
 Act (42 U.S.C. 290kk *et seq.*, as added
 by the Consolidated Appropriations Act
 (Pub. L. 106-554)), set forth various
 provisions which aim to ensure that
 religious organizations are able to
 compete on an equal footing for Federal
 funds to provide substance abuse
 services. These provisions allow
 religious organizations to offer
 substance abuse services to individuals
 without impairing the religious
 character of the organizations or the
 religious freedom of the individuals
 who receive the services. The provisions
 apply to the Substance Abuse
 Prevention and Treatment Block Grant
 (SAPT BG), to the Projects for
 Assistance in Transition from
 Homelessness (PATH) formula grant
 program, and to certain Substance
 Abuse and Mental Health Services
 Administration (SAMHSA)

discretionary grant programs (programs
 that pay for substance abuse treatment
 and prevention services, not for certain
 infrastructure and technical assistance
 activities). Every effort has been made to
 assure that the reporting, recordkeeping
 and disclosure requirements of the
 proposed regulations allow maximum
 flexibility in implementation and
 impose minimum burden.

No changes are being made to the
 regulations. This revision is for approval
 of the annual checklists to be completed
 by discretionary and PATH grantees to
 provide the information required to be
 reported by 42 CFR part 54a.8(d) and
 54.8(e), respectively, and to ascertain
 how they are implementing the
 disclosure requirements of 54a.8(b) and
 54.8(b), respectively. Information on
 how States comply with the
 requirements of 42 CFR part 54a was
 approved by the Office of Management
 and Budget (OMB) as part of the
 Substance Abuse Prevention and
 Treatment Block Grant FY 2005-2007
 annual application and reporting
 requirements approved under OMB
 control number 0930-0080.

42 CFR Citation and purpose	Number of respondents	Responses per respondent	Hours per response	Total hours
Part 54—States Receiving SAPT Block Grants and/or Projects for Assistance in Transition from Homelessness				
Reporting:				
96.122(f)(5) Annual report of activities the State undertook to comply 42 CFR Part 54	60	1	2	120
54.8(c)(4) Program participant notification to responsible unit of govern- ment regarding referrals to alternative service providers	3	24	2.00	48
54.8(e) Annual report by PATH grantees on activities undertaken to comply with 42 CFR Part 54	56	1	2.00	112
Disclosure:				
54.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider.				
SAPT BG	60	10	.05	300
PATH	56	84	.05	236
Recordkeeping:				
54.6(b) Documentation must be maintained to demonstrate significant burden for program participants under 42 U.S.C. 300x-57 or 42 U.S.C. 290cc-33(a)(2)	60	1	1.00	60
Part 54—Subtotal	181	.....	.....	876

Part 54a—States, local governments and religious organizations receiving funding under Title V of the PHS Act for substance abuse prevention and treatment services

Reporting:				
54a.8(c)(1)(iv) Program participant notification to State or local govern- ment of a referral to an alternative provider	25	4	.083	8
54a(8)(d) Program participant notification to SAMHSA of referrals	20	2	.25	10
Disclosure:				
54a.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider	1,460	1	1.0	1,460
Part 54a—Subtotal	1,505	.....	.....	1,478
Total	1,686	.....	.....	2,354

Written comments and recommendations concerning the proposed information collection should be sent by January 4, 2007 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202-395-6974.

Dated: November 27, 2006.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E6-20534 Filed 12-4-06; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 06-36]

Re-Accreditation and Re-Approval of Oiltest, Inc., as a Commercial Gauger and Laboratory

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Oiltest, Inc., of Thorofare, New Jersey, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Oiltest, Inc., 100 Grove Road, Thorofare, New Jersey 08086, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13.

DATES: The re-approval of Oiltest, Inc., as a commercial gauger and laboratory became effective on June 13, 2006. The next triennial inspection date will be scheduled for June 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: November 29, 2006.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E6-20488 Filed 12-4-06; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 06-37]

Re-Accreditation and Re-Approval of SGS North America Inc.—Bridgeport, NJ, as a Commercial Gauger and Laboratory

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of SGS North America Inc., of Bridgeport, New Jersey, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, SGS North America Inc., 614 Herron Drive, Bridgeport, New Jersey 08014, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13.

DATES: The re-approval of SGS North America Inc., as a commercial gauger and laboratory became effective on June 13, 2006. The next triennial inspection date will be scheduled for June 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D., or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: November 29, 2006.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E6-20492 Filed 12-4-06; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 06-38]

Re-Accreditation and Re-Approval of SGS North America Inc.—Tampa, FL as a Commercial Gauger and Laboratory

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of SGS North America Inc., of Tampa, Florida, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, SGS North America Inc., 1212 North 39th Street, Suite 330, Tampa, Florida 33605, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13.

DATES: The re-approval of SGS North America Inc., as a commercial gauger and laboratory became effective on May 25, 2006. The next triennial inspection date will be scheduled for May 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D., or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: November 29, 2006.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E6-20493 Filed 12-4-06; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Emergency Agency Information Collection Activity Under OMB Review: Office of Law Enforcement/Federal Air Marshal Service (OLE/FAM) Mental Health Certification

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of emergency clearance request.

SUMMARY: This Notice announces that the Transportation Security Administration (TSA) will forward the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for emergency processing and approval under the Paperwork Reduction Act. The ICR describes the nature of information collection and its expected burden.

DATES: Send your comments by January 4, 2007. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed

to Nathan Lesser, Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to aira_submission@omb.eop.gov or faxed to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Katrina Kletzly, Attorney-Advisor, Office of the Chief Counsel, TSA-2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220; telephone (571) 227-1995; facsimile (571) 227-1381.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Office of Law Enforcement/Federal Air Marshal Service Mental Health Certification.

Type of Request: Emergency processing request of new collection.

OMB Control Number: Not yet assigned.

Form(s): Mental Health Certification.

Affected Public: Office of Law Enforcement/Federal Air Marshal Service applicants.

Abstract: Pursuant to 49 U.S.C. 44901, 44903, and 44917, TSA has authority to prescribe regulations to protect passengers and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence or aircraft piracy, provide for deployment of Federal Air Marshals (FAMs) on passenger flights, and provide for appropriate training, supervision, and equipment of FAMs. In furtherance of this authority, TSA policy requires that

applicants for Office of Law Enforcement/Federal Air Marshal positions meet certain medical standards, including Federal Aviation Administration second-class airman standards as outlined in 14 CFR part 67. The TSA modifications to these standards include a psychological evaluation to determine that the individual does not have an established medical history or clinical diagnosis of psychosis, neurosis, or any other personality or mental disorder that clearly demonstrates a potential hazard to the performance of FAM duties or the safety of self or others. As part of the psychological evaluation, applicants will be required to complete a certification regarding their mental health history and provide an explanation for anything they cannot certify. Applicants will be asked whether they can certify various statements including that they have never been removed from work for medical or psychological reasons. Applicants will be instructed to submit this form directly to the FAMS Medical Programs for initial screening via fax, mail, or in person. Any explanations received will generally require further review and follow-up by a contract psychologist or psychiatrist. This certification is carefully geared to capitalize on other elements of the assessment process, such as personal interviews, physical task assessment, background investigation, as well as the other components of the medical examination and assessment.

Number of Respondents: 10,000.

Estimated Annual Burden Hours: An estimated 10,000 hours annually.

Issued in Arlington, Virginia, on November 30, 2006.

Lisa Dean,

Privacy Officer.

[FR Doc. E6-20550 Filed 12-4-06; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

No FEAR Act Notice

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Notice.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) 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. This notice fulfills OFHEO's notification obligations under the Notification and Federal Employees Antidiscrimination Retaliation Act, as implemented by Office of Personnel Management regulations.

FOR FURTHER INFORMATION CONTACT:

Janice Kullman, Senior Counsel at (202) 414-8970 or, Mark Laponsky, Executive Director and Chief of Staff at (202) 414-3832 (these are not toll-free numbers), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: 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 (the No FEAR Act), (Pub. L. 107-174). One purpose of the No FEAR Act is to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws. In support of this purpose, Congress found that agencies cannot be run effectively if those agencies practice or tolerate discrimination.

The No FEAR Act also requires Federal agencies to inform Federal employees, former Federal employees, and applicants for Federal employment of the rights and protections available to them under Federal antidiscrimination and whistleblower protection laws. Thus, the Federal Office of Federal Housing Enterprise Oversight is publishing this notice.

No FEAR Act Notice

Antidiscrimination Laws

A Federal agency may not discriminate against an employee or applicant for employment with respect to the terms, conditions, or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791, and 42 U.S.C. 2000e-16.

If you believe 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 your agency. 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).

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 the Federal employee with authority reasonably believes disclosure of information by that employee or applicant would violate Federal law, rule, or regulation; would uncover gross mismanagement, a gross waste of funds, or an abuse of authority; or create a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for employment 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 may not 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 and want to pursue any legal remedy, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections of this notice or, if applicable, OFHEO's

administrative or negotiated grievance procedures.

Disciplinary Actions

Under the existing laws, each Federal 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 OSC 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 former employee, or to violate the procedural rights of a Federal employee or former employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724. Additional information regarding Federal antidiscrimination and whistleblower protection laws can be found at the EEOC Web site at <http://www.eeoc.gov>, and the OSC Web site at <http://www.osc.gov>. You can also access the fact sheet, "Your Rights as a Federal Employee," on the OSC Web site at <http://www.osc.gov/documents/pubs/rights/htm>. The pamphlet, "The Role of the U.S. Office of Special Counsel," also contains information about the Whistleblower Protection Act of 1989 and telephone numbers for reporting purposes. You can access it at <http://www.osc.gov/documents/pubs/oscrole.pdf>. You can also learn more from the Chief Human Capital Officer and the Office of General Counsel of OFHEO.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant for employment under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: November 21, 2006.

James B. Lockhart III,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. E6-20503 Filed 12-4-06; 8:45 am]

BILLING CODE 4220-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-020-1320-EL, MTM 94378]

Notice of Availability of the Spring Creek Coal Company's Lease by Application MTM 94378 Environmental Assessment, Federal Coal Notice of Public Hearing, and Request for Environmental Assessment, Maximum Economic Recovery, and Fair Market Value Comments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with 43 Code of Federal Regulations (CFR) 3425.4, the Bureau of Land Management, Miles City Field Office, Miles City, Montana, hereby gives notice that an Environmental Assessment (EA) is available and a public hearing will be held to lease Federal coal. The EA analyzes and discloses direct, indirect, and cumulative environmental impacts of issuing competitively a Federal coal lease for 1,207.5 acres in the Bighorn County, Montana. The purpose of the public hearing is to solicit comments from the public on (1) The proposal to issue a Federal coal lease; (2) the proposed competitive lease sale; (3) the Fair Market Value (FMV) of the Federal coal; and (4) Maximum Economic Recovery (MER) of the Federal coal included in the tracts.

DATES: Written comments must be postmarked by December 27, 2006, and received by the BLM Miles City Field Office (See **ADDRESSES**). The public hearing will be held on December 14, 2006, at 10:30 a.m. requesting comments on the EA, FMV, and MER in accordance with 43 CFR parts 3422 and 3425.

ADDRESSES: The public hearing will occur at the BLM Montana State Office (5001 Southgate Drive, Billings, Montana, in the 920 Conference Room). Written comments or resource information should be addressed to or hand delivered to the BLM Miles City Field Office, Attn: Dan Benoit, 111 Garryowen Road, Miles City, Montana 59301. Comments or questions may also be sent by facsimile to the attention of Dan Benoit at (406) 232-7004; or sent electronically to: MT_Miles_City_FO@BLM.gov. Please put Spring Creek LBA Tract/Dan Benoit in the subject line.

FOR FURTHER INFORMATION CONTACT: Dan Benoit, geologist, or Rebecca Spurgin, coal coordinator, at (406) 233-3646 or (406) 896-5080, respectively.

SUPPLEMENTARY INFORMATION: Members of the public may examine documents pertinent to this proposal by visiting the Miles City Field Office during its business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Also, copies of the EA are available for inspection or provided upon request. Spring Creek Coal Company (SCCC) filed an application to lease Federal coal on the Lease by Application (LBA) which is adjacent to the Spring Creek Mine on March 7, 2005. The Powder River Regional Coal Team reviewed this lease application at a public meeting held on April 27, 2005, in Gillette, Wyoming, and recommended that BLM process it. The application includes approximately 121.4 million tons of recoverable Federal coal with an average coal quality of: 9,350 BTU/lb., 0.34% sulfur, and 3.8% ash. The Federal LBA consists of the coal found underlying the following lands in Big Horn County, Montana:

T. 8 S., R. 39 E., P.M.M.

Sec. 13: SW¹/₄NW¹/₄NW¹/₄, SW¹/₄NW¹/₄, SW¹/₄SE¹/₄NW¹/₄, N¹/₂SW¹/₄, N¹/₂SW¹/₄SW¹/₄, N¹/₂SE¹/₄SW¹/₄SW¹/₄, SE¹/₄SE¹/₄SW¹/₄SW¹/₄, SE¹/₄SW¹/₄, NW¹/₄NW¹/₄SE¹/₄, S¹/₂NW¹/₄SE¹/₄, N¹/₂SW¹/₄SE¹/₄, SW¹/₄SW¹/₄SE¹/₄; Sec. 14: NW¹/₄NE¹/₄NE¹/₄, S¹/₂NE¹/₄NE¹/₄, NW¹/₄NE¹/₄, S¹/₂NE¹/₄, SE¹/₄NE¹/₄NW¹/₄, NE¹/₄SW¹/₄NW¹/₄, N¹/₂SE¹/₄NW¹/₄, N¹/₂NE¹/₄SE¹/₄, N¹/₂S¹/₂NE¹/₄SE¹/₄, S¹/₂SE¹/₄NE¹/₄SE¹/₄, NE¹/₄NE¹/₄SE¹/₄SE¹/₄; Sec. 15: NW¹/₄SW¹/₄SE¹/₄, S¹/₂SW¹/₄SE¹/₄; Sec. 22: NE¹/₄NE¹/₄, N¹/₂NW¹/₄NE¹/₄, SE¹/₄NW¹/₄NE¹/₄, NE¹/₄SE¹/₄NE¹/₄, NE¹/₄NE¹/₄NW¹/₄; Sec. 23: SW¹/₄SW¹/₄NW¹/₄NE¹/₄, S¹/₂N¹/₂NW¹/₄, S¹/₂NW¹/₄; Sec. 24: N¹/₂NE¹/₄NW¹/₄; Sec. 25: SW¹/₄SW¹/₄; Sec. 26: SW¹/₄NE¹/₄NE¹/₄SW¹/₄, W¹/₂NW¹/₄NE¹/₄SW¹/₄, SE¹/₄NW¹/₄NE¹/₄SW¹/₄, S¹/₂NE¹/₄SW¹/₄, NW¹/₄SW¹/₄, N¹/₂SE¹/₄SW¹/₄, S¹/₂NW¹/₄SE¹/₄, S¹/₂SE¹/₄; Sec. 27: SW¹/₄NW¹/₄SE¹/₄NE¹/₄, S¹/₂SE¹/₄NE¹/₄, NW¹/₄NE¹/₄SW¹/₄NE¹/₄, S¹/₂NE¹/₄SW¹/₄NE¹/₄, W¹/₂SW¹/₄NE¹/₄, SE¹/₄SW¹/₄NE¹/₄, E¹/₂SE¹/₄NW¹/₄, N¹/₂NE¹/₄SE¹/₄, SE¹/₄NE¹/₄SE¹/₄, NE¹/₄NW¹/₄SE¹/₄.

T. 8 S., R. 40 E., P.M.M.

Sec. 30: S¹/₂NW¹/₄SE¹/₄, S¹/₂SE¹/₄.

Containing 1,207.50 acres more or less.

The surface estate of W¹/₂NE¹/₄SE¹/₄ and SE¹/₄NE¹/₄SE¹/₄ of Section 13, and the NE¹/₄SE¹/₄NE¹/₄ of Section 22 and the SW¹/₄NW¹/₄ of Section 23, T. 8 S., R. 39 E., containing 80.0 acres, more or less, is owned by the Federal government and administered by the BLM. The remainder of the surface estate is privately owned. Approximately 322 acres of the tract are unsuitable for mining due to the presence of no-coal zones and

structures. These lands are included in the tract to allow recovery of all mineable coal outside of the rail line and to comply with the Federal coal leasing regulations.

SCCC proposes to mine the tract as a part of the Spring Creek Mine. The Federal coal included in the LBA Tract would extend the life of the Spring Creek Mine about eight years based upon an average annual production rate of 15 million tons.

The Spring Creek Mine is operating under approved mining permits from the Montana Department of Environmental Quality. The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency in the preparation of the EA. If the LBA Tract is leased to the applicant, the new lease must be incorporated into the existing mining and reclamation plan for the adjacent mine and the Secretary of the Interior must approve the revision to the Mineral Leasing Act (MLA) mining plan before the Federal coal in the tract can be mined. OSM is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plan to the Office of the Secretary of the Interior, if this tract is leased.

The BLM will provide interested parties the opportunity to submit comments or relevant information or both. The EA consists of an analysis of environmental impacts that could result from leasing Federal coal and the alternatives. Issues that have been raised during processing previous EAs in the Montana PRB include: Potential impacts to cultural resource sites; potential impacts to big game herds; potential impacts to sage grouse and raptors; the need to consider the cumulative impacts of coal leasing decisions combined with other existing and proposed development in the Montana PRB; and potential site specific and cumulative impacts on air and water quality.

Comments on the FMV, and MER should address, but are not limited to, the following factors:

1. The method of mining to be employed in order to obtain MER;
2. The method of determining FMV for the coal to be offered;
3. The quality and quantity of the coal resource;
4. If this resource is likely to be mined as part of an existing mine;
5. The price that the mined coal would bring when sold;
6. Costs, including mining and reclamation, of producing the coal and the times of production and impacts the leasehold may have on the area;

7. Depreciation and other tax counting factors;

8. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given;

9. Any comparable sales data of similar coal lands; and

10. Restrictions to mining which may affect coal recovery.

The values given above may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed. As provided by 43 CFR 3422.1(a), proprietary data marked as confidential may be provided in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on FMV and MER, except those portions identified as proprietary and meeting exemptions stated in the Freedom of Information Act (FOIA), will be available for public inspection at the Bureau of Land Management office noted above.

If you wish to withhold your name or address from public review or from disclosure under the FOIA, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by the FOIA.

All submissions from organizations, businesses and individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in its entirety.

Stephen J. Van Matre,

*Acting Branch Chief of Solid Minerals,
Montana State Office.*

[FR Doc. E6-20546 Filed 12-4-06; 8:45 am]

BILLING CODE 4310-GJ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-120-1430-ET; NMNM 113684]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service (U.S.

Forest Service), has filed an application with the Bureau of Land Management (BLM) requesting the Secretary of the Interior to withdraw from mining 65 acres of National Forest System land in the Water Canyon Recreation Area of the Cibola National Forest. This notice segregates the land from location and entry under the United States mining laws for 2 years, while various studies and analyses are made to support a final decision on the withdrawal application.

DATES: Comments and requests for a public meeting must be received no later than March 5, 2007.

ADDRESSES: Comments and meeting requests should be sent to the Socorro Field Office Manager, BLM, 901 S. Highway 85, Socorro, New Mexico 87801, and to the U.S. Forest Service Supervisor, Cibola National Forest, 2113 Osuna Road NE, Suite A., Albuquerque, New Mexico 87113.

FOR FURTHER INFORMATION CONTACT: Doug Williams, Cibola National Forest, at the above address or at (505) 346-3869.

SUPPLEMENTARY INFORMATION: The applicant for the above withdrawal is the U.S. Forest Service at the address stated above. The applicant requests the Secretary of the Interior, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, to withdraw the following-described National Forest System land for a period of 20 years from location and entry under the United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian

Cibola National Forest

T. 3 S., R. 3 W.,

Sec. 27, S $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 65 acres in Socorro County.

The use of a right-of-way, an interagency agreement, or a cooperative agreement would not adequately constrain non-discretionary mining locations and related uses and would not provide adequate protection of the Federal investment in the improvements located on the land.

There are no suitable alternative sites which contain the unique cultural and associated natural ecosystem values.

No additional water rights would be needed to fulfill the purpose of the requested withdrawal.

The purpose of the proposed withdrawal would be to protect the

unique recreational and historical interpretive integrity of the Water Canyon Recreation Area within the Cibola National Forest and also to protect a capital investment in the recreation area of approximately \$750,000 of Federal funds.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to both the Bureau of Land Management, and the Supervisor of the Cibola National Forest at the addresses stated above.

Records relating to the application as well as comments, including the names and street addresses of respondents, will be available for public review at both the BLM Socorro Field Office Manager and U.S. Forest Service Supervisor's Office, Cibola National Forest at the above addresses during regular business hours, 8 a.m. to 4:45 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to both the BLM Socorro Field Office Manager and the U.S. Forest Service Supervisor, Cibola National Forest, at the addresses stated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer, Bureau of Land Management, that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a newspaper in the vicinity of the above-described land, at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from location and entry

under the United States mining laws. The segregative effect of publication of this notice shall terminate upon denial or cancellation of the subject application, approval of the application or on December 5, 2008, whichever occurs first. The temporary land uses which may be permitted during this segregative period include licenses, permits, rights-of-ways, and disposal of vegetation resources other than under the mining laws.

(Authority: 43 CFR 2310.3-1(b))

John Merino,

Field Manager, Socorro Field Office.

[FR Doc. E6-20528 Filed 12-4-06; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-220-1430-ET; NMNM 66022]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to extend the duration of Public Land Order (PLO) No. 6675 for an additional 20 years. PLO No. 6675 withdrew 264.39 acres of public lands in Taos and Rio Arriba Counties from settlement, sale, location or entry under the general land laws, including the United States mining laws, to protect, preserve, and maintain existing and future recreational values and the Federal investment in improvements located along the "Pilar" section of the Rio Grande.

DATES: Comments and requests for a public meeting must be received by March 5, 2007.

ADDRESSES: Comments and meeting requests should be sent to the BLM Taos Field Manager, 226 Cruz Alta Road, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Lora Yonemoto, BLM Taos Field Office, address above, or 505-751-4709.

SUPPLEMENTARY INFORMATION: The withdrawal created by PLO No. 6675 (53 FR 16269) will expire on May 5, 2008, unless extended. The BLM has filed an application to extend PLO No. 6675 for an additional 20-year period. The withdrawal was made to protect two sites important for recreational use on the Rio Grande, on public lands described as follows:

New Mexico Principal Meridian*County Line Site*

T. 23 N., R. 10 E.,
Sec. 14, lot 4;
Sec. 15, lot 4.

Quartzite Site

T. 24 N., R. 11 E.,
Sec. 32, lots 5 to 8, inclusive, and
SW $\frac{1}{4}$ SE $\frac{1}{4}$.

The areas described aggregate 264.39 acres in Taos and Rio Arriba Counties.

The purpose of the proposed extension is to continue the withdrawal created by PLO No. 6675 for an additional 20-year term to protect the recreational values and the Federal investment in the Bureau of Land Management's Quartzite and County Line Recreational Sites on the Rio Grande.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of land under lease, license, or permit or governing the disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way or interagency or cooperative agreement would not adequately constrain nondiscretionary uses and would not provide adequate protection of the Federal investment in the Quartzite and County Line Recreational Sites.

There are no suitable alternative sites available because the Quartzite and County Line Recreational Sites are already constructed on the above-described public lands.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

Records relating to the application may be examined by interested parties by contacting Lora Yonemoto at the above address or 505-751-4709.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Taos Field Manager at the address noted above.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Taos Field Office at the address noted above during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be

honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM Taos Field Manager within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. This withdrawal extension proposal will be processed in accordance with the applicable regulations set forth in 43 CFR 2310.4.

(Authority: 43 CFR 2310.3-1)

Dated: November 15, 2006.

Sam DesGeorges,

Field Manager, Taos Field Office.

[FR Doc. E6-20565 Filed 12-4-06; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[NM-210-1430-ET; NMNM 64057]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 16.45 acres of public land from surface entry and mining for a period of 20 years to protect the Farmington Administrative Site. The land was previously withdrawn by Public Land Order (PLO) No. 6616, which expired July 10, 2006.

DATES: Comments and requests for a public meeting must be received by March 5, 2007.

ADDRESSES: Comments and meeting requests should be sent to the BLM Farmington Assistant Field Manager for Resources, 1235 La Plata Highway, Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT: Mary Jo Albin, BLM Farmington Field

Office, at the address above or 505-599-6332.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has filed an application requesting the Secretary of the Interior to withdraw, for a period of 20 years and subject to valid existing rights, the land described below from settlement, sale, location or entry under the general land laws, including the mining laws, but not the mineral leasing laws. The proposed withdrawal would replace the withdrawal created by PLO No. 6616 (51 FR 25205), which expired on July 10, 2006. The public land proposed for continued withdrawal is described as follows:

New Mexico Principal Meridian

T. 29 N., R. 13 W.,
Sec. 7, lots 5, 11, and 12.

The area described contains 16.45 acres in San Juan County.

The purpose of the proposed withdrawal is to continue protection of the Federal investment in the Farmington Administrative Site.

The withdrawal would not alter the applicability of those public land laws governing the use of the land under lease, license, or permit or governing disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way or interagency or cooperative agreement would not adequately constrain nondiscretionary uses and, therefore, would not protect the Federal investment in the Farmington Administrative Site.

There are no suitable alternative sites available since the Farmington Administrative Site is already constructed on the above-described public land.

No water rights would be needed to fulfill the purpose of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM Farmington Assistant Field Manager for Resources at the address noted above.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Farmington Field Office at the address noted above during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must

state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Farmington Assistant Field Manager for Resources at the address above within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

This withdrawal proposal will be processed in accordance with the applicable regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the public lands described above will remain segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which will not significantly impact the administrative site may be allowed with the approval of the authorized officer of the BLM during the segregative period.

(Authority: 43 CFR 2310.3-1)

Dated: November 15, 2006.

Joel E. Farrell,

*Assistant Field Manager for Resources,
Farmington Field Office.*

[FR Doc. E6-20567 Filed 12-4-06; 8:45 am]

BILLING CODE 4310-VB-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41,

each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period November 1, 2006 through April 30, 2007. The List of Restricted Joint Bidders published in the **Federal Register** April 28, 2006 covered the period May 1, 2006 through October 31, 2006.

Group I. Exxon Mobil Corporation

ExxonMobil Exploration Company.

Group II. Shell Oil Company

Shell Offshore Inc.
SWEPI LP.
Shell Frontier Oil & Gas Inc.
Shell Consolidated Energy Resources Inc.
Shell Land & Energy Company.
Shell Onshore Ventures Inc.
Shell Offshore Properties and Capital II, Inc.
Shell Rocky Mountain Production LLC.
Shell Gulf of Mexico Inc.

Group III. BP America Production Company

BP Exploration & Production Inc.
BP Exploration (Alaska) Inc.

Group IV. TOTAL E&P USA, Inc.

Group V. Chevron Corporation

Chevron U.S.A. Inc.
Chevron Midcontinent, L.P.
Unocal Corporation.
Union Oil Company of California.
Pure Partners, LP.

Group VI. ConocoPhillips Company

ConocoPhillips Alaska, Inc.
ConocoPhillips Petroleum Company.
Phillips Pt. Arguello Production Company.
Burlington Resources Oil & Gas Company LP.
Burlington Resources Offshore Inc.
The Louisiana Land and Exploration Company.
Inexco Oil Company.

Group VII. Eni Petroleum Co. Inc.

Eni Petroleum Exploration Co. Inc.
Eni Petroleum U.S. LLC.
Eni Oil U.S. LLC.
Eni Marketing Inc.
Eni BB Petroleum Inc.
Eni US Operating Co. Inc.
Eni BB Pipeline LLC.

Group VIII. Petrobras America Inc.

Dated: November 7, 2006.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

[FR Doc. E6-20495 Filed 12-4-06; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

National Park Service

Intent To Prepare an Environmental Impact Statement for the General Management Plan/Wilderness Study, Ozark National Scenic Riverways, Missouri

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the National Park Service (NPS) is preparing an environmental impact statement (EIS) for a General Management Plan/Wilderness Study (GMP/WS) for Ozark National Scenic Riverways (Riverways). The GMP/WS will prescribe the resource conditions and visitor experiences that are to be achieved and maintained in the Riverways over the next 15 to 20 years.

DATES: To be most helpful to the scoping process, comments should be received within 60 days from the date this notice is published in the **Federal Register**. Public meetings regarding the GMP/WS will be held in September 2006. Please check local media, the park's Web site, <http://www.nps.gov/ozar>; the NPS's Planning, Environment and Public Comment (PEPC) Web site <http://parkplanning.nps.gov>; or contact the Superintendent to find out when and where these meetings will be held.

ADDRESSES: Additionally, if you wish to comment on any issues associated with the GMP/WS, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Ozark National Scenic Riverways, 404 Watercress Drive, P.O. Box 490, Van Buren, Missouri 63965. You may provide comments electronically by entering them into the PEPC Web site at the address above. Finally, you may hand-deliver comments to the Riverways headquarters located off of Business Highway 60 on Watercress Drive in Van Buren, Missouri. Information will be available for public review and comment from the Office of the Superintendent, 404 Watercress Drive, P.O. Box 490, Van Buren, Missouri 63965.

FOR FURTHER INFORMATION CONTACT: Superintendent Noel Poe, Ozark National Scenic Riverways, 404 Watercress Drive, P.O. Box 490, Van Buren, Missouri 63965, telephone, 573-323-4236.

SUPPLEMENTARY INFORMATION: As stated above, the GMP/WS will prescribe the

resource conditions and visitor experiences that are to be achieved and maintained in the Riverways over the next 15 to 20 years. The clarification of what must be achieved according to law and policy will be based on review of the Riverways' purpose, significance, special mandates, and the body of laws and policies directing park management. Based on determinations of desired conditions, the GMP/WS will outline the kinds of resource management activities, visitor activities, development that would be appropriate in the future, and consider whether or not wilderness should be proposed in a portion of the Riverways. A range of reasonable management alternatives will be developed through this planning process and will include, at minimum, a no-action and a preferred alternative. To facilitate sound analysis of environmental impacts, the NPS is gathering information necessary for the preparation of an associated EIS.

As part of the planing process, the NPS is also preparing a WS to evaluate the Big Spring area at the Riverways for possible designation as wilderness. The Big Spring area was one of three areas evaluated for wilderness suitability as part of the 1984 GMP. All three areas were determined not suitable at the conclusion of the suitability assessment. The Big Spring area is now considered suitable because non-conforming uses have been removed. The other two areas considered in 1984, the Upper Jacks Fork and Cardareva areas are not being considered for wilderness designation because of continuing non-conforming uses and the presence of non-Federal land ownership, respectively.

Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 13, 2006.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 06-9521 Filed 12-4-06; 8:45 am]

BILLING CODE 4310-AD-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee (Committee) will meet on December 14, 2006. This meeting will be held jointly with the California Bay-Delta Authority. The agenda for the joint meeting will include discussions with State and Federal agency representatives on end of Stage 1 decisions and planning for Stage 2 actions for the CALFED Bay-Delta Program (Program); and recommendations on Year 6 Program Performance and Accomplishments, Year 7 Priorities and Program Plans, and Program Performance and Balance. The meeting will also include reports from the Lead Scientist and the Independent Science Board, along with updates on the Delta Vision, Delta Risk Management Strategy, Pelagic Organisms Decline Action Plan, and Program Performance and Tracking.

DATES: The meeting will be held on Thursday, December 14, 2006, from 9 a.m. to 4 p.m. If reasonable accommodation is needed due to a disability, please contact Colleen Kirtlan at (916) 445-5511 or TDD (800) 735-2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the Sacramento Convention Center located at 1400 J Street, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Diane Buzzard, U.S. Bureau of Reclamation, at (916) 978-5022 or Julie Alvis, California Bay-Delta Program, at (916) 445-5551.

SUPPLEMENTARY INFORMATION: The Committee was established to provide advice and recommendations to the Secretary of the Interior on implementation of the CALFED Bay-Delta Program. The Committee makes recommendations on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem

restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of State and Federal agencies with the Mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee agendas and meeting materials will be available prior to all meetings on the California Bay-Delta Program Web site at <http://calwater.ca.gov> and at the meetings. These meetings are open to the public. Oral comments will be accepted from members of the public at each meeting and will be limited to 3-5 minutes.

Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Water Supply, Reliability, and Environmental Improvement Act, Pub. L. 108-361; the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*; the Endangered Species Act, 16 U.S.C. 1531 *et seq.*; and the Reclamation Act of 1902, 43 U.S.C. 391 *et seq.*, and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, 34 U.S.C. 3401.

Dated: November 14, 2006.

Allan Oto,

Special Projects Officer, Mid-Pacific Region, U.S. Bureau of Reclamation.

[FR Doc. 06-9513 Filed 12-4-06; 8:45 am]

BILLING CODE 4310-MN-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Determination of Valid Existing Rights Within the Daniel Boone National Forest, KY

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: This notice announces our decision on a request for a determination of valid existing rights (VER) under section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). We have determined that Sturgeon Mining Company, Inc. (Sturgeon Mining or Sturgeon) possesses VER for a coal haulroad within the boundaries of the Daniel Boone National Forest in Owsley County, Kentucky. This decision will allow Sturgeon to obtain a Kentucky surface coal mining and reclamation permit for the road in question and to

use the road to access and haul coal from a surface mine located on adjacent private lands.

DATES: *Effective Date:* December 5, 2006.

FOR FURTHER INFORMATION CONTACT:

William J. Kovacic, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260-8402. Fax: (859) 260-8410. E-mail: bkovacic@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. What Is the Nature of the VER Determination Request?
- II. What Legal Requirements Apply To This Request?
- III. What Information Is Available Relevant to the Basis for the Request?
- IV. How We Processed the Request
- V. How We Made Our Decision
- VI. What Public Comments Were Received?
- VII. How Can I Appeal the Determination?
- VIII. Where Are the Records of This Determination Available?

I. What Is the Nature of the VER Determination Request?

On February 23, 2006, QORE Property Sciences (QORE) submitted a request for a determination of VER on behalf of Sturgeon. Sturgeon is proposing to conduct surface coal mining operations on approximately 424 acres of privately owned land near Watches Branch of Laurel Fork in the southeast corner of Owsley County, Kentucky. The property to be mined is adjacent to the Daniel Boone National Forest.

QORE is seeking a determination that Sturgeon has VER under paragraph (c)(1) of the definition of VER in 30 CFR 761.5 to use an existing road across Federal lands within the Daniel Boone National Forest as an access and haul road for the proposed mine. No other surface coal mining operations would be conducted on Federal lands within the Daniel Boone National Forest as part of this mine.

On June 20, 2006, we published a notice in the **Federal Register** (71 FR 35448) in which we provided 30 days for the public to comment on the request for a determination of VER to use an existing Forest Service road as a coal mine access and haul road across Federal lands within the boundaries of the Daniel Boone National Forest in Owsley County, Kentucky.

II. What Legal Requirements Apply To This Request?

Section 522(e)(2) of SMCRA, 30 U.S.C. 1272(e)(2), prohibits surface coal mining operations on Federal lands within the boundaries of any national forest, with two exceptions. The first exception pertains to surface operations and impacts incidental to an underground coal mine. The second

relates to surface operations on lands within national forests west of the 100th meridian. Neither of those exceptions applies to the request now under consideration.

The introductory paragraph of section 522(e) also provides two general exceptions to the prohibitions on surface coal mining operations in that section. Those exceptions apply to operations in existence on the date of enactment of the Act (August 3, 1977) and to land for which a person has VER. SMCRA does not define VER. We subsequently adopted regulations defining VER and clarifying that, for lands that come under the protection of 30 CFR 761.11 and section 522(e) after the date of enactment of SMCRA, the applicable date is the date that the lands came under protection, not August 3, 1977.

On December 17, 1999 (64 FR 70766-70838), we adopted a revised definition of VER, established a process for submission and review of requests for VER determinations, and otherwise modified the regulations implementing section 522(e). At 30 CFR 761.16(a), we published a table clarifying which agency (OSM or the State regulatory authority) is responsible for making VER determinations and which definition (State or Federal) will apply. That table specifies that OSM is responsible for VER determinations for Federal lands within national forests and that the Federal VER definition in 30 CFR 761.5 applies to those determinations.

Paragraph (c) of the Federal definition of VER contains the standards applicable to VER for roads that lie within the definition of surface coal mining operations. QORE is seeking a VER determination under paragraph (c)(1), which provides that a person who claims VER to use or construct a road across the surface of lands protected by 30 CFR 761.11 or section 522(e) of SMCRA must demonstrate that the "road existed when the land upon which it is located came under the protection of § 761.11 or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations."

Based on other information available to us, we also considered whether VER might exist under the standard in paragraph (c)(3), which requires a demonstration that a "valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e)."

III. What Information Is Available Relevant to the Basis for the Request?

The following information has been submitted by QORE or obtained from the United States Forest Service (USFS or Forest Service) or the Kentucky Department for Natural Resources (DNR):

1. A 4,900 foot road designated USFS road FSR 1649A exists on the land to which the VER determination request pertains.
2. The land upon which the road is located was in Federal ownership as part of the Daniel Boone National Forest on August 3, 1977, the date of enactment of SMCRA.
3. On May 18, 2006, the USFS issued a permit to Sturgeon for non-Federal commercial use of this road. The permit is contingent upon Sturgeon receiving all other necessary authorizations to operate.
4. The road in question is clearly visible on several aerial photographs taken between April 11, 1978, and February 26, 1988.
5. The road is visible as a faint feature in aerial photographs dated April 27, 1974, and May 9, 1976.
6. A DNR employee remembers using an old logging road in this area for trail biking the summer after he graduated from college in the spring of 1977.
7. The USFS issued River Mining Co., Inc. a special use permit for the construction and use of a road in this location as a coal access and haul road on September 24, 1976.
8. There is a copy of pages from the Forest Service Handbook regarding categorical exclusions.
9. There is documentation pertaining to the 1976 Special Use Permit for location of Forest Service Road 1649A.

IV. How We Processed the Request

We received the request on February 23, 2006, and determined that it was administratively complete on March 23, 2006. That review did not include an assessment of the technical or legal adequacy of the materials submitted with the request.

As required by 30 CFR 761.16(d)(1), we published a notice in the **Federal Register** seeking public comment on the merits of the request on June 20, 2006 (71 FR 35448). We also published notices on June 22 and 29, and July 6 and 13, 2006, in *The Booneville Sentinel*, Booneville, Kentucky, a newspaper of general circulation in Owsley County, Kentucky.

After the close of the comment period on July 21, 2006, we reviewed the materials submitted with the request, all comments received in response to this

and other notices, and other relevant, reasonably available information (copies of pages from the Forest Service Handbook and Forest Service documentation pertaining to Watches Branch Road 1649A (Administrative Record Numbers KYVER-016 and 019, respectively) and determined that the record was sufficiently complete and adequate to support a decision on the merits of the request.

We evaluated the record in accordance with the requirements at 30 CFR 761.16(e) as to whether the requester has demonstrated VER for the proposed access and haul road. For the reasons discussed below, we have determined that the requestor has demonstrated VER.

V. How We Made Our Decision

As we stated above, QORE sought a VER determination under paragraph (c)(1) of the definition of VER at 30 CFR 761.5, which provides as follows:

(1) The road existed when the land upon which it is located came under the protection of section 761.11 or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations.

We applied this standard by examining all information submitted by QORE, the Forest Service and interested parties for evidence of a road in existence on August 3, 1977. QORE submitted a signed, notarized statement by the property owner of the currently proposed Kentucky surface coal mining permit 895-0171 (for which the applicant has requested VER to use the existing Forest Service road). That statement asserts that the road in question was originally constructed to access the property-owner's property on Watches Fork in Owsley County, Kentucky. The land owner also stated that the road was used by pre-law permit 6264-77. That permit was issued to River Mining Company of Independence, Kentucky, by the Commonwealth of Kentucky's Department of Natural Resources and Environmental Protection, Division of Reclamation on September 29, 1977.

Based upon the date of the permit alone, it appears that the 1977 surface coal mining permit issued to River Mining Company was issued post-SMCRA (Administrative Record Number KYVER-002). The exact date of construction of the road is not known. Two scanned images of Kentucky Department of Transportation aerial photographs of the same area dated April 11, 1978, clearly show the road in question (Administrative Record Numbers KYVER-005 and KYVER-006). A May 9, 1976, scan of a Forest Service

infrared aerial photograph shows the faint trace of a road at the location of the road in question, as does a Forest Service aerial photograph dated April 27, 1974 (Administrative Record Numbers KYVER-002, and KYVER-020, respectively).

Although it is not certain exactly when River Mining Company constructed its access and haul road under the 1976 Special Use Permit issued by the Forest Service, it is clear that a road of unknown origin, perhaps created as a logging road, has existed on the trace of the road in question since at least 1976. Therefore, we have determined that the evidence indicates that a road existed when the land upon which the road is located came under the protection of section 761.11 of the Federal regulations and section 522(e) of SMCRA on August 3, 1977.

The VER standard in the definition of VER at 30 CFR 761.5 also requires that the person seeking VER must have "a legal right to use the road for surface coal mining operations." That "legal right" standard was added to the definition of VER on December 17, 1999 (64 FR 70766, 70832). In the preamble to that revision of the definition of VER, OSM stated that a person must demonstrate a legal right to use the road for surface coal mining operations. (See 64 FR 70791) That is, despite the fact that a road existed on August 3, 1977, that fact alone doesn't give the applicant the right to use the road for commercial purposes. To comply with this requirement, Sturgeon applied for and received a Road Use Permit for the road in question (Watches Fork Road (FSR 1649A)) from the Forest Service dated May 18, 2006 (Administrative Record Number KYVER-008). That permit authorizes Sturgeon to haul "coal from private lands adjacent to National Forest System lands."

Paragraph (c)(1) of the definition of VER at 30 CFR 761.5 merely states that the applicant for VER must have a legal right to use the road for surface coal mining operations. The preamble to the definition of VER published on December 17, 1999, does not provide any additional information regarding the "legal right" requirement. That is, there is no requirement that the legal right to use the road must exist on the date of the enactment of SMCRA. The only requirement is that the applicant has a legal right to use the road. Therefore, we conclude that the May 18, 2006, Road Use Permit from the Forest Service is sufficient to prove that Sturgeon has a legal right to use the road.

The Forest Service Road Use Permit for the Watches Fork Road includes

various conditions. For example, the permittee is required to conduct work to improve the road, but only after VER is established and all State, local and Federal permits and licenses are obtained, and before hauling commences. Also, the Forest Service Road Use Permit states that Sturgeon's use of the road is "nonexclusive." That is, the Forest Service may use this road and authorize others to use the road at any and all times.

Based upon the evidence discussed above, we have determined that VER for the Watches Fork Road, FSR 1649A, across a portion of the Daniel Boone National Forest exists.

VI. What Public Comments Were Received?

Three commenters submitted written comments opposing approval of the VER determination. Some of the comments simply oppose the proposed mining operation without providing any information relevant to the basis upon which VER is claimed or decided. Therefore, we will not address those comments.

One commenter stated that this action could not proceed until after OSM, the USFS, and the U.S. Army Corps of Engineers (USACOE) conducted a coordinated National Environmental Policy Act (NEPA) review of this action and the pending adjacent permit application. OSM finds that a NEPA review of this type is not required. The issuance of the USFS road use permit is already covered under the NEPA action taken by the USFS in compliance with its Environmental Policy and Procedures Handbook. OSM's decision on the request for a determination of VER is a legal opinion that is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. The categorical exclusion is listed in the Departmental Manual at 516 DM 2, Appendix 1.4. Issuance of the State permit is not a Federal action and, therefore, NEPA has no applicability. Actions taken by the USACOE with respect to NEPA and any excess spoil fills on the adjacent permit are not part of this decision and, in addition, are already reviewed by the USACOE under the Nationwide 21 permit review.

Two commenters stated, and we agree, that the applicant did not meet the standards of 30 CFR 761.5(b) for VER based on having made a good faith effort to obtain a permit according to final rules issued by OSM. However, this is not the standard on which VER was requested. The appropriate standard for the road for which VER was

requested is the definition of VER at 30 CFR 761.5(c)(1) which applies to the use of roads across lands protected from surface coal mining and reclamation operations.

Two commenters contend that the USFS did not have authority to issue the May 18, 2006, land use permit to the applicant. This comment is apparently based on the premise that the USFS permit could not be issued until OSM had determined that the applicant had shown VER to use the road. This claim is apparently further based on several conversations one of the commenters had with USFS personnel who apparently told him that a USFS land use permit would not be issued until OSM made a decision on the VER request. One commenter also expressed the opinion that OSM can not find in favor of the applicant because the USFS land use permit can not be issued without a VER determination. We are not aware of any provision of law, statute, regulation, or policy that precludes the USFS from issuing a land use permit based upon whether or not some other government agency approval has already been granted. Also, the Federal regulations at 30 CFR 760.11(c)(1) state, in part, that VER can exist if the person requesting the determination has a legal right to use the road. The term "legal right" is not defined. Because it is not defined, we believe that any number of circumstances would establish this right. It could mean that the person holds a permit, has a legal easement, qualifies for a permit, or any number of circumstances or conditions that would qualify as a "legal right." In this instance, the USFS Road Use Permit satisfies the "legal right" component necessary to show that VER exist under 30 CFR 761.5(c)(1).

A commenter seemed to believe that VER could not be granted to the applicant because the road in question did not meet every standard established in the definition of VER at 30 CFR 761.5(c). Those Federal regulations do not require that every standard on that section be met. Rather, the definition of VER at 30 CFR 761.5(c) states that the applicant must meet one or more, not all, of these standards to prove VER. We have found that the applicant has shown that the road did exist at the time SMCRA became effective, and that the applicant has a legal right to use the road. Thus, the standard at 30 CFR 761.5(c)(1) has been met, and no other proof is necessary.

One commenter expressed an opinion that Sturgeon Mining did not qualify for VER because that company did not exist on August 3, 1977. It is true that

Sturgeon Mining did not exist in 1977. However, the standard for the road in question is at 30 CFR 761.5(c)(1), which is the only applicable standard in this case, and that standard requires only that the road must have existed at the passage of SMCRA and that the applicant has (not "had") a legal right to use it. Therefore, we do not agree with the commenter that Sturgeon can not apply for VER on the road in question simply because Sturgeon did not exist as an entity prior to August 3, 1977.

Several facts were published in the notice that opened the public comment period. Those facts were intended to provide information and background about the road in question. A commenter pointed out what the commenter considered to be certain discrepancies in those facts. Some of the comments are not pertinent to the characteristics that make the road eligible for VER under the definition of VER at 30 CFR 761.5(c)(1) and, therefore, we will not address those comments.

The commenter stated that while the road was visible in several aerial photos, "one could see that it was not used as a coal haul road." The requirement for VER under the definition of VER at 30 CFR 761.5(c)(1) does not require that an existing road be used as a haulroad to qualify for VER. The requirement at 30 CFR 761.5(c)(1) provides that to demonstrate VER, the road must have existed at that location when the land came under the protection of section 761.11 of the Federal regulations or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations. As we discussed above, there is ample proof that a road existed at that location when the land came under the protection of section 761.11 of the Federal regulations or 30 U.S.C. 1272(e). There is also ample proof that the road was used as a haul road, but that is not required by the standard at 30 CFR 761.5(c)(1).

The commenter asserts that the road in question runs through Breathitt and Perry counties. The commenter submitted aerial photos to prove this. While it is true that there are roads in this area that are in those counties and that the road in question may be part of this road system, the only part of the road to which the VER determination applies is that part that lies within the boundaries of the USFS in Owsley, County. Any other part of this road is not relevant to the request.

The commenter had concerns about the public notice published by the applicant for the permit application submitted to the State of Kentucky for

the surface coal mining and reclamation operation for which the road in question will be used for access and coal haulage, if VER is approved. That public notice was for the permit, not for the VER determination. As we noted above, separate newspaper notices were published concerning the VER determination request.

Two commenters seem to question whether or not the road even existed prior to the effective date of SMCRA, and whether the road on which the VER determination is being requested is the same road used by River Mining as a coal haul road. Aerial photographs, on-site visits, and affidavits and statements made by persons familiar with the area all support the fact that the road on which the VER determination request has been made existed, that it was used for coal haulage, and that the road is the same road used by River Mining and described by those persons that submitted information about the road.

Two commenters made lengthy arguments to the effect that Sturgeon Mining can not meet the criteria for VER on this road because Sturgeon is in no way related to River Mining. As we stated above, the request that OSM grant a positive VER determination is based solely upon the definition of VER at 30 CFR 761.5(c)(1), not on whether the applicant is a successor to River Mining. All information submitted by the applicant or discussed by OSM in this action pertaining to River Mining is solely for the purpose of describing the history of this road to show that it does exist and that it existed prior to the effective date of SMCRA.

A commenter stated that the public notice opening the comment period had to be re-published because the acreage for the adjacent permit was in error. The commenter stated that the notice stated that Sturgeon Mining Company, Inc. is proposing to conduct surface coal mining operations on approximately 424 acres. The commenter pointed out that the actual proposed permit acreage is 235.57 acres. While this is true, it is not reason for withdrawing and re-publishing the notice of receipt and opening of the public comment period. The size of the operation which this road might serve is not relevant to whether or not the criteria for approving or denying the VER determination are met.

VII. How Can I Appeal the Determination?

Our determination that VER exists is subject to administrative and judicial review under 30 CFR 775.11 and 775.13 of the Federal regulations.

VIII. Where Are the Records of This Determination Available?

Our records on this determination are available for your inspection at the Lexington Field Office at the location listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 22, 2006.

Michael K. Robinson,
Acting Regional Director, Appalachian Region.

[FR Doc. E6-20507 Filed 12-4-06; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF JUSTICE

[OMB Number 1103-0087]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Revision of a Currently Approved Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Tribal Resources Grant Program Equipment/ Training progress report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The revision of a currently approved information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 196, pages 59817-59818 on October 11, 2006, allowing for a 60-day comment period.

The purpose of this notice is to allow for 30 days for public comment until January 4, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Tribal Resources Grant Program Equipment/ Training Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Tribal Resources Grant Program—Equipment and Training grant recipients will report to the COPS Office on the status of grant implementation on an annual basis. *Secondary:* None.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 275 respondents will complete the form annually within 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 138 total annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 29, 2006.

Lynn Bryant,
Department Clearance Officer, PRA,
Department of Justice.
[FR Doc. E6-20511 Filed 12-4-06; 8:45 am]

BILLING CODE 4410-AT-P

DEPARTMENT OF JUSTICE

[OMB Number 1105-0082]

Executive Office for United States Attorneys; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Office of Legal Education Nomination/Confirmation Form.

The Department of Justice (DOJ), Executive Office for United States Attorneys, (EOUSA,) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 187, page 56551-56552 on September 27, 2006, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 4, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Existing collection in use without an OMB control number.

(2) *Title of the Form/Collection:* National Advocacy Center Nomination Form.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* DOJ Form Number, none. Office of Legal Education, Executive Office for United States Attorneys, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be current and potential users of agency training services. Respondents may represent Federal agencies, as well as State, local, and tribal governments. The Executive Office for United States Attorneys will use the collected information to select class participants, arrange for transportation and reserve rooms; have an address to contact the participant, and an emergency contact.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there will be 21,000 responses annually. It is estimated that each form will take 5 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with this collection:* An estimate of the total hour burden to conduct this survey is 1750 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: November 30, 2006.

Lynn Bryant,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. E6-20581 Filed 12-4-06; 8:45 am]

BILLING CODE 4410-07-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0054]

Agency Information Collection Activities

ACTION: Notice: Commerce in Firearms and Ammunition—Annual Inventory of Firearms: Withdrawal.

The Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is announcing that it has withdrawn the notice published in the **Federal Register** (November 9, 2006, Vol. 71, No. 217, page 65838) that solicited comments from the public and affected agencies for ATF's proposed information collection. The reason for the withdrawal is because the notice was published in error.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 30, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E6-20580 Filed 12-4-06; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-NEW]

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Proposed collection; National Inmate Survey.

The Department of Justice (DOJ), Bureau of Justice Statistics, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 190, pages 58004-58005 on October 2, 2006, allowing for a sixty-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 4, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Allen J. Beck, Ph.D., Bureau of Justice Statistics, 810 Seventh Street, NW., Washington, DC 20531 (phone: 202-616-3277).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New data collection.

(2) *Title of the Form/Collection:* National Inmate Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form numbers not available at this time. The Bureau of Justice Statistics, Office of Justice Programs, Department of Justice is the sponsor for the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* State, Local, or Tribal Government. *Other:* Federal Government, Business or other for-profit, Not-for-profit institutions. The work under this clearance will be used to develop surveys to produce estimates for the incidence and prevalence of sexual assault within correctional

facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108-79).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 90,100 respondents will spend approximately 30 minutes on average responding to the survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 45,360 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 29, 2006.

Lynn Bryant,

*Department Clearance Officer, PRA,
Department of Justice.*

[FR Doc. E6-20508 Filed 12-4-06; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0271]

Bureau of Justice Assistance; Agency Information Collection Activities: Extension of a Currently Approved Collection, Comments Requested

ACTION: 30-Day notice of information collection under review: Extension of a currently approved collection.

Bureau of Justice Assistance Application Form: Project Safe Neighborhood Semi-Annual Researcher Reporting Form.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection information is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** [Volume 71, Number 157, pages 46922-46923 on August 15, 2006] allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until January 4, 2007. This process is conducted in accordance with 5 CFR 1320.10.

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 Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Policy and Planning Staff, Attention: Department Clearance Officer, Suite 1600, 601 D Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514-1534.

Comments may also be submitted to the M. Pressley, Bureau of Justice Assistance, Office of Justice Programs, U. S. Department of Justice, 810 7th Street, NW., Washington, DC 20531 via facsimile to (202) 305-1367.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* Project Safe Neighborhood Semi-Annual Researcher Reporting Form.

(3) *The agency form number, if any and the applicable component of the Department sponsoring the collection:* There is no agency form number.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and local law enforcement agencies.

Other: None.

Abstract: One of the central elements of PSN is the requirement that PSN task forces collect data on outcome measures related to the level of firearms violence in each judicial district and information on the strategies used to combat that gun violence. This information is essential if we are strategically to target our financial resources for maximum impact, and is a necessary element in assessing success or failure and providing the information required to make mid-course corrections in our local programs.

To accomplish the data collection at the local level, the Bureau of Justice Assistance has funded a research partner to work with each of the 94 districts.¹ The grant program provided \$150,000 to a researcher in each district to be spent over three years. The data collected by these researchers has allowed for program assessment at the local level, but also has provided the opportunity to gauge the results of the initiative across the country.

Understanding the gun violence problem throughout the country will allow the Department to identify trends and adapt the program at a national level to meet the needs of the districts. Additionally, by collecting both outcome and intervention measures, the Department can identify programs that demonstrate success in reducing targeted gun crime. This information is essential to evaluating the program and providing feedback at the national level that can inform management decisions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that no more than 93 respondents will apply twice a year. Each application takes approximately 60 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the applications is 186. (93 respondents × 1 hour per respondent × 2 responses per year = 186 burden hours).

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC 20530.

¹ While there are 94 judicial districts, there are only 93 United States Attorneys and accordingly 93 research partners. The Northern Mariana Islands and Guam share one research partner.

Dated: November 29, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6-20509 Filed 12-4-06; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0220]

Agency Information Collection Activities: Extension of a Currently Approved Collection: Comments Requested

ACTION: 30-Day notice of information collection under review: Extension of a currently approved collection.

Bureau of Justice Assistance
Application Form: Public Safety
Officers Educational Assistance.*

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection information is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** [Volume 71, Number 195, page 59524 on October 10, 2006] allowing for a 60-day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until January 4, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806. Comments may also be submitted to M. Pressley, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531 via facsimile to (202) 305-1367.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Public Safety Officers Educational Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Dependents of public safety officers who were killed or permanently and totally disabled in the line of duty.

Abstract: BJA's Public Safety Officers' Benefits (PSOB) division will use the PSOEA Application information to confirm the eligibility of applicants to receive PSOEA benefits. Eligibility is dependent on several factors, including the applicant having received a portion of the PSOB Death Benefit or having a family member who received the PSOB Disability Benefit, the applicant's age, and the schools being attended. In addition, information to help BJA identify an individual is collected, Social Security number and contact numbers and e-mail addresses. The changes to the application form have been made in an effort to streamline the application process and eliminate requests for information that is either irrelevant or already being collected by other means.

Others: None.

(5) An estimate of the total number of respondents and the amount of time needed for an average respondent to respond is as follows: It is estimated that no more than 78 respondents will

apply a year. Each application takes approximately 20 minutes to complete.

(6) An estimate of the total public burden (in hours) associated with the collection is 26 hours. Total Annual Reporting Burden: 78×20 minutes per application = 1560 minutes/by 60 minutes per hour = 26 hours.

If additional information is required, please contact, Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 29, 2006.

Lynn Bryant,

Department Clearance, United States Department of Justice.

[FR Doc. E6-20510 Filed 12-4-06; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0235]

Agency Information Collection Activities

ACTION: 30-Day notice of information collection under review: Revision of a currently approved collection; Bulletproof Vest Partnership.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection information is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** [Volume 71, Number 191, page 58432 on October 3, 2006], allowing for a 60-day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until January 4, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806. Comments may also be

submitted to the M. Pressley, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531 via facsimile to (202) 305-1367.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Bulletproof Vest Partnership.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local, or Tribal Governments.

Abstract: The Bureau of Justice Assistance (BJA) collects this information as part of the application for federal assistance process under the Bulletproof Vest Partnership (BVP) Program. The purpose of this program is to help protect the lives of law enforcement officers by helping states and units of local and tribal governments equip their officers with armor vests. An applicant may request funds to help purchase one vest per officer per fiscal year. Federal payment covers up to 50 percent of each jurisdiction's total costs. BJA uses the information collected to review, approve, and make awards to jurisdictions in accordance with

programmatic and statutory requirements.

Others: None.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond is as follows:* There are approximately 5,000 respondents who will respond once per year, for a total of 5,000 responses. Each response will require approximately 1 hour to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden hours associated with this collection is 5,000 hours.

If additional information is required contact Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 29, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6-20512 Filed 12-4-06; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Submission for OMB Review: Comment Request

October 23, 2006.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained from *RegInfo.gov* at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/e-mail: king.darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/Fax: 202-395-6974 (these are not a toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Gamma Radiation Exposure Records.

OMB Number: 1219-0039.

Type of Response: Recordkeeping.

Affected Public: Private sector:

Business or other for-profit.

Number of Respondents: 3.

Estimated Number of Annual

Responses: 3.

Average Response Time: 1 hour.

Estimated Annual Burden Hours: 3.

Total Annualized capital/startup costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$0.

Description: 30 CFR 57.5047 requires records to be kept of cumulative individual gamma radiation exposure to ensure that annual exposure does not exceed 5 Rems per year. It is intended to protect the health of workers in mines with radioactive ores.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Mine Rescue Teams;

Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons.

OMB Number: 1219-0078.

Type of Response: Reporting; recordkeeping; and third party disclosure.

Affected Public: Private sector: Business or other for-profit.

Number of Respondents: 1,067.

Estimated Number of Annual Responses: 45,270.

Average Response Time: approximately one half (.5) hour.

Estimated Annual Burden Hours: 24,365.

Total Annualized capital/startup costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$648,196.

Description: Section 115(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) requires the Secretary of Labor (Secretary) to publish regulations which provide that mine rescue teams be available for rescue and recovery work to each underground mine in the event of an emergency. In addition, the costs of making advance arrangements for such teams are to be borne by the operator of each such mine.

Congress considered the ready availability of mine rescue in the event of an accident to be vital protection for miners. Congress was concerned that too often in the past, rescue efforts at a disaster site have had to await the delayed arrival of skilled mine rescue teams. In responding to Congressional concerns, the Mine Safety and Health Administration (MSHA) promulgated 30 CFR Part 49, Mine Rescue Teams. The regulations set standards related to the availability of mine rescue teams; alternate mine rescue capability for small and remote mines and mines with special mining conditions; inspection and maintenance records of mine rescue equipment and apparatus; physical requirements for mine rescue team members and alternates; and experience and training requirements for team members and alternates.

Title 30, CFR 49.2 provides that the mine operator of an underground mine establish at least two mine rescue teams to be available at all times that miners are underground, or the operator must enter into an arrangement for mine rescue services which assures that at least two teams are available at all times when miners are underground. Each team shall consist of five members and one alternate fully qualified, trained and equipped for rescue service. In addition, each member shall have been employed in an underground mine for a minimum of 1 year within the past 5 years. This standard also requires that each underground mine operator send the MSHA District Manager a statement describing the method of compliance. The statement must disclose whether the operator has independently provided mine rescue teams or entered into an agreement for mine rescue services. The name of the provider and the location of the services shall be included in the statement, a copy of the statement posted at the mine for miner's information, and a copy provided to the

miner's representative if a representative has been designated.

With respect to alternative mine rescue capability for small and remote mines and mines with special mining conditions, 30 CFR 49.3 and 49.4 provide that operators of those mines may submit to MSHA for approval alternative plans for assuring mine rescue capability. The intent of these regulations is to establish the best possible rescue response available given the mining conditions unique to each mine. Although small and remote mines are not statistically less hazardous than larger non-remote mines, they are distinguished by their size and location which may effectively limit the operators' ability to establish and equip two full mine rescue teams. A critical element in determining whether a mine is small and remote is the proximity of other underground mines or existing rescue teams and stations. Likewise, it is recognized that certain mining conditions and situations present significantly lower risks of entrapment to underground miners that would justify an alternative to the mine rescue team requirements contained in 49.2.

Title 30, CFR 49.3 provides that if an underground mine is small and remote, the operator may submit an application to MSHA for approval for an alternative mine rescue capability. Applications must contain the number of miners employed underground on each shift; the distance from the two nearest mine rescue stations; the total underground employment of mines within two hours ground travel time of the operator's mine; the operator's mine fire, ground, and roof control history; the operator's established escape and evacuation plan; an evaluation of the usefulness of additional refuge chambers to supplement those which may exist; the number of miners willing to serve on a mine rescue team; an alternative plan for assuring that a suitable mine rescue capability is provided at all times when miners are underground; and other relevant information.

Title 30, CFR 49.4 provides that if an underground mine is operating under special mining conditions, the mine operator may submit alternative plans to MSHA for approval as a means of achieving full compliance with the regulation. Applications must contain an explanation of the special mining conditions, the number of miners employed underground on each shift, the distance from the two nearest mine rescue stations, the operator's mine fire history, the operator's established escape and evacuation plan, the operator's alternative plan for assuring that a suitable mine rescue capability is

provided at all times when miners are underground, and other relevant information.

Title 30, CFR 49.6 provides a detailed listing of equipment that is to be provided each mine rescue station. Section 49.6(9)(b) states that rescue apparatus and equipment shall be maintained and that a person trained in the use and care of breathing apparatus shall inspect and test the apparatus at least every 30 days and shall certify by signature and date that the inspections and tests were done. The certification and the record of corrective action taken, if any, shall be maintained at the mine rescue station for a period of one year and made available to an authorized representative of the Secretary.

Title 30, CFR 49.7 requires that each team member and alternate be examined within 60 days of the beginning of the initial training, and annually thereafter by a physician who shall certify the physical fitness of the team member to perform mine rescue and recovery work for prolonged periods under strenuous conditions. The operator shall have MSHA Form 5000-3 on file for each team member certifying medical fitness and signed by the examining physician. These forms shall be kept on file at either the mine or the mine rescue station for a period of one year.

Title 30, CFR 49.8 requires that prior to serving on a mine rescue team, each member must complete an initial 20 hour course of instruction in the use, care, and maintenance of the type of breathing apparatus which will be used by the mine rescue team. All team members are required to receive 40 hours of refresher training annually which includes: (1) Sessions underground at least once each 6 months; (2) wearing and use of the breathing apparatus by team members for a period of at least 2 hours while under oxygen every 2 months; (3) where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus; (4) advanced mine rescue training and procedures; and (5) mine map training and ventilation procedures. A record of the training received by each mine rescue team member is required to be on file at the mine rescue station for a period of one year.

Title 30, CFR 49.9 provides that each mine shall have a mine rescue notification plan outlining the procedures to be followed in notifying the mine rescue teams when there is an emergency. In addition, a copy of the plan shall be posted at the mine and a

copy provided for the miners' representative, if applicable.

Title 30, CFR 75.1713-1(a) and (b) and 77.1702 (a) and (b) require that mine operators make arrangements with a licensed physician, medical service, medical clinic, or hospital and with an ambulance service to provide 24-hour emergency medical assistance and transportation.

Title 30, CFR 75.1713-1(e) and 77.1702(e) require that the mine operator post the names, titles, addresses and telephone numbers of all persons or services available for medical assistance and transportation at the mine.

This information is used by mine operators, miners, and MSHA to formulate an appropriate rescue capability within the guidelines set forth in these standards.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E6-20483 Filed 12-4-06; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 30, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. A copy of this ICR, with applicable supporting documentation, may be obtained at <http://www.reginfo.gov/public/do/PRAMain>, or contact Ira Mills on 202-693-4122 (this is not a toll-free number) or E-Mail: Mills.Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for U.S. Department of Labor/Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title: Overpayment Detection and Recovery Activities.

OMB Number: 1205-0173.

Frequency: Quarterly.

Affected Public: State governments; and Federal government.

Type of Response: Reporting.

Number of Respondents: 53.

Annual Responses: 212.

Average Response Time: 14 hours.

Total Annual Burden Hours: 2,968.

Total Annualized Capital/Startup

Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: The Secretary has interpreted applicable sections of Federal law to require States to address the prevention, detection, and recovery of benefit overpayments caused by willful misrepresentation or errors by claimants or others. This report provides an accounting of the types and amounts of such overpayments and serves as a useful management tool for monitoring overall integrity in the Unemployment Insurance system.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6-20523 Filed 12-4-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 30, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to

the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. A copy of this ICR, with applicable supporting documentation, may be obtained at <http://www.reginfo.gov/public/do/PRAMain>, or contact Ira Mills on 202-693-4122 (this is not a toll-free number) or E-Mail: Mills.Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for U.S. Department of Labor/Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension.

Title: Occupational Code Assignment.

OMB Number: 1205-0137.

Frequency: On occasion.

Affected Public: State, local or tribal government; individuals or households; business or other for-profit; and not-for-profit institutions.

Type of Response: Reporting.

Number of Respondents: 11.

Annual Responses: 11.

Average Response Time: .58 hours.

Total Annual Burden Hours: 6.42.

Total Annualized Capital/Startup

Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: ETA 741, Occupational Code Assignment (OCA) is provided as a public service to the states as well as individuals that use occupational information. The OCA process is designed to help users relate an occupational specialty or a job title or to an occupational code within the framework of the Occupational Information Network—Standard Occupational Classification (O*NET—SOC) system.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–20524 Filed 12–4–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 30, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. A copy of this ICR, with applicable supporting documentation, may be obtained at <http://www.reginfo.gov/public/do/PRAMain>, or contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: Mills.Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for U.S. Department of Labor/Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Revision.

Title: Trade Adjustment Assistance (TAA) Program Reserve Funding Request Form.

OMB Number: 1205–0275.

Frequency: Annually.

Affected Public: State, local or tribal government.

Type of Response: Reporting.

Number of Respondents: 25.

Annual Responses: 2 hours.

Total Annual Burden Hours: 50.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: The Department of Labor provides benefits and services to trade-certified individuals under the Trade Adjustment Assistance (TAA) program administered by State Workforce Agencies (SWA). The ETA–9117 (formerly ETA–9023) is required for the submission of request for TAA reserve training funds and job search and relocation allowances. Information collected on this form is also used in the development of formula base allocations awarded to States each year.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–20525 Filed 12–4–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; Request for Information on Efforts by Certain Countries To Eliminate the Worst Forms of Child Labor

AGENCY: The Bureau of International Labor Affairs, United States Department of Labor.

ACTION: Request for information on efforts by certain countries to eliminate the worst forms of child labor.

SUMMARY: This notice is a request for information for use by the Department of Labor in preparation of an annual report on certain trade beneficiary countries' implementation of international commitments to eliminate the worst forms of child labor. This will be the sixth such report by the

Department of Labor under the Trade and Development Act of 2000 (TDA).

DATES: Submitters of information are requested to provide two (2) copies of their written submission to the Office of Child Labor, Forced Labor and Human Trafficking at the address below by 5 p.m., December 22, 2006.

ADDRESSES: Written submissions should be addressed to Tina McCarter at the Office of Child Labor, Forced Labor and Human Trafficking, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5307, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Tina McCarter, Bureau of International Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking, at (202) 693–4846, fax: (202) 693–4830, or e-mail: mccarter-tina@dol.gov. The Department of Labor's international child labor reports can be found on the Internet at <http://www.dol.gov/ILAB/media/reports/iclp/main.htm> or can be obtained from the Office of Child Labor, Forced Labor and Human Trafficking.

SUPPLEMENTARY INFORMATION: The Trade and Development Act of 2000 [Pub. L. 106–200] established a new eligibility criterion for receipt of trade benefits under the Generalized System of Preferences (GSP), Caribbean Basin Trade and Partnership Act (CBTPA), and Africa Growth and Opportunity Act (AGOA). The TDA amends the GSP reporting requirements of the Trade Act of 1974 (Section 504) [19 U.S.C. 2464] to require that the President's annual report on the status of internationally recognized worker rights include "findings by the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor."

Likewise, Title II of the TDA includes as a criterion for receiving benefits under the CBTPA "whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974." The TDA Conference Report [Joint Explanatory Statement of the Committee of Conference, 106th Cong. 2d. sess. (2000)] indicates that "the conferees intend that the GSP standard, including the provision with respect to implementation of obligations to eliminate the worst forms of child labor, apply to eligibility for those additional benefits" [provided for in the AGOA.]

In addition, the Andean Trade Preference Act (ATPA) as amended and expanded by the Andean Trade Promotion and Drug Eradication Act

(ATPDEA) (Pub. L. 107–210, Title XXXI) includes as a criterion for receiving benefits “[w]hether the country has implemented its commitments to eliminate the worst forms of child labor as defined in section 507(6) of the Trade Act of 1974.”

Scope of Report

Countries and non-independent countries and territories presently eligible under the GSP and to be included in the report are: Afghanistan, Albania, Algeria, Angola, Anguilla, Argentina, Armenia, Bangladesh, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, British Indian Ocean Territory, British Virgin Islands, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Christmas Islands, Cocos Islands, Colombia, Comoros, Democratic Republic of the Congo, Republic of Congo, Cook Islands, Costa Rica, Cote d’Ivoire, Croatia, Djibouti, Dominican Republic, Ecuador, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Falkland Islands, Fiji, Gabon, the Gambia, Georgia, Ghana, Gibraltar, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Heard Island and MacDonald Islands, India, Indonesia, Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Lebanon, Lesotho, Liberia, Macedonia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Moldova, Mongolia, Montenegro, Montserrat, Mozambique, Namibia, Nepal, Niger, Nigeria, Niue, Norfolk Island, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Pitcairn Island, Romania, Russia, Rwanda, Saint Helena, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tomé and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Solomon Islands, Somalia, South Africa, Sri Lanka, Suriname, Swaziland, Tanzania, Thailand, Togo, Tokelau Island, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turks and Caicos Islands, Tuvalu, Uganda, Ukraine, Uruguay, Uzbekistan, Vanuatu, Venezuela, Wallis and Futuna, West Bank and Gaza Strip, Western Sahara, Republic of Yemen, Zambia, and Zimbabwe.

Countries eligible or potentially eligible for additional benefits under the AGOA and to be included in the report are: Angola, Benin, Botswana, Burkina Faso, Cameroon, Cape Verde, Chad, Republic of Congo, Democratic Republic of the Congo, Djibouti, Ethiopia, Gabon, the Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria,

Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, and Zambia.

Countries potentially eligible for additional benefits under the CBTPA and to be included in the report are: Barbados, Belize, Costa Rica, Dominican Republic, Guyana, Haiti, Jamaica, Panama, Saint Lucia, and Trinidad and Tobago.

Countries potentially eligible for additional benefits under the ATPA/ATPDEA and to be included in the report are: Bolivia, Colombia, Ecuador, and Peru.

In addition, the following countries will be included in the report in view of Department of Labor Appropriations, 2006, Conference Report, H.R. Rep. 109–337 (2005): Bahrain, Chile, El Salvador, Guatemala, Honduras, Nicaragua, and Morocco.

Information Sought

The Department invites interested parties to submit written information relevant to the findings to be made by the Department of Labor under the TDA, for all listed countries. Information provided through public submission will be considered by the Department of Labor in preparing its findings. Materials submitted should be confined to the specific topic of the study. In particular, the Department’s Bureau of International Labor Affairs is seeking written submissions on the following topics:

1. Whether the country has adequate laws and regulations proscribing the worst forms of child labor;
2. Whether the country has adequate laws and regulations for the implementation and enforcement of such laws and regulations;
3. Whether the country has established formal institutional mechanisms to investigate and address complaints relating to allegations of the worst forms of child labor;
4. Whether social programs exist in the country to prevent the engagement of children in the worst forms of child labor, and to assist in the removal of children engaged in the worst forms of child labor;
5. Whether the country has a comprehensive policy for the elimination of the worst forms of child labor;
6. Whether the country is making continual progress toward eliminating the worst forms of child labor.

Information relating to the nature and extent of child labor in the country is also sought. Information submitted may include reports, statistics, newspaper articles, or other materials. Governments

that have ratified ILO Convention 182 are requested to submit copies of their most recent article 22 submissions under the Convention, especially those with information on types of work determined in accordance with Article 3(d) of the Convention.

Definition of Worst Forms of Child Labor

The term “worst forms of child labor” is defined in section 412(b) of the TDA as comprising:

“(A) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(B) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(C) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties; and

(D) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

The TDA Conference Report noted that the phrase, “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children” is to be defined as in Article II of Recommendation No. 190, which accompanies ILO Convention No. 182. This includes

“(a) Work which exposes children to physical, psychological, or sexual abuse;

(b) Work underground, under water, at dangerous heights or in confined spaces;

(c) Work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;

(d) Work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;

(e) Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.”

The TDA Conference Report further indicated that this phrase be interpreted in a manner consistent with the intent of Article 4 of ILO Convention No. 182, which states that such work shall be determined by national laws or

regulations or by the competent authority in the country involved.

This notice is a general solicitation of comments from the public.

Signed at Washington, DC, this 29th day of November, 2006.

James Carter,

Deputy Undersecretary, Bureau of International Labor Affairs.

[FR Doc. E6-20561 Filed 12-4-06; 8:45 am]

BILLING CODE 4510-28-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemption 75-1; Employee Benefit Plan Security Transactions With Broker-Dealers, Reporting Dealers and Banks

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This program helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on a proposed extension of the current approval of information collection provisions incorporated in the Prohibited Transaction Class Exemption (PTE) 75-1, pertaining to securities and other related transactions with broker-dealers, reporting dealers and banks. A copy of the information collection request (ICR) can be obtained by contacting the office shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before February 5, 2007.

ADDRESSES: Direct all written comments to Susan G. Lahne, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5647, Washington, DC 20210. Telephone: (202) 693-8410; Fax: (202)

219-4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

PTE 75-1 provides exemptions from certain prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA), and the Internal Revenue Code of 1986 (Code) for specified types of transactions between employee benefit plans and broker-dealers, reporting dealers and banks relating to securities purchases and sales, provided specified conditions are met. The exempted transactions include an employee benefit plan's purchase of securities from broker-dealers' inventories of stocks, from underwriting syndicates in which a plan fiduciary is a member, from banks, from reporting dealers, and from a market-maker even if a market-maker is a plan fiduciary. The exempted transactions also include, under certain conditions, a plan's accepting an extension of credit from a broker-dealer for the purpose of facilitating settlement of a securities transaction. Among other conditions, PTE 75-1 requires that a party seeking to rely on the exemption with respect to a transaction maintain adequate records of the transaction for a period of six years. The Department has obtained approval from the Office of Management and Budget (OMB) for this information collection under OMB Control No. 1210-0092. This approval is currently scheduled to expire on March 30, 2007.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB approval of the information collection contained in PTE 75-1. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval of the information collection contained in PTE 75-1. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 75-1; Employee Benefit Plan Security Transactions with Broker-Dealers, Reporting Dealers and Banks.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0092.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 9750.

Responses: 9750.

Estimated Total Burden Hours: 1625.

Estimate Total Burden Cost: \$86,125.

III. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR submitted to OMB; they will also become a matter of public record.

Joseph A. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration

[FR Doc. E6-20519 Filed 12-4-06; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Request for Public Comment; Prohibited Transaction Class Exemption 80-83; Employee Benefit Plan Purchase of Securities Benefiting Party in Interest Issuer

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the

general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption (PTE) 80–83. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted on or before February 5, 2007.

ADDRESSES: Direct all written comments to Susan G. Lahne, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: ebsa.opr@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

PTE 80–83 provides an exemption from certain prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (Code) for transactions in which an employee benefit plan purchases securities when the proceeds from such purchase may be used to reduce or retire a debt owed by a party in interest with respect to such plan, provided that specified conditions are met. Among other conditions, PTE 80–83 requires that adequate records pertaining to an exempted transaction be maintained for six years. The Department has approval from the Office of Management and Budget (OMB) for this information collection requirement under OMB Control No. 1210–0064. This approval is currently scheduled to expire on March 30, 2007.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB approval of the information collection contained in PTE 80–83. After considering comments received in response to this notice, the

Department intends to submit an ICR to OMB for continuing approval of the information collection contained in PTE 80–83. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 80–83; Employee Benefit Plan Purchase of Securities Benefiting Party in Interest Issuer.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0064.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 25.

Responses: 25.

Estimated Total Burden Hours: 2 hours.

III. Desired Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR submitted to OMB; they will also become a matter of public record.

Joseph A. Piacentini,

*Director, Office of Policy and Research,
Employee Benefits Security Administration.*
[FR Doc. E6–20520 Filed 12–4–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Petition for Finding Under Section 3(40) of ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This program helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collections contained in regulations pertaining to the Department's procedures to making a finding under section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA) as to whether an employee benefit plan is established and maintained pursuant to one or more collective bargaining agreements. A copy of the information collection request (ICR) can be obtained by contacting the office shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before February 5, 2007.

ADDRESSES: Direct all written comments to Susan G. Lahne, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: ebsa.opr@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Rules codified beginning at 29 CFR 2570.150 set forth an administrative procedure (“procedural rules”) for obtaining a determination by the

Department as to whether a particular employee benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. These procedural rules concern specific criteria set forth in 29 CFR 2510.3-40 ("criteria rules"), which, if met, constitute a finding by the Department that a plan is collectively bargained. Plans that meet the requirements of the criteria rules are not subject to state law. Among other requirements, the procedural rules require submission of a petition and affidavits by parties seeking a finding. The Department has obtained approval from the Office of Management and Budget (OMB), under OMB Control No. 1210-0119, for the information collections contained in its rules for a finding under section 3(40). This approval is currently scheduled to expire on March 30, 2007.

II. Current Actions

This notice requests comments on an extension of OMB's approval of the information collections included in 29 CFR 2510.3-40. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval of the information collection contained in 29 CFR 2510.3-40. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Petition for Finding under Section 3(40) of ERISA.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0119.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 45.

Responses: 45.

Estimated Total Burden Hours: 1.

Estimated Total Burden Cost (Operating and Maintenance): \$120,420.

III. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval; they will also become a matter of public record.

Joseph S. Piacentini,

*Director, Office of Policy and Research,
Employee Benefits Security Administration.*
[FR Doc. E6-20521 Filed 12-4-06; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemption 88-59, Residential Mortgage Financing Arrangements

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption (PTE) 88-59. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted on or before February 5, 2007.

ADDRESSES: Direct all written comments to Susan G. Lahne, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5647, Washington, DC 20210. Telephone: (202) 693-8410; Fax: (202) 219-4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: ebbsa.opr@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

PTE 88-59 provides an exemption from certain prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (Code) for transactions in which an employee benefit plan provides mortgage financing to purchasers of residential dwelling units, provided specified conditions are met. Among other conditions, PTE 88-59 requires that adequate records pertaining to exempted transactions be maintained for the duration of the pertinent loan. This recordkeeping requirement constitutes an information collection within the meaning of the PRA, for which the Department has obtained approval from the Office of Management and Budget (OMB) under OMB Control No. 1210-0095. The OMB approval is currently scheduled to expire on March 30, 2007.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB approval of the information collection contained in PTE 88-59. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval of the information collection contained in PTE 88-59. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 88-59; Residential Mortgage Financing Arrangements.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210-0095.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 1,785.
Responses: 1,785.
Estimated Total Burden Hours: 1.

III. Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Joseph A. Piacentini,

*Director, Office of Policy and Research,
 Employee Benefits Security Administration.*

[FR Doc. E6-20522 Filed 12-4-06; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: Comments on the petitions must be postmarked and received by the

Office of Standards, Regulations, and Variances on or before January 4, 2007.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *E-Mail:* Standards-Petitions@dol.gov.
2. *Telefax:* 1-202-693-9441.
3. *Hand-Delivery or Regular Mail:* Submit comments to the Mine Safety and Health Administration (MSHA), Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

We will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. If you submit your comments by hand-delivery, you are required to check in at the receptionist desk on the 21st floor.

Copies of the petitions and comments will be available during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ria Moore Benedict, Deputy Director, Office of Standards, Regulations, and Variances at 202-693-9443 (Voice), benedict.ria@dol.gov (e-mail), or 202-693-9441 (Telefax), or you can contact Barbara Barron at 202-693-9447 (Voice), barron.barbara@dol.gov (e-mail), or 202-693-9441 (Telefax). [These are not toll-free numbers].

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard, or that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modifications.

II. Petitions for Modification

Docket Number: M-2006-076-C.
Petitioner: Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama.
Mine: Shoal Creek Mine, (MSHA I.D. No. 01-02901), located in Jefferson County, Alabama.

Regulation Affected: 30 CFR 75.507 (Power connection points).

Modification Request: The petitioner requests a modification of the existing standard to permit use of three-phase, alternating current deep-well submersible pumps in boreholes in its Shoal Creek Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M-2006-077-C.

Petitioner: Arch Western Bituminous Group, LLC, 225 N. 5th Street, Suite 900, Grand Junction, Colorado 81510.

Mine: SUFCO Mine, (MSHA I.D. No. 42-00089), located in Sevier County, Utah.

Regulation Affected: 30 CFR 75.1909(c)(2) (Non-permissible diesel-powered equipment; design and performance requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of Getman 220 tractors towing fully loaded Uintah 2m shield trailers that are: (a) Equipped with a supplemental braking system on the tractor; (b) Equipped with a system to automatically lower the load in the trailer onto the roadway providing additional braking action; (c) Operated by personnel that have been trained to recognize appropriate levels of speed for different road conditions and slopes, and all hazards associated with an additional supplemental braking system; and (d) Maintenance personnel will be trained in recognizing all hazards with the additional supplemental braking system. The petitioner states that the miners will be trained in the terms and conditions of the Proposed Decision and Order and within 60 days submit revisions of its Part 48 training plan to the District Manager that includes initial and refresher training to comply with final order. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M-2006-078-C.

Petitioner: San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421.

Mine: San Juan South Mine, (MSHA I.D. No. 29-02170), located in San Juan County, New Mexico.

Regulation Affected: 30 CFR 75.335(a)(2) (Construction of seals).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of an alternative method for construction of seals in the San Juan South Mine. Persons may review a complete

description of petitioner's alternative method at the MSHA address listed in this notice. The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and the proposed alternative method will provide an equal or higher degree of safety as the existing standard.

Docket Number: M-2006-079-C.

Petitioner: San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421.

Mine: San Juan South Mine, (MSHA I.D. No. 29-02170), located in San Juan County, New Mexico.

Regulation Affected: 30 CFR 75.335(a)(1) (Construction of seals).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of an alternative method for construction of seals in the San Juan South Mine. Persons may review a complete description of petitioner's alternative method at the MSHA address listed in this notice. The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and the proposed alternative method will provide an equal or higher degree of safety as the existing standard.

Dated at Arlington, Virginia this 22nd day of November 2006.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. E6-20569 Filed 12-4-06; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: Comments on the petitions must be postmarked and received by the Office of Standards, Regulations, and Variances on or before January 4, 2007.

ADDRESSES: You may submit your comments, identified by "docket

number" on the subject line, by any of the following methods:

1. *E-Mail:* Standards-Petitions@dol.gov.

2. *Telefax:* 1-202-693-9441.

3. *Hand-Delivery or Regular Mail:* Submit comments to the Mine Safety and Health Administration (MSHA), Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

We will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. If you submit your comments by hand-delivery, you are required to check in at the receptionist desk on the 21st floor.

Copies of the petitions and comments will be available during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ria Moore Benedict, Deputy Director, Office of Standards, Regulations, and Variances at 202-693-9443 (Voice), benedict.ria@dol.gov (e-mail), or 202-693-9441 (Telefax), or you can contact Barbara Barron at 202-693-9447 (Voice), barron.barbara@dol.gov (e-mail), or 202-693-9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard, or that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modifications.

II. Petitions for Modification

Docket Number: M-2006-067-C.

Petitioner: West Ridge Resources, Inc., P.O. Box 1077, Price, Utah 84501.

Mine: West Ridge Mine, (MSHA I.D. No. 42-02233), located in Carbon County, Utah.

Regulation Affected: 30 CFR 75.350 (Air courses and belt haulage entries).

Modification Request: The petitioner has filed a petition for modification to

request that Section V. (B)(5) of the Proposed Decision and Order (PDO) for previously granted petition, docket number M-1999-026-C, be amended to insert the following sub-paragraphs:

1. In addition to the requirements of (B)(5), and subject to the terms set forth in paragraph 2 of this subpart, diesel-powered equipment classified as "heavy-duty" under 30 CFR 75.1908(a) must include a means, maintained in operating condition, to maintain the surface temperature of the exhaust system of diesel equipment below 302° Fahrenheit.

2. In the absence of a safe and reasonable means to comply with the requirement set forth in Paragraph 1 of this subpart, the following requirements shall apply.

(i) All hydraulic hoses, fuel lines, or other devices used to convey combustible fluids must be separated from the hot engine exhaust-system surfaces by piping rerouting, barriers or other means acceptable to MSHA. Such hoses, lines, or other devices used to convey combustible fluids that by design cannot be separated as required may be insulated using Kevlar or equivalent insulation product.

(ii) Engine exhaust system must be designed to minimize contact with combustible materials. Where safe and reasonable, exhaust pipes outside of the engine compartment must be of double-wall construction. Joints in the exhaust systems must consist of flanged connections utilizing gaskets and/or solid welded construction.

(iii) In addition to the requirements of 30 CFR 75.1909, 4-braid hoses must be used where a hose failure could result in combustible fluids contacting parts of the exhaust systems. Hoses should be covered with a Kevlar covering such as Protect, NHS-125, MSHA IC-171/1, or an equivalent covering acceptable to MSHA.

(iv) Diesel equipment must be equipped with both an automatic and manual fire-suppression system meeting the requirements of 30 CFR 75.1911 and capable of being activated from inside and outside the machine operator's cab. The manual activator located outside the cab must be on the side of the machine opposite the operator's cab. The fire-suppression system must be installed by a reputable fire suppression vendor with an enhanced fire-hazard analysis designed to address a higher level of fire protection for machines that are operated in two-entry mining systems. Each diesel-powered machine must be equipped with two hand-held fire extinguishers. Diagrams specific to each diesel family must be developed and retained by the mine operator to

document how each enhanced fire-suppression system must be maintained. A record of each enhanced fire-suppression system diagram shall be maintained on the surface and be made available to all interested persons.

(v) Diesel equipment with diesel particulate matter disposal filters must be fitted with high exhaust gas temperature shutdown sensors to prevent the operation of the machine if the exhaust gas exceeds 650° Fahrenheit at the filter inlet. The shutdown sensors must be located as near the filter housing (filter inlet) as practical as determined by MSHA.

(vi) The visual inspection of diesel equipment required by 30 CFR 75.1914 must include an examination of the protective devices installed to control exhaust-system surface temperatures, hoses, fuel lines, and all other materials designed to prevent combustible fluids from contacting hot engine exhaust-system surfaces.

(vii) All underground miners working in the two-entry areas of the mine must be trained in the terms and conditions listed in this modification and the fire hazards involved with equipment working in these areas.

The petitioner asserts that this amendment to the petition for modification is filed to prevent a diminution of safety and the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M-2006-068-C.

Petitioner: Consol Pennsylvania Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241.

Mine: Bailey Mine—1 South, (MSHA I.D. No. 36-07236), located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.364(b)(2) (Weekly examination).

Modification Request: Due to deteriorating roof conditions, the petitioner proposes to establish evaluation check points 1 and 2 to evaluate and confirm the proper ventilation between 1 South 4 Wall and 29 Wall, and check points 3 and 4 to evaluate the intake air course between 1 South and 31 Wall, and 90 Wall. The petitioner states that intake air enters the mine at the two (2) 1 South Shafts in the area between points 2 and 3. The petitioner further states that the air quality and quantity at each check point will be measured weekly by a certified person who will enter the date, time and initials to indicate that an examination was conducted at each location, record the results of the examinations in a book provided for such purposes, and certify by signature that the examination was

conducted. The record book will be kept on the surface for a period of six months and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and that use of the check points to measure air and gas will provide an accurate picture of the conditions in the air course without unduly exposing persons to safety hazards.

Docket Number: M-2006-069-C.

Petitioner: Consol Pennsylvania Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241.

Mine: Bailey Mine—81 Longwall, (MSHA I.D. No. 36-07230), located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.364(b)(2).

Modification Request: Due to deteriorating roof conditions in the intake air course located in the 81 longwall set up entries, the petitioner proposes to establish evaluation check points 1 and 2 to evaluate and confirm the adequate ventilation over the fall. The petitioner states that the air quality and quantity at each check point will be measured weekly by a certified person who will enter the date, time and initials to indicate that an examination was conducted at each location. The petitioner further states that results of the examinations will be recorded in a book that will be certified by signature that the examination was conducted, and kept on the surface available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard, and use of the check points to measure air and gas will provide an accurate picture of the conditions in the air course without exposing persons to safety hazards.

Docket Number: M-2006-070-C.

Petitioner: Excel Coal Company, RD 2 Box 665, Shamokin, Pennsylvania 17872.

Mine: 3 S. Slope Mine, (MSHA I.D. No. 36-09309), located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 75.335 (Construction of seals).

Modification Request: The petitioner proposes to: (1) Construct seals from wooden materials of moderate size and weight; (2) design the seals to withstand a static horizontal pressure in the range of 10 psi; and (3) install a sampling tube in the monkey (higher elevation) seal. The petitioner states that the pitch of anthracite veins and concrete blocks are difficult to use and will expose miners

to safety hazards during transport. The petitioner cites low-level explosibility of anthracite coal dust and minimal potential for either an accumulation of methane in previously mined pitching veins or an ignition source in the gob area, as justification for the proposed 10 psi design. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M-2006-071-C.

Petitioner: Excel Coal Company, RD 2 Box 665, Shamokin, Pennsylvania 17872.

Mine: 3 S. Slope Mine, (MSHA I.D. No. 36-09309), located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 75.1202 and 75.1202-1(a) (Temporary notations, revisions, and supplements).

Modification Request: The petitioner requests a modification of the existing standard to permit the required interval of survey to be established annually from the initial survey in lieu every 6 months. The petitioner proposes to update the mine map by hand notations on a daily basis, conduct subsequent surveys prior to commencing retreat mining, and when either a drilling program under 30 CFR 75.388 or plan for mining into accessible areas under 30 CFR 75.389 is required. The petitioner states that: (1) Low production and slow rate of advance in anthracite mining make surveying on 6 month intervals impractical and, in most cases, annual development is frequently limited to less than 500 feet of gangway advance with associated up-pitch development; (2) The majority of small anthracite mines are using non-mechanized, hand-loading mining methods; (3) Development above the active gangway is designed to mine into the level above at designated intervals thereby maintaining sufficient control between both surveyed gangways; and (4) The available engineering/surveyor resources are very limited in anthracite coal fields which makes surveying on an annual basis difficult to achieve with 4 individual contractors currently available. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M-2006-072-C.

Petitioner: Excel Coal Company, RD 2 Box 665, Shamokin, Pennsylvania 17872.

Mine: 3 S. Slope Mine (MSHA I.D. No. 36-09309) located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 49.6(a)(1) & (5) (Mine Rescue teams).

Modification Request: The petitioner requests a modification of the existing

standard to permit the reduction of twelve self-contained oxygen breathing apparatus, to eight self-contained breathing apparatus and the reduction of twelve permissible cap lamps and charging rack to eight permissible cap lamps and charging rack. The petitioner asserts that this petition request will in no way alter, change, or reduce the ability, effectiveness, or safety of the underground mine personnel.

Docket Number: M-2006-073-C.

Petitioner: T.J.S. Mining, Inc., 2340 Smith Road, Shelocta, Pennsylvania 15774.

Mines: Rossmoyne No. 1 Mine, (MSHA I.D. No. 36-09075), located in Indiana County, Pennsylvania; T.J.S. No. 5 Mine, (MSHA I.D. No. 36-09159), located in Armstrong County, Pennsylvania; and T.J.S. No. 6 Mine, (MSHA I.D. No. 36-09464), located in Armstrong County, Pennsylvania.

Regulation Affected: 30 CFR 75.1100-2(e)(2) (Quantity and location of firefighting equipment).

Modification Request: The petitioner proposes to supply two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations in lieu of using 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M-2006-074-C.

Petitioner: T.J.S. Mining, Inc./Penn View Mining, Inc., 2340 Smith Road, Shelocta, Pennsylvania.

Mines: Rossmoyne No. 1 Mine, (MSHA I.D. No. 36-09075), located in Indiana County, Pennsylvania; Darmac No. 2 Mine, (MSHA I.D. No. 36-08135), located in Armstrong County, Pennsylvania; T.J.S. No. 5 Mine, (MSHA I.D. No. 36-09159), located in Armstrong County, Pennsylvania; and Penn View Mine, (MSHA I.D. No. 36-08741), located in Indiana County, Pennsylvania.

Regulation Affected: 30 CFR 75.312(c) (Main mine fan examinations and records).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method for conducting the 31 day test of the fan signal. The petitioner states that to conduct the 31 day test procedure requires stopping and restarting the fan which can cause failure to the fan's electrical circuit, and further undue burden if the fan cannot be restarted within the required fifteen (15) minutes. If the fan is stopped, this would require a special examination to be conducted which requires crawling

approximately 2 miles because some of the mines are thin seam mines (34" - 36" height). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M-2006-075-C.

Petitioner: San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421.

Mine: San Juan South Mine, (MSHA I.D. No. 29-02170), located in San Juan County, New Mexico.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner has filed a petition for modification to request that Section 2 of the Proposed Decision and Order for its previously granted petition, docket number M-2000-109-C, be amended. The petitioner's previously granted petition permits mining through oil and gas wells. The petitioner requests that Section 2 of the Proposed Decision and Order of its previously granted petition be changed to further clarify the specific procedures required when approaching and cutting through the well, and to also bring the petition more in line with other granted petitions for safety standard 30 CFR 75.1700. The petitioner asserts that this amendment to the previously granted petition will provide at least the same measure of protection as the existing modification requirements.

Docket Number: M-2006-010-M.

Petitioner: Swenson Granite Company, LLC, 369 North State Street, Concord, New Hampshire 03301.

Mine: Swenson Gray Quarry, (MSHA I.D. No. 27-00083), located in Merrimack County, New Hampshire.

Regulation Affected: 30 CFR 56.19009 (Position indicator).

Modification Request: The petitioner proposes to use state-of-the-art Pelligrini and Timberland stiff-leg derricks as man-hoists into the dimensional stone quarry, and use the company's hand signaling system daily to direct the derrick as an alternative to using the Position Indicator. The petitioner states that Swenson Granites' Gray Quarry is an open dimensional granite quarry that operates fixed stiff-leg derricks to lift stone and equipment, and that an accurate and reliable indicator of the skip or cage position will be provided in the shaft. The petitioner further states that the derricks operate and reach all areas of the quarry floor and walls and offer full view of the hook and loads, and the operation relies 100 percent on constant view of the hook and load, or the operation is stopped and conditions are improved to 100 percent visibility.

The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M-2006-011-M.

Petitioner: Swenson Granite Company, LLC, 369 North State Street, Concord, New Hampshire 03301.

Mine: Swenson Gray Quarry, (MSHA I.D. No. 27-00083), located in Merrimack County, New Hampshire.

Regulation Affected: 30 CFR 56.19090 (Dual signaling systems).

Modification Request: The petitioner proposes to use state-of-the-art Pelligrini and Timberland stiff-leg derricks as man-hoists into their dimensional stone quarry, and use the company's hand signaling system daily to direct the derrick as an alternative to using the speaking tube. The petitioner states that Swenson Granites' Gray Quarry is an open dimensional granite quarry that operates fixed stiff-leg derricks to lift stone and equipment. The petitioner proposes to continue using man hoisting with equipment that has been replaced by two newer stiff-leg derricks which they have done for many years. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Dated at Arlington, Virginia this 22nd day of November 2006.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. E6-20571 Filed 12-4-06; 8:45 am]

BILLING CODE 4510-43-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

Public Interest Declassification Board (PIDB); Notice of Meeting

Pursuant to section 1102 of the Intelligence Reform and Terrorism Prevention Act of 2004 which extended and modified the Public Interest Declassification Board (PIDB) as established by the Public Interest Declassification Act of 2000 (Pub. L. 106-567, title VII, December 27, 2000, 114 Stat. 2856), announcement is made for the following committee meeting:

Name of Committee: Public Interest Declassification Board (PIDB).

Date of Meeting: Friday, December 15, 2006.

Time of Meeting: 9 a.m. to 12:30 p.m.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Rooms 500/501, Washington, DC 20408.

Purpose: To discuss declassification program issues.

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Monday, December 11, 2006. ISOO will provide additional instructions for gaining access to the location of the meeting.

FOR FURTHER INFORMATION CONTACT: J. William Leonard, Director Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW., Washington, DC 20408, telephone number (202) 357-5250.

Dated: November 30, 2006.

J. William Leonard,

Director, Information Security Oversight Office.

[FR Doc. E6-20505 Filed 12-4-06; 8:45 am]

BILLING CODE 7515-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-35]

Energy Northwest, Columbia Generating Station Independent Spent Fuel Storage Installation Environmental Assessment and Finding of No Significant Impact Regarding a Proposed Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT:

Christopher M. Regan, Senior Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415-1179; fax number: (301) 415-1179; e-mail: cmr1@nrc.gov.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering a request dated September 14, 2006, from Energy Northwest (applicant or Energy Northwest) for an exemption from certain requirements of Title 10, Code of Federal Regulations (CFR), Part 72 (10 CFR part 72), specifically, 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 72.214, pursuant to 10 CFR 72.7, for the Columbia Generating Station (CGS) Independent Spent Fuel Storage Installation (ISFSI), located on the CGS site in Benton County,

Washington. The CGS ISFSI is an existing facility constructed for interim dry storage of spent nuclear fuel.

At the CGS ISFSI, Energy Northwest has stored spent nuclear fuel in fifteen Holtec International HI-STORM 100 storage casks. As set forth in 10 CFR 72.214, the NRC has approved use of the HI-STORM 100 Cask System in Certificate of Compliance (CoC) 1014. The NRC has issued Amendments 1 (effective date July 15, 2002) and 2 (effective date June 7, 2005) to CoC 1014. Energy Northwest loaded the spent nuclear fuel into the HI-STORM 100 storage casks at the CGS ISFSI under Amendment 1. If approved by the NRC, the exemption would apply to all HI-STORM 100 storage casks fabricated and used in accordance with Amendment 1 of CoC 1014 at the CGS ISFSI.

The exemption would authorize the applicant to perform analyses consistent with that granted by the NRC in Amendment 2 to CoC 1014 in lieu of certain analyses required by Amendment 1 to CoC 1014, specifically, Appendix B, Section 3.4.3.a., Site Specific Parameters and Analyses (concerning the determination of Holtec HI-STORM 100/ISFSI pad interface coefficient of friction under environmental conditions that may degrade the pad/cask interface, such as those caused by icing).

The NRC has prepared an environmental assessment for this proposed action in accordance with the requirements of 10 CFR part 51. Based on the environmental assessment, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action.

Environmental Assessment (EA)

I. Identification of Proposed Action

By letter dated September 14, 2006, Energy Northwest requested an exemption from the requirements of 10 CFR 72.212(a), 72.212(b)(2)(i), 72.212(b)(7) and 72.214, specifically, exemption from complying with Appendix B, Section 3.4.3.a., Site Specific Parameters and Analyses of Amendment 1 to CoC 1014, which requires a determination of the HI-STORM 100/ISFSI pad interface coefficient of friction under environmental conditions that may degrade the pad/cask interface, such as those caused by icing. Approval of the exemption request would allow the applicant to perform an analysis consistent with that granted by the NRC in Amendment 2 to CoC 1014 when evaluating icing conditions between the

bottom of the HI-STORM 100 storage casks and the ISFSI pad in lieu of determining the HI-STORM 100/ISFSI interface coefficient of friction. The presence of ice formation at the interface between the bottom of the HI-STORM 100 storage casks and the ISFSI pad can result in the storage system being in an unanalyzed condition. Energy Northwest determined that the HI-STORM 100 storage casks used at the CGS ISFSI were susceptible to the icing phenomena and developed compensatory measures during cold weather conditions to maintain the friction coefficient in accordance with Amendment 1 to CoC 1014.

For the NRC to permit Energy Northwest to demonstrate the safe condition of the HI-STORM 100 storage casks at the CGS ISFSI during cold weather conditions by performing analyses consistent with methods approved in Amendment 2 to CoC 1014, the NRC must grant Energy Northwest an exemption from certain general license conditions defined in 10 CFR 72.212 and the list of approved casks in 10 CFR 72.214. The NRC regulation, 10 CFR 72.212(a)(2), states that the general license for the storage of spent nuclear fuel at power reactor sites is limited to storage in casks approved under the provisions in 10 CFR part 72. By exempting Energy Northwest from 10 CFR 72.214, 10 CFR 72.212(a)(2) and certain other regulations in 10 CFR part 72.212 that concern compliance with the applicable CoC, namely, 72.212(b)(2)(i)(A) and 72.212(b)(7), Energy Northwest will be authorized to deviate from CoC 1014 (Amendment 1) Appendix B, Section 3.4.3.a, which requires determination of the HI-STORM 100/ISFSI pad interface coefficient of friction.

II. Need for the Proposed Action

Fifteen HI-STORM 100 storage casks have been loaded under Amendment 1 of CoC 1014 and are stored at the CGS ISFSI. Energy Northwest is currently performing compensatory measures during cold weather conditions, including monitoring operator walkdowns, de-icing, and clearing of a pathway on the ISFSI for draining, to maintain the friction coefficient in accordance with Amendment 1 to CoC 1014. Elimination of the need to continue implementation of these compensatory measures would reduce worker radiation dose and free operators to be more responsive to other duties.

III. Environmental Impacts of the Proposed Action

The potential environmental impact of using the HI-STORM 100 Cask

System was initially analyzed in the environmental assessment for the final rule to add the HI-STORM 100 Cask System to the list of approved spent fuel storage casks in 10 CFR 72.214 (65 FR 25241; May 1, 2000). In addition, the potential environmental impact of Amendment 2 changes to CoC 1014 was analyzed in the environmental assessment for the final rule that amended 10 CFR 72.214 to add Amendment 2 to CoC 1014 (70 FR 32977; June 7, 2005). Both environmental assessments concluded that there would be no significant environmental impacts as a result of the respective actions, and as such, the NRC made a finding of no significant impact. The NRC staff finds that the conclusions set forth in these environmental assessments continue to be valid.

The HI-STORM 100 Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado generated missiles, design basis earthquake, design basis flood, accidental cask drop, lightning effects, fire, explosions, and other incidents. Considering the specific design requirements for each accident condition, the design of the HI-STORM 100 Cask System, would prevent loss of containment, shielding, and criticality control.

Amendment 1 to CoC 1014, Appendix B, Section 3.4.3.a, requires that the Coulomb friction coefficient for the HI-STORM 100/ISFSI pad interface be at least 0.53 under all conditions. Amendment 2 to CoC 1014, Appendix B, Section 3.4.3.a, includes a provision, that for free standing casks, the response of the casks under the site's Design Basis Earthquake (DBE) could be established using the best estimate of the friction coefficient in an appropriate analysis model. The analysis would demonstrate that the DBE would not result in cask tip-over or cause a cask to fall off the pad, or cause an impact between casks, or if an accident were to occur, would demonstrate that the maximum g-load experienced by the stored spent nuclear fuel would be limited to 45 g's. The use of methods described in Section 3.4.3.a of Appendix B, approved by the NRC in Amendment 2 to CoC 1014, in demonstrating the safe storage of spent nuclear fuel during environmental conditions that might degrade the pad/cask interface friction, such as those caused by icing, will not result in any

degradation of specific design requirements, namely, containment, shielding or criticality control. Without the loss of either containment, shielding, or criticality control, the risk to public health and safety is not compromised.

By permitting the use of methods described in Section 3.4.3.a of Appendix B, approved by the NRC in Amendment 2 to CoC 1014, there will be a reduction in occupational exposure due to the relief from the performance of compensatory measures. Therefore, the NRC staff has determined that acceptable safety margins are maintained and that there are no significant environmental impacts as a result of using the methods described in Section 3.4.3.a of Appendix B, approved by the NRC in Amendment 2 to CoC 1014, to demonstrate safe storage of spent nuclear fuel at the CGS ISFSI.

IV. Alternatives to the Proposed Action

The staff evaluated the no action alternative, which would be a denial of the exemption request. Denial of the exemption request would result in continued performance of compensatory measures by Energy Northwest, thereby continuing to subject workers to an increased radiation dose than would be the case if the compensatory measures were not conducted.

V. Agencies and Persons Consulted

On October 27, 2006, Mr. Michael Mills of the State of Washington Energy Facility Site Evaluation Council was contacted about the EA for the proposed action and had no concerns.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. The proposed action will not have a significant effect on the quality of the human environment because the use of the Amendment 2 methodology will reduce worker radiation dose, and further, will not result in any degradation to specific cask design requirements, namely, containment, shielding, or criticality control. As described in the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 72.214, pursuant to 10 CFR 72.7, which will permit Energy Northwest to perform analyses consistent with that granted by the NRC in Amendment 2 to CoC 1014, Appendix B, Section 3.4.3.a at the CGS ISFSI, is not a major Federal action significantly affecting the quality of the human environment and,

therefore, an environmental impact statement is not required.

Further Information

In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," final NRC records and documents regarding this proposed action, including the exemption request dated September 14, 2006, are publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be inspected at NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or (301) 415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 20th day of November 2006.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

Senior Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6-20568 Filed 12-4-06; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on December 12, 2006, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, December 12, 2006—8:30 a.m.—9:30 a.m.

The Committee will discuss proposed ACNW activities and related matters.

The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Antonio F. Dias (Telephone: 301/415-6805) between 8:15 a.m. and 5 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: November 28, 2006.

Michael R. Snodderly,
Branch Chief, ACRS/ACNW.

[FR Doc. E6-20515 Filed 12-4-06; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of December 4, 11, 18, 25, 2006, January 1, 8, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of December 4, 2006

Wednesday, December 6, 2006

2:45 p.m. Discussion of Security Issues (Closed—Ex. 1).

Thursday, December 7, 2006

9:25 a.m. Affirmation Session (Public Meeting) (Tentative) a. Hydro Resources, Inc. (Crownpoint, NM) Intervenor's Petition for Review of LBP-06-19 (Final Partial Initial Decision—NEPA Issues) (Tentative).
9:30 a.m. Discussion of Management Issues (Closed—Ex. 2).

Week of December 11, 2006—Tentative

Monday, December 11, 2006

1:30 p.m. Briefing on Status of Decommissioning Activities (Public Meeting) (Contact: Keith McConnell, 301-415-7295).

This meeting will be webcast live at the Web address, <http://www.nrc.gov>.

Tuesday, December 12, 2006

9:30 a.m. Briefing on Threat Environment Assessment (Closed—Ex. 1).
1:30 p.m. Discussion of Security Issues (Closed—Ex. 1 & 3).

Wednesday, December 13, 2006

9:30 a.m. Briefing on Status of Equal Employment Opportunity (EEO) Programs (Public Meeting) (Contact: Barbara Williams, 301-415-7388).

This meeting will be webcast live at the Web address, <http://www.nrc.gov>.

Thursday, December 14, 2006

9:25 a.m. Affirmation Session (Public Meeting) (Tentative) a. Entergy Nuclear Vermont Yankee, LLC, & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-06-20 (Sept. 22, 2006), reconsidered (Oct. 30, 2006) (Tentative).

9:30 a.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301-415-7360).

This meeting will be webcast live at the Web address, <http://www.nrc.gov>.

Week of December 18, 2006—Tentative

There are no meetings scheduled for the Week of December 18, 2006.

Week of December 25, 2006—Tentative

There are no meetings scheduled for the Week of December 25, 2006.

Week of January 1, 2007—Tentative

There are no meetings scheduled for the Week of January 1, 2007.

Week of January 8, 2007—Tentative

Wednesday, January 10, 2007

9:30 a.m. Briefing on Browns Ferry Unit 1 Restart (Public Meeting) (Contact: Catherine Haney, 301-415-1453).

This meeting will be webcast live at the Web address, <http://www.nrc.gov>.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Michelle Schroll, (301) 415-1662.

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The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you

need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301-415-7041, TDD: 301-415-2100, or by e-mail at DLC@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: November 30, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06-9535 Filed 11-31-06; 10:04 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 9, 2006, to November 21, 2006. The last biweekly notice was published on November 21, 2006 (71 FR 67391).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of

the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemaking and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to *pdr@nrc.gov*.

Duke Power Company LLC, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 11, 2006

Description of amendment request: The proposed amendment would add Technical Specification (TS) Limiting Condition for Operation (LCO) 3.0.8 to allow a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber. The proposed changes are consistent with approval of TS Task Force (TSTF) change TSTF-372, Revision 4, "Addition of LCO 3.0.8, Inoperability of Snubbers."

The NRC staff issued a notice of availability of a model safety evaluation and model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on November 24, 2004 (69 FR 68412).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an inoperable snubber if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on allowance provided by proposed LCO 3.0.8 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.8. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to inoperable snubbers, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in Regulatory Guide 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.8 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Power Company LLC, 422 South Church Street, Charlotte, North Carolina 28201-1006.

NRC Branch Chief: Evangelos C. Marinos.

Duke Power Company LLC, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: June 5, 2006.

Description of amendment request: The amendments would revise the Technical Specifications (TSs) to clarify Surveillance Requirement (SR) 3.8.1.13 and its associated Bases to state that the SR only verifies that non-emergency diesel generator (DG) trips are bypassed. It is based upon, and consistent with, Industry Technical Specification Task Force (TSTF), Standard Technical Specification Traveler, TSTF-400-A, Revision 1, "Clarify Surveillance Requirement on Bypass of DG Automatic Trips."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR (License Amendment Request) involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR clarifies the purpose of Surveillance Requirement (SR) 3.8.1.13, which is to verify that non-emergency automatic diesel generator (DG) trips are bypassed in an accident. The DG automatic trips and their bypasses are not initiators of any accident that has been previously evaluated. Therefore, the probability of any of these accidents is not significantly increased. The function of the DG in mitigating accidents is not changed. The revised SR continues to ensure that the DG will operate as assumed in the accident analyses. Therefore, the consequences of any accident previously evaluated are not affected as well.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The changes proposed in this LAR only clarify the purpose of SR 3.8.1.13, which is to verify that non-emergency automatic DG trips are bypassed in an accident. The proposed change does not involve a physical change to the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation or testing. Thus, the changes proposed in this LAR do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The changes proposed in this LAR only clarify the purpose of SR 3.8.1.13, which is to verify that non-emergency automatic DG trips are bypassed in an accident. These changes clarify the purpose of the SR, which is to verify that the DG is capable of performing its assumed safety function. The safety function of the DG is unaffected, so the changes do not affect the margin of safety.

Therefore, this LAR does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Power Company LLC, 422 South Church Street, Charlotte, North Carolina 28201-1006.

NRC Branch Chief: Evangelos C. Marinos.

Duke Power Company LLC, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 11, 2006.

Description of amendment request: The proposed amendment would add Technical Specification (TS) Limiting Condition for Operation (LCO) 3.0.8 to allow a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber. The proposed changes are consistent with approval of TS Task Force (TSTF) Change TSTF-372, Revision 4, "Addition of LCO 3.0.8, Inoperability of Snubbers."

The NRC staff issued a Notice of Opportunity to Comment of a model safety evaluation and model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on November 24, 2004 (69 FR 68412).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an inoperable snubber if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on allowance provided by proposed LCO 3.0.8 are no

different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.8. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to inoperable snubbers, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in Regulatory Guide 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.8 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Power Company LLC, 422 South Church Street, Charlotte, North Carolina 28201-1006.

NRC Branch Chief: Evangelos C. Marinos.

Duke Power Company LLC, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 11, 2006.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) related to steam generator (SG) tube integrity. The changes are consistent with the consolidated line-item improvement process (CLIIP), Nuclear Regulatory Commission-approved Revision 4 to Technical Specification Task Force (TSTF) Standard TS Change Traveler, TSTF-449, "Steam Generator Tube Integrity."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change requires a SG Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational LEAKAGE.

A (steam generator tube rupture) SGTR event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary LEAKAGE rate equal to the operational LEAKAGE rate limits in the licensing basis plus the LEAKAGE rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as MSLB, rod ejection, and reactor coolant pump locked rotor the tubes are assumed to retain their structural integrity (i.e., they are assumed not to rupture). These analyses typically assume that primary to secondary LEAKAGE for all SGs is 1 gallon per minute or increases to 1 gallon per minute as a result of accident induced

stresses. The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change to the TS identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the SG Program required by the proposed change to the TS. The program, defined by NEI 97-06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of design basis accidents are, in part, functions of the DOSE EQUIVALENT 1-131 in the primary coolant and the primary to secondary LEAKAGE rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for DOSE EQUIVALENT 1-131 in primary coolant to ensure the plant is operated within its analyzed condition. The typical analysis of the limiting design basis accident assumes that primary to secondary leak rate after the accident is 0.27 gallons per minute with no more than 135 gallons per day in any one SG, and that the reactor coolant activity levels of DOSE EQUIVALENT 1-131 are at the TS values before the accident.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current TSs and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated design basis accident and is an improvement over the current TSs.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the consequences of an MSLB (main steamline break), rod ejection, or a reactor coolant pump locked rotor event, or other previously evaluated accident.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications. Implementation of the proposed SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the SG Program will be an enhancement of SG tube performance. Primary to secondary LEAKAGE that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of an SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the SG Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the SG Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TSs.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the TS.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Power Company LLC, 422 South Church Street, Charlotte, North Carolina 28201-1006.

NRC Branch Chief: Evangelos C. Marinos.

Duke Power Company LLC, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: June 5, 2006.

Description of amendment request: The amendments would revise the Technical Specifications (TSs) to clarify Surveillance Requirement (SR) 3.8.1.13 and its associated Bases to state that the SR only verifies that non-emergency diesel generator (DG) trips are bypassed. It is based upon, and consistent with, Industry Technical Specification Task Force (TSTF), Standard Technical Specification Traveler, TSTF-400-A, Revision 1, "Clarify Surveillance Requirement on Bypass of DG Automatic Trips."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR (License Amendment Request) involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR clarifies the purpose of Surveillance Requirement (SR) 3.8.1.13, which is to verify that non-emergency automatic diesel generator (DG) trips are bypassed in an accident. The DG automatic trips and their bypasses are not initiators of any accident that has been previously evaluated. Therefore, the probability of any of these accidents is not significantly increased. The function of the DG in mitigating accidents is not changed. The revised SR continues to ensure that the DG will operate as assumed in the accident analyses. Therefore, the consequences of any accident previously evaluated are not affected as well.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The changes proposed in this LAR only clarify the purpose of SR 3.8.1.13, which is to verify that non-emergency

automatic DG trips are bypassed in an accident. The proposed change does not involve a physical change to the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation or testing. Thus, the changes proposed in this LAR do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The changes proposed in this LAR only clarify the purpose of SR 3.8.1.13, which is to verify that non-emergency automatic DG trips are bypassed in an accident. These changes clarify the purpose of the SR, which is to verify that the DG is capable of performing its assumed safety function. The safety function of the DG is unaffected, so the changes do not affect the margin of safety. Therefore, this LAR does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Power Company LLC, 422 South Church Street, Charlotte, North Carolina 28201-1006.

NRC Branch Chief: Evangelos C. Marinos.

Duke Power Company LLC, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: July 31, 2006.

Description of amendment request: The proposed amendments would revise Technical Specification Section 3.6.3, "Containment Isolation Valves," and its associated Bases, by removing the allowance to open the upper containment purge isolation valves in the applicable modes consistent with the lower containment purge isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does this LAR [License Amendment Request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The Containment Purge System is not capable of initiating any accident by itself so there will be no increase in the probability of an accident. Since these containment

isolation valves will be maintained in the sealed closed position, there can be no increase in the consequences of an accident. The design and operation of the Containment Purge System is not being modified by this LAR. Therefore, approval and implementation of this LAR will have no effect on accident probabilities or consequences.

2. Does this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR does not involve any physical changes to the Containment Purge System so no new or different accident causal mechanisms will be generated. Also, no changes are being made to the way in which the Containment Purge System is operated. Some surveillance tests will no longer be performed but these tests are no longer necessary since the affected components remain in their safe, design basis position. Consequently, plant accident analyses will not be affected by this LAR.

3. Does this LAR involve a significant reduction in a margin of safety?

No. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these barriers will not be affected by the proposed changes. The containment isolation valves in the Containment Purge System will continue to perform their design basis function after this LAR is implemented.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Power Company LLC, 422 South Church Street, Charlotte, North Carolina 28201-1006.

NRC Branch Chief: Evangelos C. Marinos.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: November 1, 2006.

Description of amendment request: The proposed amendment would modify technical specification (TS) requirements for inoperable snubbers by adding Limiting Condition of Operation (LCO) 3.0.8.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on November 24, 2004 (69 FR 68412), on possible amendments to revise the plant-specific TS to allow a

delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed consistent with the program that is in place for complying with the requirements of 10 CFR 50.65(a)(4). LCO 3.0.8 was proposed to be added to an individual TS providing this allowance, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 4, 2005 (70 FR 23252). The licensee affirmed the applicability of the model NSHC determination in its application dated November 1, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an inoperable snubber if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on allowance provided by proposed LCO 3.0.8 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.8. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant

(no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to inoperable snubbers, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG [Regulatory Guide] 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.8 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a no significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: David Terao.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: November 1, 2006.

Description of amendment request: The proposed change will revise the Grand Gulf Nuclear Station (GGNS), Unit 1, Technical Specification (TS) Surveillance Requirement 3.3.1.1.7 for the surveillance interval of the local power range monitor (LPRM) calibrations from 1,000 megawatt-days/ton (MWD/T) (approximately every 36 days) to 2,000 MWD/T (approximately every 72 days).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The extended surveillance interval continues to ensure that the LPRM detectors are adequately calibrated to provide an accurate indication of core power distribution and local power changes. The change will not alter the basic operation of any process variables, structures, systems, or components as described in the safety analyses, and no new equipment is introduced. Hence, the probability of accidents previously evaluated is unchanged.

The thermal limits established by safety analysis calculations ensure that reactor core operation is maintained within fuel design limits during any Anticipated Operational Occurrence (AOO). The analytical methods and assumptions used in evaluating these transients and establishing the thermal limits assure adequate margins to fuel design limits are maintained. These methods account for various calculation uncertainties including radial bundle power uncertainty which can be affected by LPRM accuracy. Extending the LPRM calibration interval does not impact the existing uncertainties assumed in the GGNS safety analyses. Plant specific evaluation of LPRM sensitivity to exposure has determined that the extended calibration interval does not affect the radial bundle power distribution uncertainty value currently used in the safety analysis. Hence the safety analysis calculations and the associated thermal limits are not affected by the extended LPRM calibration interval and the consequences of an accident previously evaluated are not changed.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS amendment will not change the design function, reliability, performance, or operation of any plant systems, components, or structures. It does not create the possibility of a new failure mechanism, malfunction, or accident

initiators not considered in the design and licensing bases. Plant operation will continue to be within the core operating limits that are established using NRC approved methods that are applicable to the GGNS design and the GGNS fuel.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The thermal limits established by safety analysis calculations ensure that reactor core operation is maintained within fuel design limits during any Anticipated Operational Occurrence (AOO). The analytical methods and assumptions used in evaluating these transients and establishing the thermal limits assure adequate margins to fuel design limits are maintained. These methods account for various calculation uncertainties including radial bundle power uncertainty which can be affected by LPRM accuracy. Extending the LPRM calibration interval does not impact the existing uncertainties assumed in the GGNS safety analyses. Plant specific evaluation of LPRM sensitivity to exposure has determined that the extended calibration interval does not affect the radial bundle power distribution uncertainty value currently used in the safety analyses. The thermal limits determined by NRC approved analytical methods will continue to provide adequate margin to fuel design limits.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Energy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213

NRC Branch Chief: David Terao

FPL Energy Duane Arnold, LLC, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: March 1, 2006

Description of amendment request: The proposed amendment would modify the Special Operations Limiting Condition for Operation (LCO) 3.10.1, "System Leakage and Hydrostatic Testing Operation," allowance for operation with the average reactor coolant temperature greater than 212 °F while considering operational conditions to be in MODE 4, to include operations where temperature exceeds 212 °F as a consequence of maintaining reactor pressure for a system leakage or

hydrostatic test, or as a consequence of maintaining reactor pressure for control rod scram time testing initiated in conjunction with a system leakage or hydrostatic test. This change would allow more efficient testing during a refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Technical Specifications currently allow for operation at >212 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Technical Specifications currently allow for operation at >212 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. No new operational conditions beyond those currently allowed by LCO 3.10.1 are introduced. The extended allowances would result from operations that commence at reduced temperatures, but approach the normal MODE 4 limit of 212 °F prior to completion of the inspections or testing. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Technical Specifications currently allow for operation at >212 °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not

adversely impact any margin of safety. Allowing completion of inspections and testing and supporting completion of scram time testing initiated in conjunction with a system leakage or hydrostatic test prior to power operation, results in enhanced safe operations by eliminating unnecessary maneuvers to control reactor temperature and pressure.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. R. E. Helfrich, Florida Power & Light Company, P. O. Box 14000, Juno Beach, FL 33408-0420.

NRC Branch Chief: L. Raghavan.

GPU Nuclear, Inc., Docket No. 50-320, Three Mile Island Nuclear Station, Unit 2, Dauphin County, Pennsylvania

Date of amendment request: October 10, 2006.

Description of amendment requests: The amendment application proposes a revision to the Technical Specification Surveillance Requirement 4.1.1.3 to extend the containment airlock surveillance frequency from once per year to once every five years.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated? No.

The proposed change does not introduce any new degradation or failure mechanism. The failure mechanism in this case would be a failure of an airlock door to open, thus no new release path to the environment is created. As no release path is created, there is not the possibility of a significant increase in the probability or consequences of an accident.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated? No.

The proposed change does not introduce any new degradation or failure mechanism.

The failure mechanism in this case would be a failure of an airlock door to open, thus no new release path to the environment is created. As no release path is created, there is not the possibility of a new or different kind of accident from any accident previously evaluated being created.

(3) Does the proposed change involve a significant reduction in a margin of safety? No.

The proposed change does not introduce any new degradation or failure mechanism. The failure mechanism in this case would be a failure of an airlock door to open, thus no new release path to the environment is created. Thus, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

NRC Branch Chief: Claudia Craig

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 17, 2006.

Description of amendment request: The proposed amendment would revise the Cooper Nuclear Station (CNS) Technical Specifications (TS) 4.3.1.1.c by adding a new nominal center-to-center distance between fuel assemblies for the new storage racks, and would revise TS 4.3.3 by increasing the capacity of the spent fuel storage pool from 2366 assemblies to 2651 assemblies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability of a seismic event, and the resulting loss of spent fuel pool cooling flow, is not influenced by the proposed changes. In addition, the probability of an accidental fuel assembly drop or misloading is primarily influenced by the methods used to lift and move these loads. The method of handling fuel will not be changed since the same equipment and procedures will be used. Shipping cask movements in the SFP [spent fuel pool] will not be performed during installation of the new racks. There is no change to the methods or equipment to be used in moving fuel casks. Expanding the spent fuel storage capacity does not have a significant impact on the frequency of occurrence for any accident previously evaluated.

Therefore, this change will not significantly increase the probability of occurrence of any accident previously analyzed.

The consequences of a dropped spent fuel assembly in the SFP have been re-evaluated

for the proposed change by analyzing a potential impact onto the new racks. The results show that the postulated accident of a fuel assembly striking the new storage racks will not distort the racks sufficiently to impair their functionality. The minimum subcriticality margin required by the current TS (i.e., neutron multiplication factor [keff] less than or equal to 0.95) will be maintained. The structural damage to the Reactor Building, pool liner, and fuel assembly resulting from a dropped fuel assembly striking the pool floor or another assembly located in the racks is primarily dependent on the mass of the falling object and the drop height. Since these two parameters are not changed by the proposed modification, the postulated structural damage to these items remains unchanged. The radiological dose at the exclusion area boundary will not be increased since no changes are being made to in-core hold time or burnup as a result of the proposed amendment.

Loss of SFP cooling was evaluated. The concern with this event is a reduction of spent fuel pool water inventory as a result of boiling in the fuel pool, with the inventory reduction resulting in an unacceptable increase in dose rates. Loss of spent fuel pool cooling at CNS is mitigated procedurally by supplying makeup water to the pool prior to the time that the temperature of the pool reaches boiling. The thermal-hydraulic analysis for the proposed license amendment determined, for a complete loss of forced cooling and a full core discharge, that the minimum time to boil is 4.19 hours. This has been determined to be sufficient time for the operators to provide alternate means of makeup water to the SFP before the water begins to boil. Based on this the consequences of a loss of SFP cooling are not significantly increased.

The consequences of a design basis seismic event are evaluated on the basis of subsequent fuel damage or compromise of the fuel storage or building configurations leading to radiological or criticality concerns. The new racks have been analyzed in their new configuration and were found to be safe during seismic motion. Fuel has been determined to remain intact and the storage racks maintain the fuel and fixed poison configurations subsequent to a seismic event. The structural capability of the pool and liner will not be exceeded under the anticipated combinations of dead weight, thermal, and seismic loads. The Reactor Building structure will remain intact during a seismic event and will continue to adequately support and protect the fuel racks, storage array, and pool moderator/coolant. Therefore, the consequences of a design basis seismic event are not increased.

The consequence of a fuel misloading accident has been analyzed for the worst possible storage configuration subsequent to the proposed modification. It has been determined that the consequences remain acceptable with respect to the same criteria used previously.

Therefore, the proposed change does not result in a significant increase in the consequences of a previously evaluated accident.

In summary, the proposed change does not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

A drop of a fuel assembly onto fuel assemblies stored in the SFP has been previously analyzed for CNS and is not a new or different kind of accident. The only event which would represent a new or different kind of accident is an accidental drop of a rack during movement in the pool.

Dropping a rack onto stored spent fuel or the pool floor liner, commonly referred to as a "heavy load drop," is not postulated due to the defense-in-depth approach to be taken. A lifting rig designed to meet the requirements of NUREG 0612 [Nuclear Regulatory Commission technical report designation 0612] and ANSI N 14.6 [American National Standards Institute N 14.6] will be used to install the new racks. Dropping a new rack onto fuel is precluded by not allowing the new racks being placed into the SFP to travel over racks containing fuel assemblies. A rack drop to the pool liner is not postulated since the lifting components either provide redundancy in supporting the racks or are designed with safety margins greater than a factor of ten. Movements of heavy loads over the pool will comply with the applicable administrative controls and guidelines (i.e. plant procedures, NUREG 0612, etc.). Therefore, the rack drop does not represent a new or different kind of accident.

The proposed change does not alter the operation of the plant or equipment credited for the mitigation of the design basis accidents. The proposed change does not affect the important parameters required to ensure safe fuel storage.

In summary, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety? Response: No.

The function of the spent fuel pool is to store the fuel assemblies in a subcritical and coolable configuration under postulated environmental and abnormal loadings, such as an earthquake or fuel assembly drop. The new rack design meets the applicable requirements for safe storage and is functionally compatible with the SFP.

The Holtec Licensing Report was prepared using the guidance of the applicable provisions of the NRC Guidance entitled, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications." The rack materials used are compatible with the spent fuel assemblies and the SFP environment. The design of the new racks preserves the proper margin of safety during abnormal loads, e.g., loads from a seismic event, a dropped assembly, and tensile loads from a stuck fuel assembly. It has been shown that such loads will not invalidate the mechanical design and material selection to safely store fuel in a coolable and subcritical configuration.

The methodology used in the criticality analysis of the expanded spent fuel pool

complies with the appropriate NRC guidelines and the ANSI standards (Draft GDC 66 [General Design Criterion 66], NUREG 0800, Section 9.1.2, the OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications, Reg. Guide 1.13, and ANSI ANS 8.17 [American Nuclear Society 8.17]).

The subcriticality margin (k_{eff}) for spent fuel stored in the SFP is required to be less than or equal to 0.95 under normal storage, fuel handling, and accident conditions, including uncertainties. This margin will be maintained with the proposed increased capacity.

The thermal-hydraulic and cooling evaluation of the pool determined that the pool can be maintained below the specified thermal limits under the conditions of the maximum heat load. The pool temperature will not exceed the design temperature of 150°F during operation of the cooling systems. The maximum local water temperature in the hot channel will remain below the boiling point. The maximum cladding temperature after a loss of cooling remains less than the current licensing basis value of 350 °F with bulk boiling in the pool. The stored fuel will not undergo any significant heat up with blockage of a dropped fuel assembly lying horizontally on top of the racks. The thermal limits specified for the evaluations performed to support the proposed change are the same as those which were used in the previous evaluations.

The time to boiling, in the event of a complete loss of SFP cooling with a full core discharge, has been reduced from 5 hours to 4.19 hours. However, this has been determined to be sufficient time for providing makeup to the SFP.

Based on the above it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602-0499.

NRC Branch Chief: David Terao.

Nine Mile Point Nuclear Station, LLC, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: October 19, 2006.

Description of amendment request: The proposed amendment would revise the surveillance requirements in Technical Specification (TS) 4.1.1, "Control Rod System," to modify the conditions under which scram time testing (STT) of control rods is required, and add a requirement to perform STT on a defined portion of control rods, at

a specified frequency, during the operating cycle. The requirement to test "eight selected [control] rods" after a reactor scram or other outage would be replaced by a requirement to periodically test at least 20 control rods, on a rotating basis, every 180 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds new surveillance requirements (SR) to the MCPR [minimum critical power ratio] Technical Specification (TS) which requires determination of the MCPR operating limit following the completion of scram time testing (STT) of the control rods. Use of the scram speed in determining the MCPR operating limit (i.e., Option B) is an alternative to the current method for determining the operating limit (i.e., Option A). The probability of an accident previously evaluated is unrelated to the MCPR operating limit that is provided to ensure no fuel damage results during anticipated operational occurrences. This is an operational limit to ensure conditions following an assumed accident do not result in fuel failure and therefore do not contribute to the occurrence of an accident.

The proposed change revises allowable conditions for the STT of non-maintenance affected control rods and eliminates the requirement to test "eight [selected] rods" after a reactor scram or other outage. The requirement to test "eight selected rods" is replaced by a new SR to perform periodic STT. No active or passive failure mechanisms that could lead to an accident are affected by this proposed change and the STT acceptance criteria are not being revised. Therefore, the proposed change in STT requirements does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change ensures that the appropriate MCPR operating limit is in place. By implementing the correct MCPR operating limit, the MCPR SL [safety limit] will continue to be ensured. Ensuring the MCPR SL is not exceeded will result in prevention of fuel failure. Therefore, since there is no increase in the potential for fuel failure, there is no increase in the consequences of any accidents previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change adds a new SR to the MCPR TS which requires determination of the MCPR operating limit following the completion of the [STT] of the control rods. The proposed change revises allowable conditions for the STT of non-maintenance

affected control rods and eliminates the requirement to test "eight [selected] rods" after a reactor scram or other outage. The requirement to test "eight selected rods" is replaced by a new SR to perform periodic STT. The proposed change does not involve the use or installation of new equipment. Installed equipment is not operated in a new or different manner. No new or different system interactions are created, and no new processes are introduced. No new failures have been created by the addition of the proposed SR and the use of the alternate method for determining the MCPR operating limit. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Use of Option B for determining the MCPR operating limit will result in a reduced operating limit in comparison to the use of Option A. However, a reduction in the operating limit margin does not result in a reduction in the safety margin. The MCPR SL remains the same regardless of the method used for determining the operating limit. The proposed change revises allowable conditions for the STT of non-maintenance affected control rods and eliminates the requirement to test "eight [selected] rods" after a reactor scram or other outage. The requirement to test "eight selected rods" is replaced by a new SR to perform periodic STT. No active or passive failure mechanisms that could adversely impact the consequences of an accident are affected by this proposed change. All analyzed transient results remain within the design values for structures, systems and components. Therefore, the proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Richard J. Laufer.

Nuclear Management Company, LLC, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: October 23, 2006.

Description of amendment request: The proposed changes to the technical specifications (TSs) would eliminate the use of the defined term CORE ALTERATIONS in the TSs.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change eliminates the use of the defined term CORE ALTERATIONS from the Technical Specifications. CORE ALTERATIONS are not an initiator of any accident previously evaluated except a fuel handling accident. The revised Technical Specifications that protect the initial conditions of a fuel handling accident also require the suspension of movement of irradiated fuel assemblies, which protects the initial condition of a fuel handling accident.

Therefore, suspension of CORE ALTERATIONS do not affect the initiators of the accidents previously evaluated and suspension of CORE ALTERATIONS does not affect the mitigation of the accidents previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical modification of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Only two accidents are postulated to occur during plant conditions where CORE ALTERATIONS may be made: A fuel handling accident and a boron dilution accident. Suspending movement of irradiated fuel assemblies prevents a fuel handling accident. Also, requiring the suspension of CORE ALTERATIONS is redundant to suspending movement of irradiated fuel assemblies and does not increase the margin of safety. CORE ALTERATIONS have no effect on a boron dilution accident. Core components are not involved in the initiation or mitigation of a boron dilution accident. Therefore, CORE ALTERATIONS have no effect on the margin of safety related to a boron dilution accident.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Acting Branch Chief: L. Raghavan.

PSEG Nuclear LLC, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 4, 2006.

Description of amendment request: The amendments would allow the use of blind flanges for containment isolation in the containment purge system supply and exhaust lines, and make corresponding changes to the Technical Specifications (TSs). The amendments would also consolidate the containment isolation requirements by moving the requirements of TS 3/4 6.1.7, "Containment Ventilation System," to TS 3/4 6.3.1 (TS 3/4 6.3 for Unit No. 2), "Containment Isolation Valves."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Containment purge supply and exhaust penetrations presents no change in the probability or the consequence of an accident, since the penetrations continue to conform to the TS requirements for containment integrity, and will be appropriately tested as required by 10 CFR 50 Appendix J. The blind flanges are passive devices not susceptible to an active failure or malfunction that could result in a loss of isolation or leakage that exceeds limits assumed in the safety analysis. The blind flanges are leak rate tested in accordance with the containment leakage rate testing program. Containment integrity is not lessened by this change.

The change to the Containment Purge System does not affect the design basis limit for any fission product barrier.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Containment purge supply and exhaust penetrations does not change the function of the system and does not alter containment integrity. The penetrations continue to conform to the TS requirements for containment integrity and will be appropriately tested as required by 10 CFR 50 Appendix J. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change will not alter any assumptions, initial conditions or results specified in any accident analysis. The Containment purge supply and exhaust penetrations will continue to conform to the TS requirements for containment integrity, and will be appropriately tested as required by 10 CFR 50 Appendix J. The blind flanges are passive devices not susceptible to an active failure or malfunction that could result in a loss of isolation or leakage that exceeds limits assumed in the safety analysis. The blind flanges are leak rate tested in accordance with the containment leakage rate testing program. Containment integrity is not lessened by this change. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: October 3, 2006.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) and licensing basis to support the resolution of the Nuclear Regulatory Commission's (NRC's) Generic Safety Issue (GSI) 191, assessment of debris accumulation on containment sump performance and its impact on emergency recirculation during an accident, and NRC Generic Letter (GL) 2004-02.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes include a physical alteration to the RS system to start the inside and outside [Recirculation Spray] RS pumps on [Refueling Water Storage Tank] RWST Level Low coincident with High containment pressure. The RS system is used for accident mitigation only, and changes in the operation of the RS system cannot have an impact on the probability of an accident. The other changes do not affect equipment and are not accident initiators. The RWST Level Low instrumentation will comply with all applicable regulatory requirements and design criteria (e.g., train separation, redundancy, and single failure). Therefore, the design functions performed by the RS system are not changed.

Delaying the start of the RS pumps creates more challenging long-term containment pressure and temperature profiles. The environmental qualification of safety-related equipment inside containment was confirmed to be acceptable, and accident mitigation systems will continue to operate within design temperatures and pressures. Delaying the RS pump start reduces the emergency diesel generator loading early during a design basis accident, and staggering the RS pump start avoids overloading on each emergency bus. The reduction in iodine removal efficiency during the delay period is offset by changes to other assumptions in the [loss-of-coolant accident] LOCA dose analysis. The predicted offsite doses and control room doses following a design basis LOCA remain within regulatory limits.

The [Updated Final Safety Analysis Report] UFSAR safety analysis acceptance criteria continue to be met for the proposed changes to the RS pump start method, the proposed TS containment air partial pressure limits, the proposed TS containment temperature limit, the implementation of the GOTHIC containment analysis methodology, the proposed change to the [safety injection] SI [recirculation mode transfer] RMT allowable values, and the changes to the LOCA dose consequences analyses. Based on this discussion, the proposed amendments do not increase the probability or consequence of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously identified?

Response: No.

The proposed change alters the RS pump circuitry by initiating the start sequence with a new RWST Level Low signal instead of a timer after the High High containment pressure setpoint is reached. The timers for the inside RS pumps will be used to sequence pump starts and preclude diesel generator overloading. The RS pump function is not changed. The RWST Level Low instrumentation will be included as part of the Engineered Safety Features Actuation System (ESFAS) instrumentation in the North Anna TS and will be subject to the ESFAS surveillance requirements. The

design of the RWST Level Low instrumentation complies with all applicable regulatory requirements and design criteria. The failure modes have been analyzed to ensure that the RWST Level Low circuitry can withstand a single active failure without affecting the RS system design functions. The RS system is an accident mitigation system only, so no new accident initiators are created.

The remaining changes to the containment analysis methodology, the containment air partial pressures, the maximum containment temperature operating limit, the TS allowable values for SI RMT, and the LOCA [alternate source term] AST analysis basis do not impact plant equipment design or function. Together, the changes assure that there is adequate margin available to meet the safety analysis criteria and that dose consequences are within regulatory limits. The proposed changes do not introduce failure modes, accident initiators, or malfunctions that would cause a new or different kind of accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously identified.

3. Does the proposed license amendment involve a significant reduction in a margin of safety?

Response: No.

The changes to the actuation of the RS pumps and the increased containment air partial pressure have created an adverse effect on the containment response analyses and the LOCA dose analysis. Analyses have been performed that show the containment design basis limits are satisfied and the post-LOCA offsite and control room doses meet the required criteria for the proposed changes to the containment analysis methodology, the RS pump start method, the TS containment air partial pressure limits, the TS containment temperature maximum limit, the TS allowable values for SI RMT, and the LOCA AST bases. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Branch Chief: Evangelos C. Marinos.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 16, 2006.

Description of amendment request: The proposed amendments would add a

reference in Technical Specification (TS) 6.2.C, "Core Operating Limits Report (COLR)," to permit the use of the Westinghouse Best-Estimate Large Break Loss of Coolant Accident (BE-LBLOCA) analysis methodology using the Automated Statistical Treatment of Uncertainty Method (ASTRUM) for the analysis of LBLOCA.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability of occurrence or the consequences of an accident previously evaluated are not significantly increased. No physical plant changes are being made as a result of using the Westinghouse Best Estimate Large Break LOCA (BE-LBLOCA) analysis methodology. The proposed TS change simply involves updating the references in TS 6.2.C, Core Operating Limits Report (COLR), to reference the Westinghouse BE-LBLOCA analysis methodology. The consequences of a LOCA are not being increased, since the analysis has shown that the Emergency Core Cooling System (ECCS) is designed such that its calculated cooling performance conforms to the criteria contained in 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors." No other accident consequence is potentially affected by this change.

All systems will continue to be operated in accordance with current design requirements under the new analysis, therefore no new components or system interactions have been identified that could lead to an increase in the probability of any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). No changes were required to the Reactor Protection System (RPS) or Engineering Safety Features (ESF) setpoints because of the new analysis methodology.

An analysis of the LBLOCA accident for Surry Units 1 and 2 has been performed with the Westinghouse BE-LBLOCA analysis methodology using ASTRUM. The analysis was performed in compliance with all the NRC conditions and limitations as identified in WCAP-16009-P-A. Based on the analysis results, it is concluded that the Surry Units 1 and 2 continue to maintain a margin of safety to the limits prescribed by 10 CFR 50.46.

There are no changes to assumptions of the radiological dose calculations. Hence, there is no increase in the predicted radiological consequences of accidents postulated in the UFSAR.

Therefore, neither the probability of occurrence nor the consequences of an accident previously evaluated is significantly increased.

2. The possibility for a new or different type of accident from any accident previously evaluated is not created.

The use of the Westinghouse BE-LBLOCA analysis methodology with ASTRUM does

not impact any of the applicable design criteria and all pertinent licensing basis criteria will continue to be met.

Demonstrated adherence to the criteria in 10 CFR 50.46 precludes new challenges to components and systems that could introduce a new type of accident. Safety analysis evaluations have demonstrated that the use of Westinghouse BE-LBLOCA analysis methodology with ASTRUM is acceptable. All design and performance criteria will continue to be met and no new single failure mechanisms will be created. The use of the Westinghouse BE-LBLOCA analysis methodology with ASTRUM does not involve any alteration to plant equipment or procedures that would introduce any new or unique operational modes or accident precursors. Furthermore, no changes have been made to any RPS or ESF actuation setpoints. Based on this review, it is concluded that no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes.

Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

3. The margin of safety is not significantly reduced.

It has been shown that the analytical technique used in the Westinghouse BE-LBLOCA analysis methodology using ASTRUM realistically describes the expected behavior of the reactor system during a postulated LOCA. Uncertainties have been accounted for as required by 10 CFR 50.46. A sufficient number of LOCAs with different break sizes, different locations, and other variations in properties have been considered to provide assurance that the most severe postulated LOCAs have been evaluated. The analysis has demonstrated that all acceptance criteria contained in 10 CFR 50.46 continue to be satisfied.

Therefore, it is concluded that this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385

NRC Branch Chief: Evangelos C. Marinos

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application

complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to pdr@nrc.gov.

AmerGen Energy Company, LLC, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: December 1, 2005.

Brief description of amendment: The amendment revised Technical Specification 3.6.4.1, "Secondary Containment." Specifically, the amendment revised Surveillance Requirement (SR) 3.6.4.1.4 and SR 3.6.4.1.5 to clarify their intent with

respect to secondary containment boundary integrity.

Date of issuance: November 17, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 175.

Facility Operating License No. NPF-62: The amendment revised the Technical Specification Surveillance Requirements and License.

Date of initial notice in Federal Register: March 28, 2006 (71 FR 15481).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 2006.

No significant hazards consideration comments received: No.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: September 26, 2006, as supplemented by the letter dated November 3, 2006.

Brief description of amendments: The amendments revise TS 3.7.2, "Main Steam Isolation Valves (MSIVs)," to include specific requirements for the MSIV actuator trains.

Date of issuance: November 17, 2006.

Effective date: Effective as of the date of issuance to be implemented within 10 days from the date of issuance.

Amendment Nos.: Unit 1—163, Unit 2—163, Unit 3—163.

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 5, 2006 (71 FR 58879). The supplemental letter dated November 3, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 2006.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: February 27, 2006.

Brief description of amendments: The amendments revise Technical

Specification 4.2.1, "Fuel Assemblies," to permit up to four lead fuel assemblies (LFAs) with advanced cladding material to be re-inserted into either the Unit 1 or Unit 2 core for the next operating cycle, which is Cycle 19 for Unit 1 and Cycle 17 for Unit 2. Two of these LFAs were manufactured by Westinghouse Electric Company and contain a limited number of fuel rods with advanced zirconium-based alloys. The other two LFAs were manufactured by Framatome ANP, Inc. with fuel rod cladding material classified as M5™ alloy. These LFAs were originally inserted into the Unit 2 core in April 2003 (Operating Cycles 15 and 16) and are scheduled to be discharged during the 2007 refueling outage.

Date of issuance: November 16, 2006.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 280 and 257.

Renewed Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the License and Technical Specifications.

Date of initial notice in Federal Register: March 28, 2006 (71 FR 15482).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated November 16, 2006.

No significant hazards consideration comments received: No

Exelon Generation Company, LLC, Docket No. 50-249, Dresden Nuclear Power Station, Unit 3, Grundy County, Illinois

Date of application for amendment: July 21, 2006, as supplemented by letter dated October 19, 2006.

Brief description of amendment: The amendment revised the values of the safety limit minimum critical power ratio in Technical Specification Section 2.1.1, "Reactor Core SLs [Safety Limits]."

Date of issuance: November 7, 2006.

Effective date: As of the date of issuance and shall be implemented prior to startup for cycle 20.

Amendment Nos.: 213.

Renewed Facility Operating License Nos. DPR-19 and DPR-25: The amendment revised the Technical Specifications and License.

Date of initial notice in Federal Register: August 29, 2006 (71 FR 51228). The October 19, 2006 supplement provided additional clarifying information that did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration

determination published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 7, 2006.

No significant hazards consideration comments received: No.

Omaha Public Power District (OPPD), Docket No. 50-285, Fort Calhoun Station, Unit No. 1 (FCS), Washington County, Nebraska

Date of amendment request: August 21, 2006, as supplemented on September 6 and October 10, 2006.

Brief description of amendment: The amendment changed the Technical Specifications (TSs) to: (1) Revise TS Section 2.3(4) to change the reactor containment building sump buffering agent from trisodium phosphate to sodium tetraborate and change the TS section title to "Containment Sump Buffering Agent Specification and Volume Requirement," (2) revise TS 3.6(2)d to require a volume of sodium tetraborate that is within an area of acceptable operation, as shown in TS Figure 2-3, and (3) an administrative correction to TS 3.6(2)d(i). The amendment allows OPPD to replace the trisodium phosphate in the containment with sodium tetraborate. Changes were also made to the corresponding TS Bases. The TS changes are approved for Cycle 24 only, ending in the spring 2008 refueling outage.

Date of issuance: November 13, 2006.

Effective date: As of its date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 247.

Renewed Facility Operating License No. DPR-40: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 30, 2006 (71 FR 51646). The September 6 and October 10, 2006, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated November 13, 2006.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: November 3, 2005, as supplemented by letters dated May 1, August 15, and October 5, 2006.

Brief description of amendments: The amendments revised Technical Specification Section 5.5.2.11 to modify the definitions of steam generator tube "Repair Limit" and "Tube Inspection." The changes define the extent of the required tube inspections and repair criteria within the tubesheet regions.

Date of issuance: November 9, 2006.

Effective date: As of its date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 2—206; Unit 3—198.

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 6, 2005 (70 FR 72676). The May 1, August 15, and October 5, 2006, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 9, 2006.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: July 14, 2006.

Brief description of amendments: The amendments deleted duplicative notifications, reporting, and restart requirements if a safety limit was violated; replaced plant-specific position titles with generic position titles; and additional administrative changes.

Date of issuance: November 15, 2006.

Effective date: As of date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 2—207; Unit 3—199.

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 12, 2006 (71 FR 53720).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 15, 2006.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: May 11, 2006.

Brief description of amendment: The amendment revised Surveillance Requirements (SRs) 3.7.2.1, 3.7.3.1, and 3.7.3.3 on verifying the closure time of the main steam isolation valves (MSIVs), main feedwater regulating valves (MFRVs), main feedwater regulating valve bypass valves (MFRVBVs), and main feedwater isolation valve (MFIVs) in the Technical Specifications (TS). These valves are the Main Steam and Main Feedwater System isolation valves. The revisions replace (1) the specified maximum acceptable valve closure time for the MSIVs, MFRVs, and MFRVBVs, and (2) TS Figure 3.7.3-1, which shows acceptable valve closure times for the MFIVs, by the reference to the valve closure time is verified to be "within limits." The maximum acceptable valve closure times for the MFRVs and MFRVBVs, and TS Figure 3.7.3-1 are now located in the TS Bases. The maximum acceptable valve closure time for the MSIV is already in the TS Bases.

Date of issuance: November 15, 2006.

Effective date: Effective as of its date of issuance, and shall be implemented within 90 days of the date of issuance.

Amendment No.: 176.

Facility Operating License No. NPF-30: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 20, 2006 (71 FR 35461).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 2006.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has

determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has

determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to pdr@nrc.gov.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10

CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737, or by e-mail to pdr@nrc.gov. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a

material issue of law or fact.¹ Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.
2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory

¹To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, HearingDocket@nrc.gov; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemaking and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

Pacific Gas and Electric Company, Docket No. 50-275, Diablo Canyon Nuclear Power Plant, Unit No. 1, San Luis Obispo County, California

Date of application for amendment: October 18, 2006, as supplemented on November 2, 2006.

Brief description of amendment: The amendment revised Technical Specification (TS) Section 3.8.4, "DC Sources—Operating," Condition B to extend the completion time (CT) to restore an inoperable vital battery from 2 hours to 4 hours for the current operating Cycle 14, provided certain required actions are taken. The extended CT would allow sufficient time to correct a degraded condition on the station Vital Battery 1-1.

Date of issuance: November 15, 2006

Effective date: As of its date of issuance and shall be implemented within 7 days of the date of issuance.

Amendment No.: 190
Facility Operating License No. DPR-80: The amendment revised the Technical Specifications and license.

Public comments requested as to proposed no significant hazards

consideration (NSHC): Yes. An individual 14-day Notice of Consideration of Issuance of Amendment to Facility Operating License was published on October 27, 2006 (71 FR 63040) in the **Federal Register**. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by December 26, 2006, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The November 2, 2006, supplemental letter provided additional information that clarified the application, and did not expand the scope of the application as originally noticed.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated November 15, 2006.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Branch Chief: David Terao

Dated at Rockville, Maryland, this 22nd day of November 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6-20329 Filed 12-4-06; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

No Fear Act Notice

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," which is now known as the No FEAR Act. One purpose of the act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws" (Pub. L. 107-174, Summary). In support of this objective, 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 requires the U.S. Nuclear Waste Technical Review Board (Board) to provide this notice to Board employees, former Board employees, and applicants for Board employment to

inform them of their rights and protections under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws/Bases for Complaints or Grievances

The Board cannot discriminate on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation against an employee or applicant for employment related to the terms, conditions, or privileges of employment.

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 at General Services Administration 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 filing a formal complaint of discrimination with the Board (*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* (1) contact an EEO counselor as noted above or (2) 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 bases 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). As an alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the Board's Administrative Grievance Procedure or 29 CFR part 1614, if such procedures apply and are available.

Whistleblower Protection Laws

A Board employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take, threaten to take, or fail to take a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or

safety; unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee 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 (OSC) at 1730 M Street, NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site at <http://www.osc.gov>.

Retaliation for Engaging in Protected Activity

The Board 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 or, if applicable, the Board's Administrative Grievance Procedure in order to pursue any legal remedy.

Disciplinary Actions

Under existing laws, the Board retains the right, where appropriate, to discipline an employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If, however, OSC has initiated an investigation under 5 U.S.C. 1214, according to 5 U.S.C. 1214(f), the Board must seek approval from the Special Counsel to discipline an employee for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits the Board 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 the No FEAR Act regulations, refer to 5 CFR part 724. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site at <http://www.eeoc.gov> and the OSC Web site at <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 29, 2006.

William D. Barnard,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 06-9514 Filed 12-4-06; 8:45 am]

BILLING CODE 6820-AM-M

OFFICE OF PERSONNEL MANAGEMENT

[OMB No. 3206-0040]

Submission for OMB Review; Comment Request for Revised Information Collection: OPM Form 1203-FX, and Discontinuation of: OPM Form 1203-EZ

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) submitted to the Office of Management and Budget a request for review of a revised information collection for Occupational Questionnaire (OPM Forms 1203-FX and 1203-EZ). The Occupational Questionnaire is an optical scan form designed to collect applicant information and qualifications in a format suitable for automated processing and to create applicant records for an automated examining system. Each version of this form contains a unique scan form identifier in the upper left-hand corner for the scanning equipment to recognize which version is being used. The 1203 series was commonly referred to as the Qualifications and Availability Form C. OPM has re-titled the series as Occupational Questionnaire, to fit a more generic need. OPM uses these forms to carry out its responsibility for open competitive examining for admission to the competitive service in accordance with section 3304, of title 5, United States Code.

OPM has not revised the Form 1203-FX Occupational Questionnaire commonly referred to as Form C. Upon clearance from the Office of

Management and Budget in 2002, the Occupational Questionnaire was available via OPM's Web site and OPM's USAJOBS Web site. OPM Form 1203-EZ is a three page version that is shorter and was previously approved by OMB in 2002. The approved OPM Form 1203-EZ is being discontinued because over the past two years the form was not used.

The Form 1203 FX version allowed the applicant to transmit information via facsimile, mail, or the Internet using a fillable Adobe Acrobat Reader (PDF) file. The public reporting burden of collecting this information is estimated to vary from 20 minutes to 45 minutes. The average time to complete this form is 30 minutes. Over the past three years an annual average of 54,202 applicants used Form 1203-FX for a public burden of 27,101 hours per year.

A comment request for these forms was published in the **Federal Register** on November 9, 2005 [FR Vol. 70, No. 216]. During the initial 60-day comment request period, OPM received only one comment from the Department of the Treasury: "None [bureaus] are using the three-page version, OPM Form 1203-EZ; therefore, we have no objections to OPM's plans to discontinue this three-page version." Further, "* * * we definitely do see the need for continued use of the regular OPM Form 1203-FX, and are glad to hear that OPM plans to continue its availability."

For copies of this proposal, contact Mary Beth Smith-Toomey on 202-606-8358, fax at 202-418-3251, or e-mail at mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 days from the date of this publication.

ADDRESSES: Send or deliver comments to—

U.S. Office of Personnel Management,
Division of Human Resources
Products and Services, Center for
Talent Services, ATTN: Charles
Conyers, 1900 E Street, NW., Room
1425, Washington, DC 20415-9820, E-
mail: charles.conyers@opm.gov
and

Brenda Aguilar, OPM Desk Officer,
Office of Management & Budget,
Office of Information & Regulatory
Affairs, New Executive Office
Building, NW., Room 10235,
Washington, DC 20503.

U.S. Office of Personnel Management.

Dan G. Blair,

Deputy Director.

[FR Doc. E6-20554 Filed 12-4-06; 8:45 am]

BILLING CODE 6325-38-P

PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

Senior Executive Service Performance Review Board Membership

AGENCY: Office of Inspector General for the Department of the Interior.

ACTION: Notice.

SUMMARY: This notice sets forth the names and titles of the current membership of the President's Council on Integrity and Efficiency (PCIE) Performance Review Board as of October 2, 2006.

DATES: *Effective Date:* December 5, 2006.

FOR FURTHER INFORMATION CONTACT:

Individual Offices of Inspectors General at the telephone numbers listed below.

SUPPLEMENTARY INFORMATION:

I. Background

The Inspector General's Act of 1978, as amended, created the Offices of Inspectors General as independent and objective units to conduct and supervise audits and investigations relating to Federal programs and operations. Executive Order 12301 (March 26, 1981) established the President's Council on Integrity and Efficiency (PCIE) to coordinate and enhance governmental efforts to promote integrity and efficiency and to detect and prevent fraud, waste, and abuse in Federal programs. The PCIE is an interagency committee chaired by the Office of Management and Budget's Deputy Director for Management, and is comprised principally of the 29 Presidential appointed Inspectors General (IGs).

II. PCIE Performance Review Board

Under 5 U.S.C. 4314(c)(1)-(5), and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the President's Council on Integrity and Efficiency Performance Review Board, as of October 2, 2006, are as follows:

Agency for International Development
Phone Number: (202) 712-1170
PCIE/ECIE Liaison—Dona Dinkler (202) 712-1653

Michael G. Carroll	Deputy Inspector General.
Adrienne Rish	Assistant Inspector General for Investigations.
Walter M. Kindred, Jr. (SFS)	Deputy Assistant Inspector General for Investigations.
Joe Farinella (SFS)	Assistant Inspector General for Audit.
Bruce Boyer (SFS)	Deputy Assistant Inspector General for Audit.
Paula Hayes	Assistant Inspector General for Management.

Department of Agriculture
Phone Number: (202) 720-8001
PCIE/ECIE Liaison—Cheryl Viani (202) 720-8001

Kathleen S. Tighe	Deputy Inspector General.
David R. Gray	Counsel to the Inspector General.
Robert W. Young, Jr.	Assistant Inspector General for Audit.
Marlane T. Evans	Deputy Assistant Inspector General for Audit.
Tracy A. LaPoint	Deputy Assistant Inspector General for Audit.
Mark R. Woods	Assistant Inspector General for Investigations.
Karen L. Ellis	Deputy Assistant Inspector General for Investigations.
Suzanne M. Murrin	Assistant Inspector General for Management.

Department of Commerce
Phone Number: (202) 482-4661
PCIE/ECIE Liaison—Susan Carnohan (202) 482-2187

Edward L. Blansitt	Deputy Inspector General.
Elizabeth T. Barlow	Assistant Inspector General for Investigation.
Allison C. Lerner	Counsel to the Inspector General.
Judith J. Gordon	Assistant Inspector General for Systems Evaluation.
John M. Seeba	Assistant Inspector General for Auditing.
Jill A. Gross	Assistant Inspector General for Inspections and Program Evaluation.
Jessica Rickenbach	Assistant Inspector General for Compliance and Administration.

Department of Defense
Phone Number: (703) 604-8324
PCIE/ECIE Liaison—John R. Crane (703) 604-8324

Charles W. Beardall	Acting Deputy Inspector General for Investigations.
Patricia Brannin	Assistant Inspector General for Audit Policy and Oversight, Office of the Deputy Inspector General for Policy and Oversight.
John R. Crane	Assistant Inspector General for Communications and Congressional Liaison.
Ric Fiore	General Counsel and Assistant Inspector General for the Office of Legal Counsel.
Jerry Hansen	Deputy Inspector General for Policy and Oversight.
James Pavlik	Assistant Inspector General for Investigative Policy and Oversight.
Daniel F. Willkens	Acting Director, Defense Criminal Investigative Service, Office of the Deputy Inspector General for Investigations.

Department of Education
Phone Number: (202) 245-6900
PCIE/ECIE Liaison—Tara Porter (202) 245-6588

Cathy Lewis	Assistant Inspector General for Evaluations, Inspections and Management Services.
Helen Lew	Assistant Inspector General for Audit Services.
George Rippey	Deputy Assistant Inspector General for Audit Services.
Thomas Sipes	Assistant Inspector General for Investigative Services.
Charles Coe	Assistant Inspector General for Information Technology and Computer Crimes Investigation.
Mary Mitchelson	Counsel to the Inspector General.

Department of Energy
Phone Number: (202) 586-4393
PCIE/ECIE Liaison—Marilyn Richardson (202) 586-4624

John Hartman	Assistant Inspector General for Investigations.
Chris Sharpley	Deputy Inspector General for Investigations and Inspections.
Rickey Hass	Assistant Inspector General for Financial Audits.
Linda Snider	Assistant Inspector General for Audit Planning and Administration.
Sanford Parnes	Counsel to the Inspector General.

Department of Health and Human Services
Phone Number: (202) 619-3148
PCIE/ECIE Liaison—Sheri Denkensohn (202) 619-3148

Lewis Morris	Chief Counsel to the Inspector General.
Sam Shellenberger	Deputy Inspector General for the Office of Management and Policy.

Joe Green	Assistant Inspector General for Audit Management, Policy and Information Technology Audits.
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Department of Homeland Security
Phone Number: (202) 254-4100
PCIE/ECIE Liaison—Denise S. Johnson (202) 254-4100

James L. Taylor	Deputy Inspector General.
Richard N. Reback	Counsel to the Inspector General.
David M. Zavada	Assistant Inspector General for Audits.
Edward F. Cincinnati	Assistant Inspector General for Administration.
Elizabeth M. Redman	Assistant Inspector General for Investigations.
Frank Deffer	Assistant Inspector General for Information Technology.
Matt Jadacki	Special Inspector General for Gulf Coast Hurricane Recovery.
Joseph Sullivan	Deputy Assistant Inspector General for Investigations.
Edward M. Stulginsky	Deputy Assistant Inspector General for Audits.
Belinda J. Finn	Deputy Assistant Inspector General for Audits.

Department of Housing and Urban Development
Phone Number: (202) 708-0430
PCIE/ECIE Liaison—Helen Albert (202) 708-0614, Ext. 8187

Michael P. Stephens	Deputy Inspector General.
James A. Heist	Assistant Inspector General for Audit.
Bryan P. Saddler	Counsel to the Inspector General.
John McCarty	Deputy Assistant Inspector General for Inspections and Evaluations.
Lester Davis	Deputy Assistant Inspector General for Investigations.
Robert Gwin	Deputy Assistant Inspector General for Audit.

Department of the Interior
Phone Number: (202) 208-5745
PCIE/ECIE Liaison—Renee Pettis (202) 219-0637

Mary Kendall	Deputy Inspector General.
Michael Wood	Chief of Staff.
Anne Richards	Assistant Inspector General for Audits.
Kimberly Elmore	Principal Deputy Assistant Inspector General for Audits.
Steve Hardgrove	Assistant Inspector General for Investigations.
John Dupuy	Principal Deputy Assistant Inspector General for Investigations.
Renee Pettis	Assistant Inspector General for Management.
Thomas Moyle	Deputy Assistant Inspector General for Management.

Department of Justice
Phone Number: (202) 514-3435
PCIE/ECIE Liaison—Linda N. Ruder (202) 616-4550

Carol F. Ochoa	Assistant Inspector General for Oversight and Review.
Gregory T. Peters	Assistant Inspector General for Management and Planning.
Paul A. Price	Assistant Inspector General for Evaluation and Inspections.

Department of Labor
Phone Number: (202) 693-5100
PCIE/ECIE Liaison—Steve Anthony (202) 693-5130

Nancy F. Ruiz de Gamboa	Assistant Inspector General for Management and Policy/Chief of Staff.
Thomas F. Farrell	Assistant Inspector General for Labor Racketeering and Fraud Investigations.
Elliot P. Lewis	Assistant Inspector General for Audit.
Robert W. Curtis	Deputy Assistant Inspector General for Audit.
Howard L. Shapiro	Counsel for the Inspector General.
Richard Clark	Deputy Assistant Inspector General for Labor Racketeering and Fraud Investigations.

Department of State and the Broadcasting Board of Governors
Phone Number: (202) 663-0340
PCIE/ECIE Liaison—Michael Wolfson (703) 284-2710

William E. Todd	Deputy Inspector General for Audits, Investigations, and Management, Policy, and Planning.
Robert B. Peterson	Assistant Inspector General for Inspections.
Mark Duda	Assistant Inspector General for Audits.
John Dedona	Assistant Inspector General for Investigations.

Department of Transportation
Phone Number: (202) 366-1959
PCIE/ECIE Liaison—Brian J. Dettelbach (202) 366-8751

Todd J. Zinser	Acting Inspector General.
Theodore P. Alves	Principal Assistant Inspector General for Auditing and Evaluation.
David A. Dobbs	Assistant Inspector General for Aviation & Special Program Audits.
Robin K. Hunt	Deputy Assistant Inspector General for Aviation & Special Program Audits.

Rebecca C. Leng	Assistant Inspector General for Financial and Information Technology Audits.
Kurt W. Hyde	Assistant Inspector General for Surface and Maritime Programs.
Rebecca A. Batts	Deputy Assistant Inspector General for Surface and Maritime Programs.
David E. Tornquist	Assistant Inspector General for Competition and Economic Analysis.
Charles H. Lee, Jr.	Assistant Inspector General for Investigations.
Richard C. Beitel, Jr.	Deputy Assistant Inspector General for Investigations.
Brian J. Dettelbach	Assistant Inspector General for Legal, Legislative, and External Affairs.

Department of the Treasury
Phone Number: (202) 622-1090
PCIE/ECIE Liaison—Adam D. Silverman (202) 927-5835

Dennis S. Schindel	Deputy Inspector General.
Adam D. Silverman	Assistant Inspector General for Management.
Marla A. Freedman	Assistant Inspector General for Audit.
Nick D. Swanstrom	Assistant Inspector General for Investigations.
Robert A. Taylor	Deputy Assistant Inspector General for Program Audit.
Richard K. Delmar	Counsel to the Inspector General.

Treasury Inspector General for Tax Administration/Department of the Treasury
Phone Number: (202) 622-6500
PCIE/ECIE Liaison—Bonnie Heald (202) 927-7037

Michael Phillips	Deputy Inspector General for Audit.
Margaret Begg	Assistant Inspector General for Audit.
Daniel Devlin	Assistant Inspector General for Audit.
Michael McKenney	Assistant Inspector General for Audit.
Steven Jones	Deputy Inspector General for Investigations.
Timothy Camus	Assistant Inspector General for Investigations.
Gregory Holley	Deputy Assistant Inspector General for Investigations.
Michael Delgado	Assistant Inspector General for Investigations.
Mary Anne Curtin	Counsel to the Inspector General.
Joseph Hungate	Assistant Inspector General for Information Technology.

Department of Veterans Affairs
Phone Number: (202) 565-8620
PCIE/ECIE Liaison—Catherine Gromek (202) 565-8620

Daniel Petrole	Assistant Inspector General for Investigations.
James O'Neill	Deputy Assistant Inspector General for Investigations.
Michael Staley	Assistant Inspector General for Audit.
Richard Ehrlichman	Assistant Inspector General for Management and Administration.
Joseph Vallowe	Deputy Assistant Inspector General for Management and Administration.
John Daigh	Assistant Inspector General for Healthcare Inspections.
Dana L. Moore	Deputy Assistant Inspector General for Healthcare Inspections.
Maureen Regan	Counselor to the Inspector General.

Environmental Protection Agency
Phone Number: (202) 566-0847
PCIE/ECIE Liaison—Eileen McMahon (202) 566-2546

Mark Bialek	Counsel to the Inspector General.
Eileen McMahon	Assistant Inspector General for Congressional and Public Liaison.
Melissa Heist	Assistant Inspector General for Audit.
Rick Linthurst (Acting)	Assistant Inspector General for Program Evaluation.
Stephen Nesbitt	Assistant Inspector General for Investigations.
Howard Cantor	Assistant Inspector General for Planning, Analysis and Results.

Equal Employment Opportunity Commission
Phone Number: (202) 663-4379
PCIE/ECIE Liaison—Larkin Jennings (202) 663-4391

Aletha L. Brown	Inspector General.
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Federal Trade Commission
Phone Number: (202) 326-2800
PCIE/ECIE Liaison—(202) 326-2800

Howard Sribnick	Inspector General.
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General Services Administration
Phone Number: (202) 501-0450
PCIE/ECIE Liaison—Jack C. Lebo (202) 501-2319

Eugene L. Waszily (Acting)	Deputy Inspector General.
Kevin A. Buford	Counsel to the Inspector General.
Eugene L. Waszily	Assistant Inspector General for Auditing.

Andrew Patchan, Jr.	Deputy Assistant Inspector General for Auditing.
Charles J. Augone (Acting)	Assistant Inspector General for Investigations.

National Aeronautics and Space Administration
Phone Number: (202) 358-1220
PCIE/ECIE Liaison—Madeline Chulumovich (202) 358-0615

Thomas Howard	Deputy Inspector General.
Frank LaRocca	Counsel to the Inspector General.
Kevin Winters	Assistant Inspector General for Investigations.
Evelyn Klemstine	Assistant Inspector General for Audits.
Alan Lamoreaux	Assistant Inspector General for Management and Policy.

National Science Foundation
Phone Number: (703) 292-7100
PCIE/ECIE Liaison—Maury Pully (703) 292-5059

Thomas (Tim) Cross	Deputy Inspector General.
Peggy Fischer	Assistant Inspector General for Investigations.

Peace Corps
Phone Number: (202) 692-2900

H. David Kotz	Inspector General (Foreign Service)
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Nuclear Regulatory Commission
Phone Number: (301) 415-5930
PCIE/ECIE Liaison—Marie Lopez/Nagle (301) 415-5898

David C. Lee	Deputy Inspector General.
Stephen D. Dingbaum	Assistant Inspector General for Audits.

Office of Personnel Management
Phone Number: (202) 606-1200
PCIE/ECIE Liaison—Gary R. Acker (202) 606-2444

Norbert E. Vint	Deputy Inspector General.
Daniel K. Marella	Assistant Inspector General for Policy, Resources Management, and Oversight.
Michael R. Esser	Assistant Inspector General for Audits.
Jeffery E. Cole	Deputy Assistant Inspector General for Audits.

Railroad Retirement Board
Phone Number: (312) 751-4690
PCIE/ECIE Liaison—Linda Wimbourne (312) 751-4993

William Tebbe	Assistant Inspector General for Investigations.
Henrietta B. Shaw	Assistant Inspector General for Audit.

Small Business Administration
Phone Number: (202) 205-6586
PCIE/ECIE Liaison—Robert F. Fisher (202) 205-6583

Peter L. McClintock	Deputy Inspector General.
Glenn P. Harris	Counsel to the Inspector General.
Debra S. Ritt	Assistant Inspector General for Auditing.
Daniel J. O'Rourke	Assistant Inspector General for Investigations.
Robert F. Fisher	Assistant Inspector General for Management and Policy.

Social Security Administration
Phone Number: (410) 966-8385
PCIE/ECIE Liaison—H. Douglas Cunningham (202) 358-6319

Steven L. Schaeffer	Assistant Inspector General for Audit.
Richard A. Rohde	Acting Assistant Inspector General for Investigations.
Kathy Buller	Chief Counsel to the Inspector General.

United States Postal Service
Phone Number: (703) 248-2300
PCIE/ECIE Liaison—Agapi Doulaveris (703) 248-2286

Scott Wilson	Deputy Inspector General.
Elizabeth Martin	Assistant Inspector General, General Counsel.
Gladis Griffith	Deputy Assistant Inspector General, General Counsel.
Ron Stith	Assistant Inspector General, Mission Support.
David Sidransky	Chief Information Officer.
Sam Guttman	Assistant Inspector General for Investigations.
Randy Stone	Deputy Assistant Inspector General for Investigations—West.

Lance Carrington	Deputy Assistant Inspector General for Investigations—South.
LaVan Griffith	Deputy Assistant Inspector General for Headquarters.
Timothy Barry	Deputy Assistant Inspector General for Investigations—East (Acting).
Gordon Milbourn	Assistant Inspector General for Audits.
Colleen McAntee	Deputy Assistant Inspector General for Audits—Core Operations.
Mary Demory	Deputy Assistant Inspector General for Audits—Headquarters Operations.
John Cihota	Deputy Assistant Inspector General for Audits—Financial Operations.

Dated: November 8, 2006.

Earl E. Devaney,

Inspector General, Department of the Interior
and Chair, Human Resources Committee,
PCIE.

[FR Doc. E6-20548 Filed 12-4-06; 8:45 am]

BILLING CODE 3110-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54837; File No. SR-NYSE-
2006-102]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Inclusion of an Additional Security in the Pilot to Put Into Operation Certain Rule Changes Pending Before the Securities and Exchange Commission to Coincide With the Exchange's Implementation of Phase 3 of the NYSE HYBRID MARKETSM and the Substitution of the Name and Trading Symbol of a Security Operating in the Pilot A

November 29, 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 28, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change 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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to include an additional security to participate in the Exchange's current pilot ("Pilot") program which puts into operation certain rule changes pending before the Commission to coincide with the Exchange's implementation of NYSE HYBRID MARKETSM ("Hybrid Market")⁵ Phase 3. The Exchange further seeks to change the name of a security currently operating under the Pilot and substitute the name and trading symbol of its successor entity. The relevant securities are identified in Exhibit 3 to the filing, which is available on the NYSE's Web site (<http://www.nyse.com>), at the principal office of the NYSE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. 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

On October 5, 2006, the Commission approved an Exchange Pilot⁶ to, among other things, put into operation certain proposed modifications to Exchange Rules that are currently pending⁷ before

⁵ The Hybrid Market was approved on March 22, 2006. See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006).

⁶ See Securities Exchange Act Release Nos. 54578, 71 FR 60216 (October 12, 2006) and 54610 (October 16, 2006), 71 FR 62142 (October 23, 2006).

⁷ See Securities Exchange Act Release Nos. 54520 (September 27, 2006), 71 FR 57590 (September 29, 2006) (SR-NYSE-2006-65 and the Amendments thereto proposing to amend several Exchange Rules to clarify certain definitions and systemic processes

the Commission to coincide with the Exchange's implementation of the Hybrid Market Phase 3. The Pilot commenced on October 6, 2006⁸ and is scheduled to terminate on the close of business November 30, 2006⁹ or the earlier of Commission approval of the Omnibus Filing,¹⁰ Stabilization Filing and the Block Cross Filing while the Commission continues to review the aforementioned pending filings. The Pilot applies to a group of securities, known as Phase 3 Pilot securities ("Pilot securities").¹¹

The Exchange is currently in the process of phasing in the securities operating under the Pilot. As expected, the Pilot is operating with minimal problems and the benefits are proving invaluable. The Pilot is providing the Exchange with the opportunity to identify and address any system problems. Moreover, the Exchange has the ability to identify and incorporate beneficial system changes that become apparent as a result of usage in real time and under real market conditions.

("Omnibus Filing"); 54504 (September 26, 2006), 71 FR 57011 (September 28, 2006) (SR-NYSE 2006-76 proposing to amend the specialist stabilization requirements set forth in Exchange Rule 104.10 ("Stabilization Filing")); and SR-NYSE-2006-73 (filed on September 13, 2006) and Amendment No. 2 thereto (filed on October 13, 2006) (proposing to amend Exchange Rule 127 which governs the execution of a block cross transaction at a price outside the prevailing NYSE quotation ("Block Cross Filing"). The Commission notes that it approved the Omnibus Filing on November 27, 2006. See Securities Exchange Act Release No. 54820.

⁸ The changes related to stop orders and stop limit orders proposed in the Omnibus Filing were implemented on October 16, 2006 in order to give customers and member organizations sufficient time to make any changes necessary as a result of the elimination of stop limit orders.

⁹ On October 31, 2006 the Exchange filed to extend the Pilot until November 30, 2006. See Securities Exchange Act Release No. 54675 (October 31, 2006), 71 FR 65019 (November 6, 2006). The extension made clear that approval of any one of the pending filings would act to terminate the operation of the rules associated with the approved filing from the Pilot. Accordingly, the changes approved in the Omnibus Filing are no longer part of the Pilot. The Pilot shall not terminate in its entirety unless and until all pending filings are approved or November 30, 2006.

¹⁰ See note 7 *supra*.

¹¹ Phase 3 Pilot Securities are posted on the Exchange's Web site. The securities posted on the Exchange's Web site include securities added to operate under the Pilot pursuant to Securities Exchange Act Release No. 54685 (November 1, 2006), 71 FR 65559 (November 8, 2006).

The Exchange further has the ability to have real time user interface which is proving very useful to the Exchange. In addition to its usefulness to the Exchange, the Pilot is providing the current users with essential practical experience with the new systems and processes in a well-modulated way, in real time and under real market conditions that cannot be completely replicated in the mock-trading environment.

As of Tuesday November 28, 2006, the Exchange will complete the phasing in of all Banc of America Specialists allocated securities approved to operate under the Pilot. In order to continue increasing the users that may benefit from the enhanced educational and supervisory training experience that the Pilot provides, the Exchange seeks through this filing to include an additional security handled by Banc of America Specialists for participation in the Pilot. Specifically, the Exchange seeks to include the security traded under the symbol GE (General Electric Company).

The Exchange believes that the addition of this security will continue to provide an increased number of individual specialists with the educational opportunity of real time experience under real market conditions that cannot be completely replicated in the mock-trading environment. It will further provide an increased number of the firm's supervisory personnel with additional opportunities for supervisory training in real time and under real market conditions.

In addition to including GE in the Pilot, the Exchange seeks to substitute the trading symbol for Lucent Technologies which is currently operating in the Pilot under the trading symbol LU with the symbol ALU to reflect the December 1, 2006 business combination of Lucent Technologies with Alcatel. The Exchange therefore seeks to change the trading symbol LU to ALU in order to accurately reflect the successor entity which is now Alcatel-Lucent.

Accordingly, the Exchange believes that the inclusion of this additional security will only further the Exchange's ability to identify and address any system problems and to identify and incorporate beneficial system changes while providing the new users with real time education.

The securities proposed for inclusion in the Pilot are identified in Exhibit 3 to the filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

the requirement under Section 6(b)(5)¹² of the Act¹³ that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)¹⁴ in that it seeks to assure economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is filed pursuant to Section 19(b)(3)(A)¹⁵ of the Act and Rule 19b-4(f)(6)¹⁶ thereunder.

This proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. Accordingly, the Exchange believes that this amendment is non-controversial.

In connection with the filing being made under Section 19(b)(3)(A) of the Act, the Exchange requests that the Commission waive the 30-day delayed operative date and five-day pre-filing period of Rule 19b-4(f)(6)(iii).

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁷ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission is exercising authority to waive the five-day pre-filing

requirement and believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal could allow Banc of America Specialists to provide more of its personnel with the educational opportunity of real-time experience with real market conditions under the Pilot. In addition, the Commission believes that replacing LU with ALU is appropriate so that the successor security to LU would continue to trade in a similar manner on the Exchange. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁸

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-NYSE-2006-102 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-102. 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

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78a.

¹⁴ 15 U.S.C. 78k-1(a)(1).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 Number SR-NYSE-2006-102 and should be submitted on or before December 26, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Nancy M. Morris,

Secretary.

[FR Doc. E6-20517 Filed 12-4-06; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Grant Acquired Property Release at Concord Regional Airport, Concord, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the City of Concord to waive the requirement that approximately 0.66-acres of airport property, located at the Concord Regional Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before January 4, 2007.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Rusty Nealis, Program Manager, 1701 Columbia Ave., Suite 2-260, Atlanta, GA 30337-2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to W. Brian Hiatt,

City Manager of the City of Concord at the following address: City of Concord, Post Office Box 308, Concord, NC 28026.

FOR FURTHER INFORMATION CONTACT:

Rusty Nealis, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2-260, Atlanta, GA 30337-2747, (404) 305-7142. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the City of Concord to release approximately 0.66 acres of airport property at the Concord Regional Airport. The property consists of one parcel roughly located on the Western edge of Ivey Cline Road approximately 600-ft south of Popular Tent Road and adjacent to 7.30 acres previously requested for release. This property is currently shown on the approved Airport Layout Plan as aeronautical use land; however the property is currently not being used for aeronautical purposes and the proposed use of this property is compatible with airport operations. The City will ultimately sell the property for future industrial use with proceeds of the sale providing funding for future airport development.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Concord Regional Airport.

Issued in Atlanta, Georgia on November 21, 2006.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 06-9511 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Rogue Valley; International—Medford Airport, Medford, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at Rogue Valley International—Medford Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the

21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before January 4, 2007.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington, 98057-3356.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bern E. Case, Airport Director, at the following address: Mr. Bern E. Case, Airport Director, 3650 Biddle Road, Medford, OR 97504.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Watson, OR/ID Section Supervisor, Federal Aviation Administration, Northwest Mountain Region, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98057-3356.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Rogue Valley International—Medford Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On November 16, 2006, the FAA determined that the request to release property at Rogue Valley International—Medford Airport submitted by the airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than January 4, 2006.

The following is a brief overview of the request:

Rogue Valley International—Medford Airport is proposing the release of approximately 1.70 acres of airport property in exchange of 1.34 acres of private property currently used to house runway approach lights.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at Rogue Valley International—Medford Airport.

¹⁹ 17 CFR 200.30-3(a)(12).

Issued in Renton, Washington on November 16, 2006.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 06-9512 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 28, 2006, vol. 71, no. 124, pages 36869-36870. The FAA requires the information in the interest of aviation safety to protect aircraft operations from the potential hazardous effect of laser emissions.

DATES: Please submit comments by January 4, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Laser Operations in the Navigable Airspace (Advisory Circular (AC), Outdoor Laser Operations).

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120-0662.

Form(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 20 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 11 hours per response.

Estimated Annual Burden Hours: An estimated 2,200 hours annually.

Abstract: The FAA requires the information in the interest of aviation safety to protect aircraft operations from the potential hazardous effect of laser emissions. The information collected is reviewed for its impact on aviation in the vicinity of the laser activity. Upon completion of the review of the information the FAA issues a letter of determination to the respondent in regard to their request.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to aira_submission@omb.eop.gov or faxed to (202) 395-6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 28, 2006.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO-20.

[FR Doc. 06-9507 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Competition Plans, Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This information is needed to meet the requirements of Title 49, Section 40117(k), Competition Plans, and to carry out a passenger facility charge application.

DATES: Please submit comments by February 5, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267-9895, or by e-mail at: Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Competition Plans, Passenger Facility Charges.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120-0661.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 40 Respondents.

Frequency: The information is collected every 18 months.

Estimated Average Burden per Response: Approximately 150 hours per response.

Estimated Annual Burden Hours: An estimated 1,400 hours annually.

Abstract: This information is needed to meet the requirements of Title 49, Section 40117(k), Competition Plans, and to carry out a passenger facility charge application. No Passenger Facility Charge (PFC) may be approved for a covered airport and no Airport Improvement Program (AIP) grant may be made for a covered airport unless the airport has submitted a written competition plan in accordance with the statute. The affected public includes public agencies controlling medium or large hub airports.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, Strategy and Investment Analysis Division, AIO-20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 28, 2006.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO-20.

[FR Doc. 06-9509 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Pilot Schools—FAR 141**

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. 14 CFR Part 141 prescribes requirements for pilot schools certification. Information collected is used for certification and to determine compliance.

DATES: Please submit comments by January 4, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267-9895, or by e-mail at: Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION:**Federal Aviation Administration (FAA)**

Title: Pilot Schools—FAR141.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120-0009.

Forms(s): FAA form 8420-8.

Affected Public: A total of 546 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 54.5 hours per response.

Estimated Annual Burden Hours: An estimated 29,770 hours annually.

Abstract: Chapter 447, Subsection 44707, authorizes certification of civilian schools giving instruction in flying. 14 CFR Part 141 prescribes requirements for pilot schools certification. Information collected is used for certification and to determine compliance. The respondents are applicants who wish to be issued pilot school certificates and associated ratings.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, Strategy and Investment Analysis Division, AIO-20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department,

including whether the formation will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on November 28, 2006.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO-20.

[FR Doc. 06-9510 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Fifth Meeting: Special Committee 209, Air Traffic Control Radar Beacon Systems (ATCRBS)/Mode S Transponder**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 209, ATCRBS/Mode S Transponder.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 209, Air Traffic Control Radar Beacon Systems (ATCRBS)/Mode S Transponder.

DATES: The meeting will be held December 5-7, 2006, from 9 a.m.-5 p.m.

ADDRESSES: The meeting will be held at RTCA Inc., 1828 L Street, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>, (2) Host Contact: Hal Moses; telephone (202) 833-9339, e-mail hmoses@rtca.org, (3) Secretary Contact: Gary Furr; telephone (609) 485-4254, e-mail gary.ctr.furr@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 209 meeting. The agenda will include: December 5-7:

- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Review/Approval of Agenda, Review/Approval of Minutes from Meeting #4).

- Report from Team creating and revising Appendix B.

- Draft v1.3 of the Proposed Appendix B.

- Summary of the Status of Appendix B for MSSS.

- Report from Team restructuring and making revisions to DO-181C.

- Draft version 0.5 of DO-181D.

- Comparison Matrix of Differences between DO-181C and v0.5.

- Consolidated Comments against draft v0.5 of DO-181D.

- Report from the Team reviewing the update of Test Procedures.

- Status of the ED-73B/DO-181C Requirements Comparison data base.

- Status of the coordination with EUROCAE WG-49.

- Review of Status of Work Related to DO-144A (to be held at a specific time; to be announced).

- Review of Status of Action Items.

- Closing Plenary Session (Other Business, Discussion of Agenda for Next Meeting, Date, Place and Time of Future Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, November 16, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06-9505 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Tenth Meeting: RTCA Special Committee 207/Airport Security Access Control Systems**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 207 Meeting, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 207, Airport Security Access Control Systems.

DATES: The meeting will be held January 16, 2006, from 9:30 a.m.-4 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 207 meeting. The agenda will include: January 16:

- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks)
- Review of Meeting Summary
- Workgroup Reports
- Overview
- Workgroup 2: System Performance Requirements
- Workgroup 3: Subsystem Functional Performance Requirements
- Workgroup 4: System Verification and Validation
- Workgroup 5: Biometrics
- Workgroup 6: Credentials
- Workgroup 7: Perimeter
- ICAO Update
- Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Following Meetings).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 27, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06-9506 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Minnesota and Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway

project, the St. Croix River Crossing on Trunk Highway (TH) 36 in Oak Park Heights, Washington County, Minnesota to State TH 35/64 in St. Joseph, St. Croix County, Wisconsin. Those actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions of the highway project will be barred unless the claim is filed on or before June 6, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Thomas Sorel, Division Administrator, Federal Highway Administration, Galtier Plaza, Suite 500, 380 Jackson Street, St. Paul, Minnesota 55101, Telephone (651) 291-6100, e-mail Thomas.sorel@fhwa.dot.gov. The Minnesota Division Office's normal business hours are 7:30 a.m. to 4 p.m. (central time). For the Minnesota Department of Transportation (Mn/DOT): Mr. Todd Clarkowski, P.E.—Metro District, 1500 West County Road B2, Roseville, Minnesota 55113, Telephone (651) 582-1169, (800) 627-3529 TTY, e-mail:

Todd.clarkowski@state.mn.us. For the Wisconsin Department of Transportation (Wis/DOT): Mr. Terry Pederson, P.E., 718 West Clairemont Avenue, Eau Claire, Wisconsin 54701, telephone (715) 836-2857, e-mail: Terry.pederson@dot.state.wi.us.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in Minnesota and Wisconsin: St. Croix River Crossing on TH 36 from a point 700 feet east of the TH 5/TH 36 interchange in Oak Park Heights, Washington County, Minnesota to a point 100 feet southwest of the 150th Avenue overpass on Sate TH 35/64 in St. Joseph, St. Croix County, Wisconsin. The project will be a 6.7 mile long, four-lane highway and includes the construction of a new crossing of the St. Croix River. The project also includes reconstruction of associated roadways in both states, as well as construction in Stillwater and Bayport, Minnesota. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the 2006 Supplemental Final Environmental Impact Statement (SFEIS)/Final Section 4(f) Evaluation for the project, approved on May 17, 2006, in the FHWA Record of Decision (ROD)

issued on November 13, 2006, and in other documents in the FHWA project files. The SFEIS, ROD and other project records are available by contacting the FHWA, Mn/DOT or Wis/DOT at the addresses provided above. The FHWA SFEIS and ROD can be viewed and downloaded from the project Web site at <http://www.dot.state.mn.us/metro/projects/stcroix/index.html>. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

3. Wildlife: Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703-712].

4. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; archaeological and Historic Preservation Act [16 U.S.C. 469-469(c)].

5. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].

6. Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)-300(j)(6)]; Flood Disaster Protection Act [42 U.S.C. 4001-4128].

7. Executive Orders: E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13287, Preserve America; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 11514, Protection and Enhancement of Environmental Quality; E.O. 13112, Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: November 28, 2006.

Thomas K. Sorel,

Division Administrator, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 06-9519 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than February 5, 2007.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Gina Christodoulou, Office of Support Systems, RAD-43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130-0526." Alternatively, comments may be transmitted via facsimile to (202) 493-6230 or (202) 493-6170, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov*, or

to Ms. Christodoulou at *gina.christodoulou@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292) or Ms. Gina Christodoulou, Office of Support Systems, RAD-43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology (e.g., permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(i)-(iv); 5 CFR 1320.8(d)(1)(i)-(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Control of Alcohol and Drug Use in Railroad Operations.

OMB Control Number: 2130-0526.

Abstract: The information collection requirements contained in pre-employment and "for cause" testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information—evidence of unauthorized alcohol or drug use—is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident. Finally, FRA analyzes the data provided in the Management Information System annual report to monitor the effectiveness of a railroad's alcohol and drug testing program.

Form Number(s): FRA F 6180.73, 6180.74, 6180.94A, 61880.94B.

Affected Public: Businesses.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost (\$)
219.7—Waivers	100,000 employees	2 letters	2 hours	4	\$140
219.9(b)(2)—Responsibility for compliance.	450 railroads	2 requests	1 hour	2	70
219.9(c)(2)—Responsibility for compliance.	450 railroads	10 contracts/docs ..	2 hours	20	700
219.11(b)(2)—Gen'l conditions for chemical tests.	450 Medical Fac	1 document	15 minutes .....	.25	4
219.11(g) & 219.301(c)(2)(ii)—Training—Alcohol and Drug.	5 railroads	5 programs	3 hours	15	525

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost (\$)
—Training	50 railroads	50 training classes	3 hours	150	5,250
219.23(d)—Notice to Employee Organizations.	5 railroads	5 notices	1 hour	5	175
219.104/219.107—Removal from Covered Svc..	450 railroads	20 letters	1 hour	20	700
219.201(c) Good Faith Determination	450 railroads	10 reports	30 minutes	5	175
219.203/207/209—Notifications by Phone to FRA.	450 railroads	104 phone calls	10 minutes	17	595
219.205—Sample Collection and Handling.	450 railroads	400 forms	15 minutes	100	3,500
—Form covering accidents/incidents	450 railroads	100 forms	10 minutes	17	595
219.209(a)—Reports of Tests and Refusals.	450 railroads	80 phone rpts	2 minutes	3	105
219.209(c)—Records—Tests promptly administered.	450 railroads	40 records	30 minutes	20	700
219.211(b)—Analysis and follow-up—MRO.	450 railroads	8 reports	15 minutes	2	200
219.302(f)—Tests not promptly administered.	450 railroads	200 records	30 minutes	100	3,500
219.401/403/405—Voluntary referral and Co-worker report policies.	5 railroads	5 report policies	20 hours	100	3,500
219.405(c)(1)—Report by Co-worker	450 railroads	450 reports	5 minutes	38	1,330
219.403/405—SAP Counselor Evaluation.	450 railroads	700 reports	30 minutes	350	12,250
219.601(a)—RR Random Drug Testing Programs.	5 railroads	5 programs	1 hour	5	175
—Amendments	450 railroads	20 amendments	1 hour	20	700
219.601(b)(1)—Random Selection Proc.—Drug.	450 railroads	5,400 documents	4 hours	21,600	324,000
219.601(b)(4); 219.601(d)—Notices to Employees.	5 railroads	100 notices .....	.5 minute	1	35
—New Railroads	5 railroads	5 notices	10 hours	50	1,750
—Employee Notices—Tests	450 railroads	25,000 notices	1 minute	417	14,595
219.603(a)—Specimen Security—Notice By Employee Asking to be Excused from Urine Testing.	20,000 employees	20 excuse doc	15 minutes	5	145
219.607(a)—RR Random Alcohol Testing Programs.	5 railroads	5 programs	8 hours	40	1,400
—Amendments to Approved Program.	450 railroads	20 amendments	1 hour	20	700
219.608—Administrator's Determination of Random Alcohol Testing Rate.	53 railroads	53 MIS reports	2 hours	106	3,710
219.707 9(c)(d) & 40.33—Review by MRO of Urine Drug Testing Results/Employee Notification.					
—Positive Drug Test Result	450 MROs	980 reports	2 hours	1,960	196,000
—Copies of Positive Test Results to Employees.	450 railroads	980 tests	15 minutes	245	3,675
219.709—Retests—Written Request by Employee.	450 railroads	10 letters	30 minutes	5	175
219.711(c) & 40.25(f)(22)(ii)—Employee Consent.	100,000 employees	60 letters	5 minutes	5	175
219.801—Reporting Alcohol/Drug Misuse Prevention Program Results in a Management Info. System.					
—Alcohol/Drug Testing Management Info. System" Data Collection Form.	53 railroads	25 forms	4 hours	100	3,500
—Easy Data Collection Form—No Alcohol/Drug Misuse.	53 railroads	28 forms	2 hours	56	1,960
219.901/903—Retention of Breath Alcohol Testing Records; Retention of Urine Drug Testing.	450 railroads	100,500 records	5 minutes	8,375	125,625
—Summary Report of Breath Alcohol/Drug Test.	450 railroads	200 reports	2 hours	400	6,000

Respondent Universe: 450 railroads.

Total Responses: 135,603.

Status: Regular Review.

Frequency of Submission: On occasion.

Estimated Total Annual Burden: 34,378 hours.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA

informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on November 29, 2006.

D.J. Stadler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E6–20501 Filed 12–4–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Alternative Transportation in Parks and Public Lands Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Funding Availability: Alternative Transportation in Parks and Public Lands Program.

SUMMARY: This notice solicits proposals to compete for Fiscal Year (FY) 2007 funds through the Alternative Transportation in Parks and Public Lands (ATPPL) program, administered by the Federal Transit Administration (FTA) in partnership with the Department of the Interior (DOI) and the U.S. Department of Agriculture's Forest Service. The purpose of the program is to enhance the protection of national parks and Federal lands, and increase the enjoyment of those visiting them. The program funds capital and planning expenses for alternative transportation systems such as buses and trams in federally-managed parks and public lands. Federal land management agencies and State, tribal and local governments acting with the consent of a Federal land management agency are eligible to apply. DOI, after consultation with and in cooperation with FTA, will determine the final selection and funding of projects.

DATES: Complete proposals must be received by the designated Federal land management agency contact listed in this notice by the close of business on February 16, 2007.

ADDRESSES: Project proposals must be submitted to the designated contact person at the headquarters office of the Federal land management agency that manages the park or public land involved. If the project involves more than one Federal land management agency, a project proposal template must be submitted to all agencies involved. The required project proposal

template is available at <http://www.fta.dot.gov/atppl>. E-mail submission is preferred. Mail and fax submission will also be accepted.

- National Park Service: Mark H Hartsoe, Mark_H_Hartsoe@nps.gov; tel: 202–513–7025, fax: 202–371–6675, mail: 1849 C Street, NW., (MS2420); Washington, DC 20240–0001.

- Fish and Wildlife Service: Nathan Caldwell, nathan_caldwell@fws.gov, tel: 703–358–2205, fax: 703–358–2517, mail: 4401 N. Fairfax Drive, Room 634; Arlington, VA 22203.

- Forest Service: Ellen LaFayette, elafayette@fs.fed.us, tel: 703–605–4509, fax: 703–605–1542, mail: 1400 Independence Avenue, SW., Washington, DC 20250–1101. FedEx: USDA Forest Service, Engineering Suite RPC 500, 1601 N. Kent Street, Arlington, VA 22209.

- Bureau of Land Management: Linda Force, linda_force@blm.gov, tel: 202–557–3567, fax: 202–452–5046, mail: 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Scott Faulk, Office of Program Management, Federal Transit Administration, 202–366–1660, e-mail: Scott.Faulk@dot.gov.

SUPPLEMENTARY INFORMATION:

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- I. General Program Information
- II. Guidelines for Preparing and Submitting Proposals
- III. Proposal Review, Selection, and Notification
- IV. Additional Program Information

I. General Program Information

A. Authority

Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users of 2005 (SAFETEA–LU) established a new program called the ATPPL program (49 U.S.C. 5320). SAFETEA–LU authorized \$97 million in funding for the program for FY 2006 through 2009. SAFETEA–LU authorized \$23 million FY 2007. Availability of funding is subject to congressional appropriations, which have not yet been finalized for FY 2007. No one project may receive more than 25 percent of available funds.

B. Background

Congestion in and around parks and public lands causes traffic delays and noise and air pollution that substantially detract from the visitor's experience and the protection of natural resources. In August 2001, the Department of Transportation (DOT) and DOI published a comprehensive

study of alternative transportation needs in national parks and related Federal lands. The study identified significant alternative transportation needs at sites managed by the National Park Service, the Bureau of Land Management, and the U.S. Fish and Wildlife Service. Additionally, a supplement to this report identified Forest Service sites that would benefit from such services.

Section 3021 of SAFETEA–LU (49 U.S.C. 5320) addresses these needs by establishing a new program to fund alternative transportation projects in national parks and other federal lands. The goals of the program are to:

- Conserve natural, historical, and cultural resources;
- Reduce congestion and pollution;
- Improve visitor mobility and accessibility;
- Enhance visitor experience; and
- Ensure access to all, including persons with disabilities.

C. Eligible Applicants

Eligible applicants are:

- (1) Federal land management agencies, including the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, and the Bureau of Reclamation; and
- (2) State, tribal and local governments with jurisdiction over land in the vicinity of an eligible area, acting with the consent of a Federal land management agency, alone or in partnership with a Federal land management agency or other governmental or non-governmental participant. If the applicant is a State, tribal, or local government, a letter from the unit(s) of the Federal land management agency or agencies affected expressing support for the project should be submitted with the project proposal.

D. Eligible Expenses

SAFETEA–LU defines alternative transportation as “transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service. Such term also includes a non-motorized transportation system (including the provision of facilities for pedestrians, bicycles, and non-motorized watercraft).”

A qualified project is a planning or capital project in or in the vicinity of a Federally-owned or managed park, refuge, or recreational area that is open to the general public and meets the goals of the program. Operating expenses are not eligible under the program. A project proposal may

include up to 15 percent of project expenses for project administration, contingency, and oversight. As specified in 49 U.S.C. 5320(b)(5), the following types of projects are eligible:

Planning

1. Activities to comply with metropolitan and statewide planning provisions. (49 U.S.C. 5320(b)(5)(A) referencing 49 U.S.C. 5303, 5304, 5305).
2. Activities include planning studies for an alternative transportation system including evaluation of no-build and all other reasonable alternatives, traffic studies, visitor utilization studies, transportation analysis, feasibility studies, and environmental studies.

Capital

1. General Capital Expenses for Alternative Transportation System Projects

a. Eligible capital projects include all aspects of "acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;"

b. Capital projects may include those projects operated by an outside entity, such as a public transportation agency, state or local government, private company engaged in public transportation, or private non-profit organization; and,

c. Projects may also include the deployment/commercialization of alternative transportation vehicles that introduce innovative technologies or methods.

2. "Fixed Guideway" and Bus Projects

a. The SAFETEA-LU legislation includes language allowing eligibility of "fixed guideway" projects. These are defined as those transportation projects that run on a dedicated right of way, like a light rail, trolley, bus rapid transit, or any type of ferry system. For these types of projects, eligible projects can include:

- i. Development of a new fixed guideway project;
- ii. Rehabilitation or modernization of existing fixed guideway systems; and,
- iii. Expansion of existing systems.

b. For bus or shuttle projects, eligible projects can include:

- i. Purchase of buses and related equipment;

- ii. Replacement of buses and related equipment;
- iii. Rehabilitation of buses and related equipment;
- iv. Construction of bus-related facilities such as bus shelters; and,
- v. Purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on August 10, 2005, with clean fuel vehicles.

3. The ATPPL program specifically includes these other eligible capital projects:

a. The capital costs of coordinating Federal land management agency public transportation systems with other public transportation systems.

b. Non-motorized transportation systems (including the provision of facilities for pedestrians, bicycles and non-motorized watercraft).

c. Water-borne access systems within or in the vicinity of an eligible area as appropriate and consistent with Section 5320.

d. Any other alternative transportation project that

- i. Enhances the environment;
- ii. Prevents or mitigates an adverse impact on a natural resource;
- iii. Improves Federal land management agency resource management;

iv. Improves visitor mobility and accessibility and the visitor experience;

v. Reduces congestion and pollution (including noise pollution and visual pollution); or

vi. Conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

In order to be considered for funding, a project must consist of one or more of the eligible activities listed above, meet the definition of alternative transportation, and contribute to the goals of the program.

Lease vs. Purchase

The capital cost of leasing vehicles is an eligible expense under the program. For vehicle acquisition projects, sponsors should compare the cost-effectiveness of leasing versus purchasing vehicles. Leasing may be particularly cost effective in circumstances in which transit service is only needed during a peak visitation period that lasts only a few months. In these cases, leasing a vehicle for a few months during the year may be less expensive than purchasing a vehicle that is then only used for a few months during the year. An ATPPL award can cover the capital cost of leasing vehicles but not the cost of operations.

Project sponsors should also compare the cost effectiveness of providing service versus contracting for service. The capital portion of contracted service is an eligible capital expense under the program. For example, if a public land contracts with a private bus company to provide a shuttle service with privately owned buses, the portion of the contract that covers the capital expense of the buses is an eligible expense under the ATPPL program. Operating expenses are not eligible under the program. Project sponsors will be asked to compare the cost-effectiveness of their preferred option to other alternatives in the financial sustainability portion of the proposal.

E. Proposal Evaluation Criteria and Other Considerations

It is anticipated that the demand for financial assistance through the ATPPL program will significantly exceed the funds available, and thus the selection process will be highly competitive. Project proposals will be evaluated based on how well the proposed project would meet the goals of the program identified in the legislation and in section I B of this notice. The criteria below, which are consistent with the considerations identified in section 5320(g)(2), aid evaluators in determining how well projects would meet these goals. The application template contains specific questions related to each of these criteria to guide the applicant in justifying the project.

Proposed capital projects will be evaluated based on the following criteria:

- Demonstration of Need
 - Visitor mobility & experience current or anticipated problem
 - Environmental current or anticipated problem
 - Visitor Mobility & Experience
 - Benefits of Project
 - Reduced traffic congestion
 - Enhanced visitor mobility, accessibility, and safety
 - Improved visitor education, recreation, and health benefits
 - Environmental Benefits of Project
 - Protection of sensitive natural, cultural, and historic resources
 - Reduced pollution (air, noise, visual)
 - Financial Sustainability and Operational Efficiency
 - Effectiveness in meeting management goals
 - Realistic financial plan
 - Cost effectiveness
 - Partnering, funding from other sources, innovative financing
- Proposed planning projects will be evaluated based on the following criteria:

- Demonstration of Need
 - Visitor mobility & experience current or anticipated problem
 - Environmental current or anticipated problem
- Methodology for Assessing Visitor Mobility & Experience Benefits of Project
 - Reduced traffic congestion
 - Enhanced visitor mobility, accessibility, and safety
 - Improved visitor education, recreation, and health benefits
- Methodology for Assessing Environmental Benefits of Project
 - Protection of sensitive natural, cultural, and historical Resources
 - Reduced pollution (air, noise, visual)
- Methodology for Assessing Operational Efficiency and Financial Sustainability of Alternatives
 - Realistic financial plan
 - Cost effectiveness
 - Partnering, funding from other sources
- The planning project involves partnerships and funding from other sources.

A special note on non-motorized transportation systems: While non-motorized systems, such as trails, are eligible under the program, not all non-motorized systems will meet the goals of the program needed to be considered for funding. Like motorized systems, in order to be considered for funding, non-motorized systems must reduce or mitigate the number of auto trips by providing an alternative to travel by private auto. In addition, non-motorized systems must provide a high degree of connectivity within a transportation system. Finally, they should improve safety for motorized and non-motorized transportation system users.

Additional consideration will be given to projects based upon geographic diversity, balance between urban and rural projects, and balance in size of projects.

The program of projects may also be balanced by type of project, as categorized below, to best show accomplishments from the program.

- New alternative transportation systems—to show new systems made possible by this new program.
- Expansion or enhancement of an existing alternative transportation system—to demonstrate improvements and expansions enabled by the program.
- Rehabilitation or replacement of vehicles or facilities of existing alternative transportation systems—to support and sustain existing meritorious systems into the future.
- Planning studies—to prepare for new systems that can be funded in future years.

II. Guidelines for Preparing and Submitting Proposals

Project proposal templates as well as guidance on completing them are available at <http://www.fta.dot.gov/atppl>. There are separate proposal templates for planning and capital (“implementation”) projects. Project proposals must be submitted to the designated contact person at the headquarters office of the Federal land management agency that manages the park or public land involved. This list can be found in the **ADDRESSES** section of this notice. If the project involves more than one Federal land management agency, a proposal template must be submitted to all agencies involved. Project proposals must adhere to the page limits listed on the proposal templates. Submission by e-mail is preferred. Mail and fax submissions will also be accepted.

In addition, a synopsis of this announcement will also be posted in the FIND module of the government-wide electronic grants Web site at <http://www.grants.gov>.

A “webinar”-style workshop to provide information on the program and guidance on applying will be held during the middle of December 2006. Check the Web site at <http://www.fta.dot.gov/atppl> for more details. If you do not have adequate Internet access you may request hard copies of the webinar presentations and information on how to phone in to the webinar from Scott Faulk at 202-366-1660.

If applicants would like to apply for funds appropriated for future fiscal years, applicants must reapply each year. An applicant may also propose a project that would expend money in multiple years even though the award is from one year's worth of appropriated ATPPL program funds. The project, would however, need to be ready to begin and need to be completed in a reasonable period of time, as evaluated on a case by case basis. In sum, the period of performance of the award is separate from the year of funds of the award.

III. Proposal Review, Selection and Notification

Proposals will first be reviewed and screened by the headquarters office of the relevant Federal land management agency (or agencies if the project involves more than one). Following this initial review, proposals will be evaluated by an interagency team which includes representatives from FTA, each of the Federal land management agencies, and DOI. After evaluating the

projects based on the criteria in the law and further explained in part E of this notice, the team will provide a recommendation to the Secretary of the Interior. The Secretary of the Interior, after consultation with and in cooperation with the Secretary of Transportation, shall determine the final selection and amount of funding for each project.

Selected projects will be announced in Spring 2007. DOI will notify each Federal land management agency of projects awarded for sites under the agency's jurisdiction. FTA will publish the list of all selected projects and funding levels in the **Federal Register**, as well as in its annual report to Congress on the ATPPL program submitted as part of its Annual Report on New Starts in early February 2008. Criteria and application procedures may be reassessed for subsequent years.

IV. Additional Program Information

A. Funds Administration

Once proposals have been reviewed and projects have been selected, FTA will award funds to the lead project sponsor to implement the project. These funds will be administered according to federal requirements as well as the appropriate policies, guidelines and rules of the pertinent agencies.

For projects directly administered by a Federal land management agency, these funds will be administered by interagency agreement between the FTA and the respective agency. For programs administered by a State, tribal, or local governmental authority, these funds will be administered through a grant administered by FTA.

B. Program Requirements and Oversight

The requirements for recipients of funding through the program can be found at <http://www.fta.dot.gov/atppl> under “Requirements for Recipients of Funding.” This document also describes the oversight FTA will provide for this program.

C. Performance Measures

Participants may be asked to compile data for use in measuring program performance.

D. Technical Assistance, Planning, and Research

The ATPPL program allows DOT to spend not more than 10 percent of program funds to carry out planning, research, and technical assistance activities. FTA will oversee the funds allocated to technical assistance to assist program participants in planning, implementing, and evaluating alternative transportation projects. In

addition, FTA will be responsible for the provision of planning guidance and dissemination of research findings. First products include a program manual to be issued in November and the webinar to be held on November 29. A limited number of technical assistance visits are available to assist potential project sponsors in the initial stages of planning. Project sponsors or potential project sponsors may contact the relevant Federal land management agency headquarters contact or the FTA contact in the Addresses section to request technical assistance or provide ideas of types of activities that would be particularly helpful in furthering the goals of the program.

Issued in Washington, DC, this 29th day of November, 2006.

James S. Simpson,
Administrator.

[FR Doc. E6-20540 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 26481]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *CIRCADIAN*.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006-26481 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order

for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before January 4, 2007.

ADDRESSES: Comments should refer to docket number MARAD-2006 26481. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *CIRCADIAN* is:

Intended Use: "Sailing instruction for coastal and offshore passages, sailing charters."

Geographic Region: Connecticut, Delaware, Florida, Georgia, North Carolina, South Carolina, Maryland, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Virginia, Puerto Rico and the U.S. Virgin Islands.

Dated: November 29, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6-20497 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: 2006 26482]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of

the Coastwise Trade Laws for the vessel *DREAM ON*.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 20xx-xxxx at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before January 4, 2007.

ADDRESSES: Comments should refer to docket number MARAD-2006 26482. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *DREAM ON* is:

Intended Use: "Sportfishing, USCG facility."

Geographic Region: Southeast Georgia.

Dated: November 29, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6-20498 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 26479]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *GRAND PAUSE*.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006-26479 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before January 4, 2007.

ADDRESSES: Comments should refer to docket number MARAD-2006 26479. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401,

Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *GRAND PAUSE* is:
Intended Use: "Inter-island carriage of passengers in Hawaiian waters."
Geographic Region: Hawaiian Islands coastwise.

Dated: November 29, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6-20500 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 26483]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *OFISHAL BUSINESS*.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006-26483 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in

accordance with Public Law 105-383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before January 4, 2007.

ADDRESSES: Comments should refer to docket number MARAD-2006 26483. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *OFISHAL BUSINESS* is:

Intended Use: "Sportfishing charters."
Geographic Region: Port Canaveral Florida.

Dated: November 29, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6-20496 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 26480]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *PASSAGES*.

SUMMARY: As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006-26480 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have

an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 4, 2007.

ADDRESSES: Comments should refer to docket number MARAD-2006 26480. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m.

and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *PASSAGES* is:

Intended Use: "Passengers for hire on sailing trips."

Geographic Region: Coast of Massachusetts.

Dated: November 29, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6-20499 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-81-P



Federal Register

**Tuesday,
December 5, 2006**

Part II

Department of Transportation

Federal Railroad Administration

**49 CFR Parts 213, 214 et al.
Proposed Revisions to the Schedules of
Civil Penalties for a Violation of a
Federal Railroad Safety Law or Federal
Railroad Administration Safety Regulation;
Proposed Rule**

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration**

49 CFR Parts 213, 214, 215, 217, 218, 219, 220, 221, 222, 223, 224, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, and 241

[Docket No. FRA-2006-25274]

RIN 2130-AB81

Proposed Revisions to the Schedules of Civil Penalties for a Violation of a Federal Railroad Safety Law or Federal Railroad Administration Safety Regulation

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Proposed schedules of civil penalties with request for comments.

SUMMARY: FRA is issuing for comment proposed statements of agency policy that would amend the 25 schedules of civil penalties (Schedules) issued as appendixes to FRA's safety regulations to reflect more accurately the safety risks associated with a violation of each section or subsection of the regulations, as well as to make sure that the civil monetary penalty amounts (CMP) are consistent across all the safety regulations. These proposed revisions to the Schedules are being published to inform members and representatives of the regulated community and the general public of the amount of the civil penalty that a respondent would likely be assessed for a given violation and to invite their comments on those proposed amounts. In addition, FRA is proposing to correct any obvious errors or omissions in the Schedules.

DATES: Written comments must be received by January 4, 2007. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

ADDRESSES: *Comments:* Comments related to this Docket No. FRA 2006-25274, Notice No. 1, may be submitted by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 202-493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington,

DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

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

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information.

Docket: For access to the docket to read background documents or comments received go to <http://dms.dot.gov> at any time or to PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Edward Pritchard, Director, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202-493-6247), edward.pritchard@dot.gov; or Carolina Mirabal, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202-493-6043), carolina.mirabal@dot.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

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List of Subjects in 49 CFR Parts 213, 214, 215, 217, 218, 219, 220, 221, 222, 223, 224, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, and 241

I. Background

FRA last published comprehensive revisions to the Schedules of its safety regulations on December 29, 1988. 53 FR 52918. The revisions reflected the higher maximum penalty amounts made available by the enactment of the Rail Safety Improvement Act of 1988 (RSIA) (Pub. L. 100-342). 53 FR 52918. With

the exception of the penalties relating to the hours of service laws (49 U.S.C. Ch. 211), RSIA raised the maximum CMP for any ordinary violation from \$2,500 to \$10,000 (the ordinary maximum) and to \$20,000 (the aggravated maximum) for a grossly negligent violation or a pattern of repeated violations that has created an imminent hazard of death or injury or caused death or injury.

Therefore, FRA published amendments to the Schedules in order to "give effect to the full range of civil penalties * * * permitted to be assessed for violation of specific regulations." 53 FR 52918. These amendments revised not only the maximum civil penalty amount for any violation, but also the individual line-item penalties for specific sections or subsections of the regulations.

The Rail Safety Enforcement and Review Act (RSERA) of 1992 (Pub. L. 102-365) increased the maximum CMP from \$1,000 to \$10,000 and in some cases to \$20,000, for a violation of the hours of service laws, making these penalty amounts uniform with those of FRA's other regulatory provisions. RSERA also increased the minimum CMP from \$250 to \$500 for all of FRA's regulatory provisions.

Since the publication of the Schedules in 1988, FRA has only adjusted its minimum and ordinary or aggravated maximum CMPs to conform to the mandates of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Act). The Inflation Act required that an agency adjust by regulation each maximum CMP, or range of minimum and maximum CMPs within that agency's jurisdiction by October 23, 1996, and adjust those penalty amounts once every four years thereafter to reflect inflation. Public Law 101-410, 104 Stat. 890, 28 U.S.C. 2461, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996, Public Law 104-134, 110 Stat. 1321-373, April 26, 1996. In the Inflation Act, Congress found a way to counter the effect that inflation has had on the CMPs by having the agencies charged with enforcement responsibility administratively adjust the CMPs. Currently FRA's minimum CMP is \$550, the ordinary maximum is \$11,000, and the aggravated maximum is \$27,000 (for when a "grossly negligent violation or pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury").

The Inflation Act requires only that the minimum, maximum and aggravated maximum civil penalty for a violation be adjusted, not that the guideline penalty amounts for a specific type of violation be adjusted; therefore, FRA

has not adjusted the line-item guideline penalties found in the Schedules in conjunction with its adjustments of the minimum, maximum and aggravated maximum civil penalties. FRA's practice has been to issue Schedules assigning to each section or subsection of the regulations specific dollar amounts for initial penalty assessments. These Schedules (and all line-item penalty amounts found within them) are statements of agency policy that specify the CMP that FRA will ordinarily assess for the violation of a particular section or subsection of a safety regulation, and are published to inform members of the regulated community of the amount that they are likely to be assessed for a given violation within the range of \$550 to \$11,000. The Schedules are "meant to provide guidance as to FRA's policy in predictable situations, not to bind FRA from using the full range of penalty authority where extraordinary circumstances warrant." 49 CFR part 209, App. A. Thus, regardless of the amounts shown in the Schedules, FRA continues to reserve the right to assess an amount other than that listed in the Schedules based on the circumstances of the alleged violation, as well as the statutory maximum CMP of up to \$27,000 per violation in situations "where a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury."

II. FRA's Approach to Reevaluating the Schedules of Civil Penalties

The Federal Railroad Administrator is authorized as the delegate of the Secretary of Transportation to enforce the Federal railroad safety statutes (49 U.S.C. Ch. 201–213) and regulations, including the statutory civil penalty provisions at 49 U.S.C. Ch. 213. 49 CFR 1.49. FRA currently has 25 regulations that contain Schedules.¹ FRA is proposing to amend each of the line-item penalty amounts contained within the Schedules for each of the regulations. In addition, FRA would correct any obvious errors or omissions in the Schedules. For example, FRA would add a line-item penalty for any existing section or subsection that has been inadvertently omitted from an existing Schedule, such as 49 CFR 213.110. FRA would also correct obvious spelling or typographical errors that are caught during the review process. Because the Schedules are

¹ FRA is not amending the Schedule found in 49 CFR part 210 because that part is enforcing the Railroad Noise Emission Standards established by the Environmental Protection Agency in 40 CFR part 201.

statements of agency policy, FRA has authority to issue these amendments without having to follow the notice and comment procedures under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA is providing members and representatives of the regulated community and the general public with an opportunity to comment on the proposed line-item penalty amounts before amending the Schedules.

In reevaluating the penalty amounts in the Schedules, FRA has developed the following Severity Scale (Severity Scale) for setting the line-item penalty amounts for each of the provisions in the safety regulations:

Severity Scale for Setting Line-Item Penalty Amounts in FRA Penalty Schedules

FRA's regulations are intended either to prevent a railroad accident/incident or to mitigate the consequences if one were to occur. For the most severe ratings on the scale, FRA concentrated on the *degrees of likelihood* that an accident/incident² will occur or that graver consequences will occur as a result of failing to comply with the section. The following severity scale is intended to reflect this focus:

Level A—Very High Probability—Failure of railroad to comply with this section or subsection of the Code of Federal Regulations (CFR) *is extremely likely to result* in one or more of the following events, but does not create an imminent hazard of death or injury to individuals or causes an actual death or injury³:

1. Rail equipment accident/incident;
- or

² "Accidents/incidents" is defined at 49 CFR 225.5 and 225.19(c). The term includes highway-rail grade crossing accidents/incidents, rail equipment accidents/incidents, and accidents/incidents resulting in death, injury, or occupational illness. A highway-rail grade crossing accident/incident is "[a]ny impact between railroad on-track equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing." 49 CFR 225.5, read in light of 49 CFR 225.19(c). Rail equipment accidents/incidents are defined in 49 CFR 225.19(c) to include "collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) * * * that result in damage to railroad property that is greater than the reporting threshold." Currently the reporting threshold is \$7,700. 70 FR 754141, 75417 (Dec. 20, 2005).

³ FRA has statutory authority to assess civil penalties in the range of \$550 (minimum) to \$11,000 (maximum) for ordinary violations of its regulations. FRA may only assess a penalty at the statutory maximum of \$27,000 "when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury." A \$27,000 statutory maximum penalty is the equivalent of a Level A Plus and is therefore off the scale.

2. Other accident/incident (not a rail equipment accident/incident).

FRA is proposing to issue a CMP guideline for Level "A" of \$8,500 for ordinary violations and \$11,000 for willful violations of the regulations.

Level B—High Probability—Failure of railroad to comply with this section or subsection of the CFR *is more likely than not to result* in the occurrence of:

1. Rail equipment accident/incident;
- or
2. Other accident/incident (not a rail equipment accident/incident).

FRA is proposing to issue a CMP guideline for Level "B" of \$6,500 for ordinary violations and \$9,000 for willful violations of the regulations.

For the following levels, FRA is not only addressing the likelihood that noncompliance will or could contribute to an accident or aggravated consequences if an accident occurred, but also the importance of maintaining compliance in order to prevent violations of these CFR sections or subsections from becoming leading accident causes in the future.

Level C—Moderate Probability—Failure of railroad to comply with this section or subsection of the CFR *substantially increases* the likelihood that one of the following will occur:

1. Rail equipment accident/incident;
- or
2. Other accident/incident (not a rail equipment accident/incident).

FRA is proposing to issue a CMP guideline for Level "C" of \$5,000 for ordinary violations and \$7,500 for willful violations of the regulations.

Level D—Minor Probability—Failure of the railroad to comply with this section or subsection of the CFR *slightly increases* the likelihood that one of the following will occur:

1. Rail equipment accident/incident;
- or
2. Other accident/incident (not a rail equipment accident/incident).

FRA is proposing to issue a CMP guideline for Level "D" of \$3,000 for ordinary violations and \$4,500 for willful violations of the regulations.

Level E—Minimal Probability—Failure to comply with this CFR section or subsection *does not increase the likelihood* that a rail equipment accident/incident or other accident/incident will occur, except in special circumstances, such as if the noncompliance is willful or widespread. Nevertheless, noncompliance with any one of these provisions undercuts the effectiveness of the Federal railroad safety program, and could compromise the safety of rail operations.

Example: Violation of § 225.13—Late Reports—Submitting a late accident/

incident report to FRA does not increase the likelihood that a rail equipment accident/incident or other accident/incident will occur. Widespread noncompliance with that provision, however, could lead to inaccuracies in Federal accident databases, which in turn could delay FRA's response to emerging safety problems.

FRA is proposing to issue a CMP guideline for Level "E" of \$1,500 for ordinary violations and \$2,500 for willful violations of the regulations.

As the Severity Scale shows, there are five different degrees of probabilities, ranging from A (the most severe) to E (the least severe of the types of violations). In developing the rankings (A through E), FRA concentrated on the degrees of likelihood that an accident/incident will occur or that graver consequences will occur as a result of the failure to comply with the particular section or subsection of the safety regulations. The Severity Scale was then used by FRA to assign a ranking (from A to E) to each of the provisions of the particular safety regulations that it has responsibility for administering and enforcing. The resulting line-item penalty amounts for each of the sections or subsections of the safety regulations affected reflect FRA's determination, based on safety data and industry knowledge, of how likely the violation of a particular section or subsection is to result in a rail equipment accident/incident or other type of accident/incident. FRA not only increased the penalty amounts in some instances, but also reduced the penalty amounts for some sections or subsections where it determined that a violation of the particular regulation constituted less of a safety risk. A determination by FRA that a CFR section or subsection does not increase the likelihood than a rail equipment accident/incident or other accident will occur, however, does not mean that this section or subsection is inconsequential to the effectiveness of the Federal railroad safety program or to the overall safety of railroad operations.

The new Schedules will continue to have two categories of violations: Ordinary and willful. See 49 CFR part 209, App. A for a discussion of "willful" violations. The ordinary penalties apply to railroads or other respondents, except individuals, while the "willful" column applies to willful violations committed by railroads or other respondents, including individuals. Each Schedule lists the CFR section or subsection in the left hand column, with the corresponding penalties listed in the columns next to it. The only exception continues to be 49 CFR part 231; what are listed in the

left hand column of the Schedule are the FRA "defect codes"⁴ for that part, and not the corresponding CFR sections. The reason for this continues to be the fact that the defect codes are organized by the type of safety appliance, which makes them easier to use, than the section numbers of part 231, which are organized primarily by car type. Nevertheless, if necessary, every defect code can be traced to a specific regulatory provision in part 231 or statutory provision in 49 U.S.C. Chapter 203, or both.

The following chart summarizes the proposed guideline amounts for ordinary and willful violations by severity level:

Severity level	Ordinary violations	Willful violations
Level A	\$8,500	\$11,000
Level B	6,500	9,000
Level C	5,000	7,500
Level D	3,000	4,500
Level E	1,500	2,500

III. Rankings of the Sections or Subsections of Each of the Rail Safety Regulations

Although the railroad industry's overall safety record has improved over the last decade, significant train accidents/incidents continue to occur. As a result, the FRA's safety program is being guided by careful analysis of accident/incident, inspection, and other safety data. FRA has also directed both its regulatory and compliance efforts toward the areas that involve the highest of safety risks, in order to reduce the number and severity of accidents/incidents caused by a failure to comply with those safety regulations. Therefore, the goal of the new line-item penalty amounts for each of the Schedules is to reflect the different degrees of probability that a violation of a particular CFR section or subsection will result in a rail equipment accident/incident or other accident/incident, in order to improve the overall safety of railroad operations.

A. Motive Power and Equipment Regulations (MP&E) (49 CFR Parts 215, 218 (Partially), 223, 224, 229, 230, 231, 232, 238, and 239 (Partially))

In reevaluating the line-item penalty amounts for each of the CFR sections or subsections found in Parts 215, 218 (partially), 223, 224, 229, 231, 232, 238,

and 239 (partially) of the CFR, FRA took into consideration, among other factors, the nationwide list of "Top 10" MP&E defects. The defects are listed in the table below, in descending order, according to the number of times that each defect was determined to have caused a rail equipment accident/incident, excluding highway-rail grade crossing accidents/incidents that are also classified as rail equipment accidents/incidents (hereinafter "train accidents," between 2002 and 2005.

Journal (roller bearing) overheated—(158)	Coupler/draft system defects (car)—(55)
Truck bolster stiff—(78)	Electrically caused fire (locomotive)—(50)
Side bearing clearance insufficient—(67)	Coupler retainer pin/cross key—(48)
Broken rim—(62)	Damaged flange or tread (built up)—(45)
Pantograph defect (locomotive)—(59)	Rigging down or dragging—(43)

The CFR sections or subsections that relate to the defects associated with greater safety risks have received more severe rankings in the Schedules, and as such now carry higher CMP amounts. For example, a violation of 49 CFR 215.103(d)(3), which is a defective wheel rim with a crack of one inch or more, received an "A" severity ranking (and a proposed guideline penalty amount of \$8,500) because of the high safety risk that the defect will cause a broken-rim derailment. In addition, the FRA applied the Severity Scale in order to determine the degrees of likelihood that any type of accident/incident will occur as a result of noncompliance with the regulations.

B. Track and Workplace Safety Regulations (49 CFR Parts 213 and 214)

In recent years, most of the serious accidents/incidents (train collisions or derailments resulting in a release of hazardous materials or harm to rail passengers, rail employees, or the general public) resulted from human factor or track causes. Over the last five years 34 percent of train accidents were caused by track defects. In an effort to reduce track accidents, FRA is focusing its track inspections on the areas of highest risks and encouraging inspectors to recommend enforcement action on the kinds of violations that are considered leading causes of track-caused train accidents. Therefore, in evaluating the line-item penalty amounts for all the sections or subsections, FRA took into consideration the leading causes of

⁴ Defect codes were developed by FRA in order to facilitate computerization of inspection data generated by FRA inspectors by providing a digital format for every CFR section. Defect codes are analytical tools only and are subject to change without notice.

track-related train accidents when applying the Severity Scale to the Track Safety Standards. For example, 49 CFR 213.53(b)—Gage—received an “A” (and a proposed penalty guideline amount of \$8,500) ranking because it is one of the leading causes of track-related train accidents.

In ranking the sections or subsections of 49 CFR part 214 (Part 214)—Railroad Workplace Safety, FRA took into consideration not only the probability that an accident/incident could result if a violation occurred, but also the fact that the accident/incident could result in serious injury or death. One example of the rankings for part 214 is the ranking for the second type of violation of section 214.103, which requires bridge workers to use fall protection. This subsection received a ranking of “A” (and a proposed guideline penalty of \$8,500) because a violation of the subsection could result in serious injury or death, as evidenced by the several bridge worker fatalities in the past 10 years due to the failure to use fall protection.

C. Grade Crossing Signal Systems and Signal and Train Control Regulations (CFR Parts 233, 234, 235, and 236)

FRA applied the Severity Scale to each of the sections in Parts 233, 234, 235, and 236, in order to determine the appropriate rankings for each of the sections or subsections of the regulations. In the area of signal and train control (S&TC), FRA followed the Severity Scale, which concentrates on the potential for an accident/incident resulting from noncompliance. While there are relatively few train accidents associated with S&TC causes and few highway-rail grade crossing accidents/incidents associated with S&TC causes that have occurred in recent years, it is imperative that the Schedules still reflect the levels of risks associated with the violation of these CFR sections or subsections, in order to prevent future S&TC-caused accidents.

D. Operating Practices Regulations (CFR Parts 217, 218 (Partially), 219, 220, 221, 222, 225, 228, 239 (Partially), 240, and 241)

Over the last five years, human-factor-related causes have accounted for 38 percent of all train accidents. A review of the FRA’s Office of Safety database indicated that the top four human factor causes contributing to train accidents are as follows: (1) Switch improperly lined; (2) shoving movement, absence of employee on, at or ahead of movement; (3) shoving movement, failure to control; and (4) buff/slack action excess, train handling. These top causes are

often involved in violations of such regulations as 49 CFR part 220, Railroad Communications. A review of the top four causes for human factors train accidents between 2001 and 2005 showed that these causes accounted for 2,175 reportable train accidents/incidents (including 12 employee fatalities, 389 employee injuries, and \$60,550,000 in rail and equipment damages). Therefore, when applying the Severity Scale to the CFR sections or subsections, FRA considered all of this safety information in order to ensure that each line-item penalty amount reflected the likelihood that noncompliance would result in a train accident/incident, or that graver consequences would occur as a result of failing to comply with the section or subsection of the regulations⁵.

List of Subjects

49 CFR Part 213

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 215

Freight, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 217

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, safety, Transportation.

49 CFR Part 220

Penalties, Radio, Railroad safety.

49 CFR Part 221

Penalties, Railroad safety, reporting and recordkeeping requirements.

49 CFR Part 222

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 223

Glass and glass products, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 224

Incorporation by reference, Penalties, Railroad locomotive safety, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 228

Penalties, Railroad employees, Reporting and recordkeeping requirements.

49 CFR Part 229

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 230

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety.

49 CFR Part 232

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 233

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 235

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 236

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Fire prevention, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 239

Penalties, Railroad safety, Reporting and recordkeeping.

⁵FRA has separately proposed that additional Railroad Operating Rules be incorporated in the Federal regulations and made directly enforceable. The notice of proposed rulemaking was issued on October 12, 2006, and included additional amendments to the Schedules of Parts 217 and 218. See 71 FR 60372.

49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 241

Communications, Penalties, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FRA proposes to amend Parts 213, 214, 215, 217, 218, 219, 220, 221, 222, 223, 224, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, and 241 of Subtitle B, Chapter II of Title 49 of the Code of Federal Regulations as follows:

PART 213—[AMENDED]

1. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

2. Appendix B to part 213 is revised to read as follows:

APPENDIX B TO PART 213.—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
Subpart A—General		
213.4(a) Excepted track ²	\$5,000	\$7,500
213.4(b) Excepted track ²	6,500	9,000
213.4(c) Excepted track ²	6,500	9,000
213.4(d) Excepted track ²	6,500	9,000
213.4(e):		
(1) Excepted track	6,500	9,000
(2) Excepted track	6,500	9,000
(3) Excepted track	6,500	9,000
(4) Excepted track	6,500	9,000
213.4(f) Excepted track	3,000	4,500
213.7 Designation of qualified persons to supervise certain renewals and inspect track	5,000	7,500
213.9 Classes of track: Operating speed limits	8,500	11,000
213.11 Restoration or renewal of track under traffic conditions	5,000	7,500
213.13 Measuring track not under load	6,500	9,000
Subpart B—Roadbed		
213.33 Drainage	6,500	9,000
213.37 Vegetation	5,000	7,500
Subpart C—Track Geometry		
213.53 Gage	8,500	11,000
213.55 Alignment	6,500	9,000
213.57 Curves; elevation and speed limitations	6,500	9,000
213.59 Elevation of curved track; runoff	6,500	9,000
213.63 Track surface	6,500	9,000
Subpart D—Track Structure		
213.103 Ballast; general	5,000	7,500
213.109 Crossties		
(a) Material used	3,000	4,500
(b) Distribution of ties	6,500	9,000
(c) Sufficient number of nondefective ties	5,000	7,500
(d) Sufficient number of nondefective ties (effective 9/21/2000)	5,000	7,500
(f) Joint ties	5,000	7,500
(g) Track constructed without crossties	5,000	7,500
213.110 Gage restraint measurement systems		
(a) through (b) Notification	5,000	7,500
(c) Design requirements	6,500	9,000
(g) through (i) Exception reports	5,000	7,500
(j) Data integrity	6,500	9,000
(k) Training	5,000	7,500
(l) Remedial actions	8,500	11,000
(m) PTLF	6,500	9,000
(n) Recordkeeping	5,000	7,500
(o) Inspection frequency	8,500	11,000
213.113 Defective rails	8,500	11,000
213.115 Rail end mismatch	5,000	7,500
213.119 Continuous welded rail		
(a) CWR plan filed with FRA	6,500	9,000
(b) CWR fastening requirements	6,500	9,000
(c) CWR rail temperature requirements	6,500	9,000
(d) CWR alignment monitoring requirements	6,500	9,000
(e) Procedures for controlling train speed on CWR track	6,500	9,000
(f) CWR track inspections	6,500	9,000
(g) CWR joint bar inspections	6,500	9,000

APPENDIX B TO PART 213.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(h) CWR training	6,500	9,000
(i) CWR recordkeeping requirements	6,500	9,000
213.121(a) Rail joints	6,500	9,000
213.121(b) Rail joints	6,500	9,000
213.121(c) Rail joints	8,500	11,000
213.121(d) Rail joints	6,500	9,000
213.121(e) Rail joints	6,500	9,000
213.121(f) Rail joints	6,500	9,000
213.121(g) Rail joints	6,500	9,000
213.121(h) Rail joints	6,500	9,000
213.122 Torch cut rail	6,500	9,000
213.123 Tie plates	5,000	7,500
213.127 Rail fastenings	6,500	9,000
213.133 Turnouts and track crossings, generally	5,000	7,500
213.135 Switches:		
(a) through (g)	6,500	9,000
(h) chipped or worn points	6,500	9,000
213.137 Frogs	6,500	9,000
213.139 Spring rail frogs	6,500	9,000
213.141 Self-guarded frogs	5,000	7,500
213.143 Frog guard rails and guard faces; gage	6,500	9,000
Subpart E—Track Appliances and Track-Related Devices		
213.205 Derails	5,000	7,500
Subpart F—Inspection		
213.233 Track inspections	5,000	7,500
213.235 Switches, crossings, transition devices	5,000	7,500
213.237 Inspection of rail	6,500	9,000
213.239 Special inspections	5,000	7,500
213.241 Inspection records	5,000	7,500
Subpart G—High Speed		
213.305 Designation of qualified individuals; general qualifications	8,500	11,000
213.307 Class of track; operating speed limits	8,500	11,000
213.309 Restoration or renewal of track under traffic conditions	8,500	11,000
213.311 Measuring track not under load	6,500	9,000
213.319 Drainage	5,000	7,500
213.321 Vegetation	5,000	7,500
213.323 Track gage	8,500	11,000
213.327 Alignment	8,500	11,000
213.329 Curves, elevation and speed limits	8,500	11,000
213.331 Track surface	8,500	11,000
213.333 Automated vehicle inspection systems	8,500	11,000
213.335 Crossties		
(a) Material used	5,000	7,500
(b) Distribution of ties	6,500	9,000
(c) Sufficient number of nondefective ties, non-concrete	5,000	7,500
(d) Sufficient number of nondefective, concrete ties	8,500	11,000
(e) Joint ties	8,500	11,000
(f) Track constructed without crossties	8,500	11,000
(g) Non-defective ties surrounding defective ties	8,500	11,000
(h) Tie plates	8,500	11,000
(i) Tie plates	8,500	11,000
213.337 Defective rails	8,500	11,000
213.339 Inspection of rail in service	8,500	11,000
213.341 Inspection of new rail	8,500	11,000
213.343 Continuous welded rail (a) through (h)	8,500	11,000
213.345 Vehicle qualification testing (a) through (b)	8,500	11,000
(c) through (e)	8,500	11,000
213.347 Automotive or railroad crossings at grade	6,500	9,000
213.349 Rail end mismatch	6,500	9,000
213.351(a) Rail joints	8,500	11,000
213.351(b) Rail joints	8,500	11,000
213.351(c) Rail joints	8,500	11,000
213.351(d) Rail joints	8,500	11,000
213.351(e) Rail joints	6,500	9,000
213.351(f) Rail joints	8,500	11,000

APPENDIX B TO PART 213.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
213.351(g) Rail joints	8,500	11,000
213.352 Torch cut rails	5,000	7,500
213.353 Turnouts, crossovers, transition devices	8,500	11,000
213.355 Frog guard rails and guard faces; gage	6,500	9,000
213.357 Derails	5,000	7,500
213.359 Track stiffness	8,500	11,000
213.361 Right of way	5,000	7,500
213.365 Visual inspections	8,500	11,000
213.367 Special inspections	8,500	11,000
213.369 Inspections records	5,000	7,500

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

² In addition to assessment of penalties for each instance of noncompliance with the requirements identified by this footnote, track segments designated as excepted track that are or become ineligible for such designation by virtue of noncompliance with any of the requirements to which this footnote applies are subject to all other requirements of part 213 until such noncompliance is remedied.

PART 214—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

4. Appendix A to part 214 is revised to read as follows:

3. The authority citation for part 214 continues to read as follows:

APPENDIX A TO PART 214.—SCHEDULE OF CIVIL PENALTIES ¹

Section	Violation	Willful violation
Subpart B—Bridge Worker Safety Standards		
214.103 Fall protection:		
(i) Failure to provide fall protection	\$6,500	\$9,000
(ii) Failure to use fall protection	8,500	11,000
214.105 Standards and practices:		
(a) General:		
(1) Fall protection used for other purposes	5,000	7,500
(2) Failure to remove from service	5,000	7,500
(3) Failure to protect from deterioration	5,000	7,500
(4) Failure to inspect and remove	6,500	9,000
(5) Failure to train	6,500	9,000
(6) Failure to provide for prompt rescue	6,500	9,000
(7) Failure to prevent damage	5,000	7,500
(8) Failure to use proper connectors	5,000	7,500
(9) Failure to use proper anchorages	5,000	7,500
(b) Fall arrest system:		
(1)–(17) Failure to provide conforming equipment	5,000	7,500
(c) Safety net systems:		
(1) Failure to install close to workplace	5,000	7,500
(2) Failure to provide fall arrest if over 30 feet	6,500	9,000
(3) Failure to provide for unobstructed fall	6,500	9,000
(4) Failure to test	5,000	7,500
(5) Failure to use proper equipment	5,000	7,500
(6) Failure to prevent contact with surface below	6,500	9,000
(7) Failure to properly install	6,500	9,000
(8) Failure to remove defective nets	6,500	9,000
(9) Failure to inspect	6,500	9,000
(10) Failure to remove objects	3,000	4,500
(11)–(13) Failure to use conforming equipment	5,000	7,500
214.107 Working over water:		
(a)(i) Failure to provide life vest	6,500	9,000
(ii) Failure to use life vest		9,000
(c) Failure to inspect	5,000	7,500
(e)(i) Failure to provide ring buoys	6,500	9,000
(ii) Failure to use ring buoys	5,000	7,500
(f)(i) Failure to provide skiff	5,000	7,500
(ii) Failure to use skiff		7,500
214.109 Scaffolding:		
(a)–(f) Failure to provide conforming equipment	6,500	9,000
214.113 Head protection:		
(a)(i) Failure to provide	6,500	9,000
(ii) Failure to use		9,000
(b) or (c) Failure to provide conforming equipment	5,000	7,500

APPENDIX A TO PART 214.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section	Violation	Willful violation
214.115 Foot protection:		
(a)(i) Failure to require use of	5,000	7,500
(ii) Failure to use .....	.....	7,500
214.117 Eye and face protection:		
(a)(i) Failure to provide	5,000	7,500
(ii) Failure to use .....	.....	4,500
(b) Failure to use conforming equipment	5,000	7,500
(c) Use of defective equipment	5,000	7,500
(d) Failure to provide for corrective lenses	5,000	7,500
Subpart C—Roadway Worker Protection Rule		
214.303 Railroad on-track safety programs, generally:		
(a) Failure of a railroad to implement an On-track Safety Program	8,500	11,000
(b) On-track Safety Program of a railroad includes no internal monitoring procedure	8,500	11,000
214.305 Compliance Dates:		
Failure of a railroad to comply by the specified dates	5,000	7,500
214.307 Review and approval of individual on-track safety programs by FRA:		
(a)(i) Failure to notify FRA of adoption of On-track Safety Program	5,000	7,500
(ii) Failure to designate primary person to contact for program review	5,000	7,500
214.309 On-track safety program documents:		
(1) On-track Safety Manual not provided to prescribed employees	6,500	9,000
(2) On-track Safety Program documents issued in fragments	5,000	7,500
214.311 Responsibility of employers:		
(b) Roadway worker required by employer to foul a track during an unresolved challenge	8,500	11,000
(c) Roadway workers not provided with written procedure to resolve challenges of on-track safety procedures	6,500	9,000
214.313 Responsibility of individual roadway workers:		
(a) Failure to follow railroad's on-track safety rules .....	.....	11,000
(b) Roadway worker fouling a track when not necessary in the performance of duty .....	.....	11,000
(c) Roadway worker fouling a track without ascertaining that provision is made for on-track safety .....	.....	11,000
(d) Roadway worker failing to notify employer of determination of improper on-track safety provisions .....	.....	11,000
214.315 Supervision and communication:		
(a) Failure of employer to provide job briefing	8,500	11,000
(b) Incomplete job briefing	6,500	9,000
(c)(i) Failure to designate roadway worker in charge of roadway work group	6,500	9,000
(ii) Designation of more than one roadway worker in charge of one roadway work group	5,000	7,500
(iii) Designation of non-qualified roadway worker in charge of roadway work group	6,500	9,000
(d)(i) Failure to notify roadway workers of on-track safety procedures in effect	6,500	9,000
(ii) Incorrect information provided to roadway workers regarding on-track safety procedures in effect	6,500	9,000
(iii) Failure to notify roadway workers of change in on-track safety procedures	6,500	9,000
(e)(i) Failure of lone worker to communicate with designated employee for daily job briefing .....	.....	7,500
(ii) Failure of employer to provide means for lone worker to receive daily job briefing	6,500	9,000
214.317 On-track safety procedures, generally:		
On-track safety rules conflict with this part	8,500	11,000
214.319 Working limits, generally:		
(a) Non-qualified roadway worker in charge of working limits	8,500	11,000
(b) More than one roadway worker in charge of working limits on the same track segment	6,500	9,000
(c)(1) Working limits released without notifying all affected roadway workers	8,500	11,000
(2) Working limits released before all affected roadway workers are otherwise protected	8,500	11,000
214.321 Exclusive track occupancy:		
(a) Improper transmission of authority for exclusive track occupancy	5,000	7,500
(b)(1) Failure to repeat authority for exclusive track occupancy to issuing employee .....	.....	7,500
(2) Failure to retain possession of written authority for exclusive track occupancy .....	.....	9,000
(3) Failure to record authority for exclusive track occupancy when issued .....	.....	9,000
(c) Limits of exclusive track occupancy not identified by proper physical features	8,500	11,000
(d)(1) Movement authorized into limits of exclusive track occupancy without authority of roadway worker in charge	8,500	11,000
(2) Movement authorized within limits of exclusive track occupancy without authority of roadway worker in charge	8,500	11,000
(3) Movement within limits of exclusive track occupancy exceeding restricted speed without authority of roadway worker in charge	8,500	11,000
214.323 Foul time:		
(a) Foul time authority overlapping movement authority of train or equipment	8,500	11,000
(b) Failure to repeat foul time authority to issuing employee	6,500	9,000
214.325 Train coordination:		
(a) Train coordination limits established where more than one train is authorized to operate	6,500	9,000
(b)(1) Train coordination established with train not visible to roadway worker at the time	5,000	7,500
(2) Train coordination established with moving train .....	.....	7,500
(3) Coordinated train moving without authority of roadway worker in charge	6,500	9,000
(4) Coordinated train releasing movement authority while working limits are in effect	6,500	9,000

APPENDIX A TO PART 214.—SCHEDULE OF CIVIL PENALTIES¹—Continued

Section	Violation	Willful violation
214.327 Inaccessible track:		
(a) Improper control of entry to inaccessible track	6,500	9,000
(5) Remotely controlled switch not properly secured by control operator	6,500	9,000
(b) Train or equipment moving within inaccessible track limits without permission of roadway worker in charge	6,500	9,000
(c) Unauthorized train or equipment located within inaccessible track limits	6,500	9,000
214.329 Train approach warning provided by watchmen/lookouts:		
(a) Failure to give timely warning of approaching train		11,000
(b)(1) Failure of watchman/lookout to give full attention to detecting approach of train		9,000
(2) Assignment of other duties to watchman/lookout	6,500	9,000
(c) Failure to provide proper warning signal devices	5,000	7,500
(d) Failure to maintain position to receive train approach warning signal	6,500	9,000
(e) Failure to communicate proper warning signal	6,500	9,000
(f)(1) Assignment of non-qualified person as watchman/lookout	6,500	9,000
(2) Non-qualified person accepting assignment as watchman/lookout	5,000	7,500
(g) Failure to properly equip a watchman/lookout	5,000	7,500
214.331 Definite train location:		
(a) Definite train location established where prohibited	6,500	9,000
(b) Failure to phase out definite train location by required date	5,000	7,500
(d)(1) Train location information issued by unauthorized person	6,500	9,000
(2) Failure to include all trains operated on train location list	8,500	11,000
(5) Failure to clear track 10 minutes before earliest departure time of train at last station prior to work location, or failure to remain clear until such train passed		9,000
(6) Train passing station before time shown in train location list	8,500	11,000
(7) Non-qualified person using definite train location to establish on-track safety	6,500	9,000
214.333 Informational line-ups of trains:		
(a) Informational line-ups of trains used for on-track safety where prohibited	8,500	11,000
(b) Informational line-up procedures inadequate to protect roadway workers	8,500	11,000
(c) Failure to discontinue informational line-ups by required date	5,000	7,500
214.335 On-track safety procedures for roadway work groups:		
(a) Failure to provide on-track safety for a member of a roadway work group	8,500	11,000
(b) Member of roadway work group fouling a track without authority of employee in charge	6,500	9,000
(c) Failure to provide train approach warning or working limits on adjacent track where required	8,500	11,000
214.337 On-track safety procedures for lone workers:		
(b) Failure by employer to permit individual discretion in use of individual train detection	8,500	11,000
(c)(1) Individual train detection used by non-qualified employee	6,500	9,000
(2) Use of individual train detection while engaged in heavy or distracting work	5,000	7,500
(3) Use of individual train detection in controlled point or manual interlocking	5,000	7,500
(4) Use of individual train detection with insufficient visibility	8,500	11,000
(5) Use of individual train detection with interfering noise		7,500
(6) Use of individual train detection while a train is passing		9,000
(d) Failure to maintain access to place of safety clear of live tracks		11,000
(e) Lone worker unable to maintain vigilant lookout		9,000
(f)(1) Failure to prepare written statement of on-track safety		4,500
(2) Incomplete written statement of on-track safety		4,500
(3) Failure to produce written statement of on-track safety to FRA		4,500
214.339 Audible warning from trains:		
(a) Failure to require audible warning from trains	5,000	7,500
(b) Failure of train to give audible warning where required	5,000	7,500
214.341 Roadway maintenance machines:		
(a) Failure of on-track safety program to include provisions for safety near roadway maintenance machines	8,500	11,000
(b) Failure to provide operating instructions	5,000	7,500
(1) Assignment of non-qualified employee to operate machine	6,500	9,000
(2) Operator unfamiliar with safety instructions for machine	6,500	9,000
(3) Roadway worker working with unfamiliar machine	6,500	9,000
(c) Roadway maintenance machine not clear of passing trains or operation of machine component closer than four feet to adjacent track without procedural instructions	8,500	11,000
214.343 Training and qualification, general:		
(a)(1) Failure of railroad program to include training provisions	6,500	9,000
(2) Failure to provide initial training	6,500	9,000
(b) Failure to provide annual training	6,500	9,000
(c) Assignment of non-qualified railroad employees to provide on-track safety	6,500	9,000
(d)(1) Failure to maintain records of qualifications	5,000	7,500
(2) Incomplete records of qualifications	5,000	7,500
(3) Failure to provide records of qualifications to FRA	5,000	7,500
214.345 Training for all roadway workers	6,500	9,000
214.347 Training and qualification for lone workers.		
214.349 Training and qualification of watchmen/lookouts.		
214.351 Training and qualification of flagmen.		
214.353 Training and qualification of roadway workers who provide on-track safety for roadway work groups.		

APPENDIX A TO PART 214.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section	Violation	Willful violation
214.355 Training and qualification in on-track safety for operators of roadway maintenance machines.		
Subpart D—On-Track Roadway Maintenance Machines and Hi-Rail Vehicles		
214.503 Good-faith challenges; procedures for notification and resolution:		
(a) Failure of employee to notify employer that the machine or vehicle does not comply with this subpart or has a condition inhibiting safe operation .....	.....	9,000
(b) Roadway worker required to operate machine or vehicle when good-faith challenge not resolved	8,500	11,000
(c) Failure of employer to have or follow written procedures to resolve good-faith challenges	8,500	11,000
214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs:		
(a) Failure to equip new machines with required systems	8,500	11,000
(b) Failure of new or existing machines to protect employees from exposure to air contaminants	8,500	11,000
(c) Failure of employer to maintain required list of machines or make list available	5,000	7,500
(d) Removal of “designated machine” from list before retired or sold	5,000	7,500
(e) Personal respiratory protective equipment not provided when ventilation system fails	8,500	11,000
(f) Personal respiratory protective equipment fails to meet required standards	8,500	11,000
(g) Other new machines with enclosed cabs not equipped with operable heating and ventilation systems ..	8,500	11,000
(h) Non-enclosed station not equipped with covering, where feasible	8,500	11,000
214.507 Required safety equipment for new on-track roadway maintenance machines:		
(a)(1)–(5) Failure to equip new machine or provide protection as specified in these paragraphs	8,500	11,000
(a)(6)–(7) Failure to equip new machine with first-aid kit or operative and charged fire extinguisher	6,500	9,000
(b) Position for operator to stand not properly equipped to provide safe and secure position	8,500	11,000
(c) New machine not equipped with accurate speed indicator, as required	6,500	9,000
(d) As-built light weight not conspicuously displayed on new machine	6,500	9,000
214.509 Required visual illumination and reflective devices for new on-track roadway maintenance machines	6,500	9,000
214.511 Required audible warning devices for new on-track roadway maintenance machines	8,500	11,000
214.513 Retrofitting of existing on-track roadway maintenance machines; general:		
(a) Failure to provide safe and secure position and protection from moving parts inside cab for each roadway worker transported on machine	8,500	11,000
(b) Horn or other audible warning device is missing, inoperable, or has non-compliant triggering mechanism	6,500	9,000
(c) Illumination device or portable light missing, inoperable, improperly secured, or incapable of illuminating track as required	6,500	9,000
214.515 Overhead covers for existing on-track roadway maintenance machines:		
(a) Failure to repair, reinstall, or maintain overhead cover as required	8,500	11,000
(b) Failure to provide written response to operator’s request within 60 days	5,000	7,500
214.517 Retrofitting of existing on-track roadway maintenance machines manufactured on or after January 1, 1991:		
(a) Failure to equip machine with change-of-direction alarm or rearward viewing device	8,500	11,000
(b) Failure to equip machine with operative heater	8,500	11,000
(c) Failure to display light weight of machine as required	6,500	9,000
(d) Failure to equip machine with reflective material, reflective device, or operable brake lights	8,500	11,000
(e) Failure to install or replace safety glass as required	8,500	11,000
(f) Failure to equip machine with turntable restraint device or warning light as required	8,500	11,000
214.518 Safe and secure position for riders	8,500	11,000
214.519 Floors, decks, stairs, and ladders for on-track roadway maintenance machines	8,500	11,000
214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles	6,500	9,000
214.523 Hi-rail vehicles:		
(a) Failure to inspect hi-rail gear annually	8,500	11,000
(b) Failure to maintain inspection record or make record available to FRA	5,000	7,500
(c) Failure to equip new hi-rail vehicle with alarm and light or beacon as required	6,500	9,000
(d)(2) Failure of operator to tag, date or report non-complying condition	5,000	7,500
(d)(3) Failure to repair or replace non-complying alarms, lights or beacons as required	6,500	9,000
214.525 Towing with on-track roadway maintenance machines or hi-rail vehicles	8,500	11,000
214.527 On-track roadway maintenance machines; inspection for compliance and schedule for repairs:		
(a) Failure of operator to check on-track roadway maintenance machine for compliance	5,000	7,500
(b) Failure of operator to tag, date, or report noncomplying condition	5,000	7,500
(c)(1)–(4) Failure to meet requirements for operating on-track roadway maintenance machine with non-complying headlights, work lights, horn, fire extinguisher, alarm, warning light, or beacon	6,500	9,000
(c)(5) Failure to repair or replace defective or missing operator’s seat within required time period	8,500	11,000
214.529 In-service failure of primary braking system	8,500	11,000
214.531 Schedule of repairs; general	6,500	9,000
214.533 Schedule of repairs subject to availability of parts:		
(a)–(c) Failure to order necessary part(s), make repair(s), or remove on-track roadway maintenance machine or hi-rail vehicle from service as required	6,500	9,000

APPENDIX A TO PART 214.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section	Violation	Willful violation
(d) Failure to maintain record or make record available to FRA	5,000	7,500

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. The penalty schedule uses section numbers from 49 CFR part 214. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 215—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461.

6. Appendix B to part 215 is revised to read as follows:

5. The authority citation for part 215 continues to read as follows:

APPENDIX B TO PART 215.—SCHEDULE OF CIVIL PENALTIES ¹

Section	Violation	Willful violation
Subpart A—General		
215.9 Movement for repair:		
(a), (c)	(¹)	(¹)
(b)	\$3,000	\$4,500
215.11 Designation of qualified persons	5,000	7,500
215.13 Pre-departure inspection	5,000	7,500

Subpart B—Freight Car Components

215.103 Defective wheel:		
(a) Flange thickness of:		
(1) 7/8" or less but more than 13/16"	5,000	7,500
(2) 13/16" or less	6,500	9,000
(b) Flange height of:		
(1) 1 1/2" or greater but less than 1 5/8"	5,000	7,500
(2) 1 5/8" or more	6,500	9,000
(c) Rim thickness of:		
(1) 1 1/16" or less but more than 5/8"	5,000	7,500
(2) 5/8" or less	6,500	9,000
(d) Wheel rim, flange plate hub width:		
(1) Crack of less than 1"	5,000	7,500
(2) Crack of 1" or more	6,500	9,000
(3) Break	8,500	11,000
(e) Chip or gouge in flange of:		
(1) 1 1/2" or more but less than 1 5/8" in length; and 1/2" or more but less than 5/8" in width	3,000	4,500
(2) 1 5/8" or more in length; or 5/8" or more in width	5,000	7,500
(f) Slid flat or shelled spot(s):		
(1)(i) One spot more than 2 1/2", but less than 3", in length	3,000	4,500
(ii) One spot 3" or more in length	5,000	7,500
(2)(i) Two adjoining spots each of which is more than 2" but less than 2 1/2" in length	3,000	4,500
(ii) Two adjoining spots both of which are at least 2" in length, if either spot is 2 1/2", or more in length	5,000	7,500
(g) Loose on axle	8,500	11,000
(h) Overheated; discoloration extending:		
(1) more than 4" but less than 4 1/2"	5,000	7,500
(2) 4 1/2" or more	6,500	9,000
(i) Welded	6,500	9,000
215.105 Defective axle:		
(a)(1) Crack of 1" or less	5,000	7,500
(2) Crack of more than 1"	6,500	9,000
(3) Break	8,500	11,000
(b) Gouge in surface that is between the wheel seats and is more than 1/8" in depth	3,000	4,500
(c) End collar with crack or break	5,000	7,500
(d) Journal overheated	8,500	11,000
(e) Journal surface has: a ridge; a depression; a circumferential score; corrugation; a scratch; a continuous streak; pitting; rust; or etching	5,000	7,500
215.107 Defective plain bearing box: general:		
(a)(1) No visible free oil	3,000	4,500
(2) Lubricating pad dry (no expression of oil observed when pad is compressed)	6,500	9,000
(b) Box lid is missing, broken, or open except to receive servicing	3,000	4,500
(c) Contains foreign matter that can be expected to damage the bearing or have a detrimental effect on the lubrication of the journal and bearing	5,000	7,500

APPENDIX B TO PART 215.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section	Violation	Willful violation
215.109 Defective plain bearing box: journal lubrication system:		
(a) Lubricating pad has a tear	3,000	4,500
(b) Lubricating pad scorched, burned, or glazed	5,000	7,500
(c) Lubricating pad contains decaying or deteriorating fabric	5,000	7,500
(d) Lubricating pad has an exposed center core or metal parts contacting the journal	5,000	7,500
(e) Lubricating pad is missing or not in contact with the journal	6,500	9,000
215.111 Defective plain bearing:		
(a) Missing	8,500	11,000
(b) Bearing liner is loose or has piece broken out	5,000	7,500
(c) Overheated	8,500	11,000
215.113 Defective plain bearing wedge:		
(a) Missing	8,500	11,000
(b) Cracked	5,000	7,500
(c) Broken	6,500	9,000
(d) Not located in its design position	5,000	7,500
215.115 Defective roller bearing:		
(a)(1) Overheated	8,500	11,000
(2)(i) Cap screw(s) loose	6,500	9,000
(ii) Cap screw lock broken, missing or improperly applied	3,000	4,500
(3) Seal is loose or damaged, or permits leakage of lubricant	3,000	4,500
(b)(1) Not inspected and tested after derailment	6,500	9,000
(2) Not disassembled after derailment	5,000	7,500
(3) Not repaired or replaced after derailment	6,500	9,000
215.117 Defective roller bearing adapter:		
(a) Cracked or broken	5,000	7,500
(b) Not in its design position	6,500	9,000
(c) Worn on the crown	5,000	7,500
215.119 Defective freight car truck:		
(a)(1) A side frame or bolster that is broken	8,500	11,000
(2)(i) Side frame or bolster with crack of: $\frac{1}{4}$ " or more, but less than 1"	5,000	7,500
(ii) 1" or more	6,500	9,000
(b) A snubbing device that is ineffective or missing	5,000	7,500
(c) Side bearing(s):		
(1) Assembly missing or broken	8,500	11,000
(2) In contact except by design	6,500	9,000
(3), (4) Total clearance at one end or at diagonally opposite sides of:		
(i) more than $\frac{3}{4}$ " but not more than 1"	5,000	7,500
(ii) more than 1"	6,500	9,000
(d) Truck spring(s):		
(1) Do not maintain travel or load	5,000	7,500
(2) Compressed solid	5,000	7,500
(3) Outer truck springs broken or missing:		
(i) Two outer springs	5,000	7,500
(ii) Three or more outer springs	6,500	9,000
(e) Truck bolster-center plate interference	6,500	9,000
(f) Brake beam shelf support worn	5,000	7,500
215.121 Defective car body:		
(a) Has less than 2 $\frac{1}{2}$ " clearance from the top of rail	5,000	7,500
(b) Car center sill is:		
(1) Broken	8,500	11,000
(2) Cracked more than 6"	5,000	7,500
(3) Bent or buckled more than 2 $\frac{1}{2}$ " in any 6" length	5,000	7,500
(c) Coupler carrier that is broken or missing	5,000	7,500
(d) Car door not equipped with operative safety hangers	8,500	11,000
(e)(1) Center plate not properly secured	8,500	11,000
(2) Portion missing	5,000	7,500
(3) Broken	8,500	11,000
(4) Two or more cracks	5,000	7,500
(f) Broken sidesill, crossbearer, or body bolster	5,000	7,500
215.123 Defective couplers:		
(a) Shank bent out of alignment	3,000	4,500
(b) Crack in highly stressed junction area	5,000	7,500
(c) Coupler knuckle broken or cracked	5,000	7,500
(d) Coupler knuckle pin or thrower that is missing or inoperative	5,000	7,500
(e) Coupler retainer pin lock that is missing or broken	3,000	4,500
(f) Coupler with following conditions: locklift inoperative; no anticreep protection; or coupler lock is missing, inoperative, bent, cracked, or broken	5,000	7,500
215.125 Defective uncoupling device	5,000	7,500
215.127 Defective draft arrangement:		
(a) Draft gear that is inoperative	5,000	7,500
(b) Yoke that is broken	5,000	7,500

APPENDIX B TO PART 215.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section	Violation	Willful violation
(c) End of car cushioning unit is leaking or inoperative	5,000	7,500
(d) Vertical coupler pin retainer plate missing or has missing fastener	8,500	11,000
(e) Draft key or draft key retainer that is inoperative or missing	8,500	11,000
(f) Follower plate that is missing or broken	5,000	7,500
215.129 Defective cushioning device	5,000	7,500
Subpart C—Restricted Equipment		
215.203 Restricted cars	5,000	7,500
Subpart D—Stenciling		
215.301 General	3,000	4,500
215.303 Stenciling of restricted cars	3,000	4,500
215.305 Stenciling of maintenance-of-way	3,000	4,500

¹ A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single freight car that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$11,000 per day. A failure to perform, with respect to a particular freight car, the predeparture inspection required by §215.13 of this Part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on the car. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. Failure to observe any condition for movement set forth in paragraphs (a) and (c) of §215.9 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the freight car at the time of movement. Maintenance-of-way equipment not stenciled in accordance with §215.305 is subject to all requirements of this Part. See §215.3(c)(3). The penalty schedule uses section numbers from 49 CFR part 215. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 217—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

8. Appendix A to part 217 is revised to read as follows:

7. The authority citation for part 217 continues to read as follows:

APPENDIX A TO PART 217.—SCHEDULE OF CIVIL PENALTIES ¹

Section	Violation	Willful violation
217.7 Operating Rules:		
(a)	\$6,500	\$9,000
(b)	6,500	9,000
(c)	6,500	9,000
217.9 Operational tests and inspections:		
(a) Program	8,500	11,000
(b) Record of program	6,500	9,000
(c) Record of tests and inspections	8,500	11,000
(d) Annual Summary	8,500	11,000
217.11 Program of instruction on operating rules:		
(a)	8,500	11,000
(b)	8,500	11,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

PART 218—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

10. Appendix A to part 218 is revised to read as follows:

9. The authority citation for part 218 continues to read as follows:

APPENDIX A TO PART 218.—SCHEDULE OF CIVIL PENALTIES ¹

Section	Violation	Willful violation
Subpart B—Blue Signal Protection of Workmen		
218.22 Utility employees:		
(a) Employee qualifications	\$5,000	\$7,500
(b) Concurrent service	6,500	9,000

APPENDIX A TO PART 218.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section	Violation	Willful violation
(c) Assignment conditions:		
(1) No controlling locomotive	6,500	9,000
(2) Empty cab	6,500	9,000
(3)(4) Improper communication	6,500	9,000
(5) Performing functions not listed	5,000	7,500
(d) Improper release	5,000	7,500
(f) More than three utility employees with one crew	5,000	7,500
218.23 Blue signal display	6,500	9,000
218.24 One-person crew:		
(a)(1) Equipment not coupled or insufficiently separated	6,500	9,000
(a)(2) Unoccupied locomotive cab not secured	5,000	7,500
(b) Helper service	6,500	9,000
218.25 Workmen on a main track	6,500	9,000
218.27 Workmen on track other than main track:		
(a) Protection provided except that signal not displayed at switch	6,500	9,000
(b) through (e)	5,000	7,500
218.29 Alternate methods of protection:		
(a)(1) protection provided except that signal not displayed at switch	6,500	9,000
(a)(2) through (a)(8)	6,500	9,000
(b)(1) Protection provided except that signal not displayed at switch	6,500	9,000
(b)(2) through (b)(4)	6,500	9,000
(c) Use of derails	5,000	7,500
(d) Emergency repairs	6,500	9,000
218.30 Remotely controlled switches:		
(a) and (b)	5,000	7,500
(c)	1,500	2,500

Subpart C—Protection of Trains and Locomotives

218.35 Yard limits:		
(a) and (b)	3,000	4,500
(c)	3,000	4,500
218.37 Flag protection:		
(a)	1,500	2,500
(b) and (c)	1,500	2,500
218.39 Hump operations	6,500	9,000
218.41 Noncompliance with hump operations rule	6,500	9,000

Subpart D—Prohibition Against Tampering With Safety Devices

218.55 Tampering		11,000
218.57 (i) Knowingly operating or permitting operation of disabled equipment	3,000	
(ii) Willfully operating or permitting operation of disabled equipment		4,500
218.59 Operation of disabled equipment	3,000	4,500

¹ Except as provided for in § 218.57, a penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where the circumstances warrant. See 49 CFR part 209, appendix A. The penalty schedule uses section numbers from 49 CFR part 218. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any sub-section designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 219—[AMENDED]

11. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

12. Appendix A to part 219 is revised to read as follows:

Appendix A to Part 219—Schedule of Civil Penalties

The following chart lists the schedule of civil penalties:

PENALTY SCHEDULE ¹

Section	Violation	Willful violation
Subpart A—General		
219.3 Application:		
Railroad does not have required program	\$5,000	\$7,500
219.11 General conditions for chemical tests:		
(b)(1) Employee unlawfully refuses to participate in testing	8,500	11,000

PENALTY SCHEDULE ¹—Continued

Section	Violation	Willful violation
(b)(2) Employer fails to give priority to medical treatment	8,500	11,000
(b)(3) Employee fails to remain available	8,500	11,000
(b)(4) Employee tampers with specimen	8,500	11,000
(d) Employee unlawfully required to execute a waiver of rights	5,000	7,500
(e) Railroad used or authorized the use of coercion to obtain specimens	1,500	2,500
(g) Failure to meet supervisory training requirements or program of instruction not available or program not complete	6,500	9,000
(h) Urine or blood specimens provided for Federal testing were used for non-authorized testing	8,500	11,000
219.23 Railroad policies:		
(a) Failure to provide written notice of FRA test	3,000	4,500
(b) Failure to provide written notice of basis for FRA test	3,000	4,500
(c) Use of subpart C form for other test	3,000	4,500
(d) Failure to provide educational materials	1,500	2,500
(e) Educational materials fail to explain requirements of this part and/or include required content	1,500	2,500
(f) Non-Federal provisions are clearly described as independent authority	1,500	2,500
Subpart B—Prohibitions		
219.101 Alcohol and drug use prohibited:		
Employee violates prohibition(s)	8,500	.....
219.103 Prescribed and over-the-counter drugs:		
(a) Failure to train employee properly on requirements	5,000	7,500
219.104 Responsive Action:		
(a) Failure to remove employee from covered service immediately	8,500	11,000
(b) Failure to provide notice for removal	5,000	7,500
(c) Failure to provide prompt hearing	8,500	11,000
(d) Employee improperly returned to service	8,500	11,000
219.105 Railroad's duty to prevent violations:		
(a) Employee improperly permitted to remain in covered service	8,500	11,000
(b) Failure to exercise due diligence to assure compliance with prohibition	6,500	9,000
219.107 Consequences of unlawful refusal:		
(a) Failure to disqualify an employee for nine months following a refusal	8,500	11,000
(e) Employee unlawfully returned to service	8,500	11,000
Subpart C—Post-Accident Toxicological Testing		
219.201 Events for which testing is required:		
(a) Failure to test after qualifying event (each employee not tested is a violation)	8,500	11,000
(c)(1)(i) Failure to make good faith determination	5,000	7,500
(c)(1)(ii) Failure to provide requested decision report to FRA	1,500	2,500
(c)(2) Testing performed after non-qualifying event	8,500	11,000
219.203 Responsibilities of railroads and employees:		
(a)(1)(i) and (a)(2)(i) Failure to properly test/exclude from testing	5,000	7,500
(a)(1)(ii) and (a)(2)(ii) Non-covered service employee tested	5,000	7,500
(b)(1) Delay in obtaining specimens due to failure to make every reasonable effort	3,000	4,500
(c) Independent medical facility not utilized	5,000	7,500
(d) Failure to report event or contact FRA when intervention required	1,500	2,500
219.205 Specimen collection and handling:		
(a) Failure to observe requirements with respect to specimen collection, marking and handling	5,000	7,500
(b) Failure to provide properly prepared forms with specimens	1,500	2,500
(d) Failure to promptly or properly forward specimens	5,000	7,500
219.207 Fatality:		
(a) Failure to test	6,500	9,000
(a)(1) Failure to ensure timely collection and shipment of required specimens	1,500	2,500
(b) Failure to request assistance when necessary	5,000	7,500
219.209 Reports of tests and refusals:		
(a)(1) Failure to provide telephonic report	3,000	4,500
(b) Failure to provide written report of refusal to test	3,000	4,500
(c) Failure to maintain report explaining why test not conducted within 4 hours	3,000	4,500
219.211 Analysis and follow-up:		
(c) Failure of MRO to report review of positive results to FRA	1,500	2,500
Subpart D—Testing for Cause		
219.300 Mandatory reasonable suspicion testing:		
(a)(1) Failure to test when reasonable suspicion criteria met	8,500	11,000
(a)(2) Tested when reasonable suspicion criteria not met	8,500	11,000
219.301 Testing for reasonable cause:		
(a) Event did not occur during daily tour	6,500	9,000
(b)(2) Tested when accident/incident criteria not met	8,500	11,000
(b)(3) Tested when operating rules violation criteria not met	8,500	11,000

PENALTY SCHEDULE ¹—Continued

Section	Violation	Willful violation
219.302 Prompt specimen collection: (a) Specimen collection not conducted promptly	5,000	7,500
Subpart E—Identification of Troubled Employees		
219.401 Requirement for policies: (b) Failure to publish and/or implement required policy	5,000	7,500
219.407 Alternate policies: (c) Failure to file agreement or other document or provide timely notice or revocation	5,000	7,500
Subpart F—Pre-Employment Tests		
219.501 Pre-employment tests: (a) Failure to perform pre-employment drug test before first time employee performs covered service	5,000	7,500
Subpart G—Random Testing Programs		
219.601 Railroad random drug programs: (a)(1) Failure to file a random program	6,500	9,000
(a)(2) Failure to file amendment to program	5,000	7,500
(b) Failure to meet random testing criteria	3,000	4,500
(b)(1)(i) Failure to use a neutral selection process	8,500	11,000
(b)(2)(i)(B) Testing not spread throughout the year	3,000	4,500
(b)(3) Testing not distributed throughout the day	3,000	4,500
(b)(4) Advance notice provided to employee	8,500	11,000
(b)(6) Testing when employee not on duty	6,500	9,000
219.601A Failure to include covered service employee in pool	5,000	7,500
219.602 Administrator's determination of drug testing rate: (f) Total number of tests below minimum random drug testing rate	6,500	9,000
219.603 Participation in drug testing: Failure to document reason for not testing selected employee	5,000	7,500
219.607 Railroad random alcohol programs: (a)(1) Failure to file a random alcohol program	5,000	7,500
(a)(2) Failure to file amendment to program	5,000	7,500
(b) Failure to meet random testing criteria	8,500	11,000
(b)(1) Failure to use a neutral selection process	6,500	9,000
(b)(5) Testing when employee not on duty	5,000	7,500
(b)(8) Advance notice provided to employee	8,500	11,000
219.607A Failure to include covered service employee in pool	6,500	9,000
219.608 Administrator's determination of random alcohol testing rate: (e) Total number of tests below minimum random alcohol testing rate	6,500	9,000
219.609 Participation in alcohol testing: Failure to document reason for not testing selected employee	5,000	7,500
Subpart H—Drug and Alcohol Testing Procedures		
219.701 Standards for drug and alcohol testing: (a) Failure to comply with part 40 procedures in subpart B, D, F, or G testing	1,500	2,500
(b) Testing not performed in a timely manner	3,000	4,500
Subpart I—Annual Report		
219.801 Reporting alcohol misuse prevention program results in a management information system: (a) Failure to submit MIS report on time	3,000	4,500
(c) Failure to submit accurate MIS report	3,000	4,500
(d) Failure to include required data	1,500	2,500
219.803 Reporting drug misuse prevention program results in a management information system: (c) Failure to submit accurate MIS report	3,000	4,500
(d) Failure to submit MIS report on report	3,000	4,500
(e) Failure to include required data	1,500	2,500
Subpart J—Recordkeeping Requirements		
219.901 Retention of Alcohol Testing Records: (a) Failure to maintain records required to be kept by part 40	5,000	7,500
(b) Failure to maintain records required to be kept for five years	5,000	7,500
(c) Failure to maintain records required to be kept for two years	5,000	7,500
219.903 Retention of Drug Testing Records: (a) Failure to maintain records required to be kept by part 40	5,000	7,500
(b) Failure to maintain records required to be kept for five years	5,000	7,500
(c) Failure to maintain records required to be kept for two years	5,000	7,500
219.905 Access to facilities and records:		

PENALTY SCHEDULE ¹—Continued

Section	Violation	Willful violation
(a) Failure to release records in this subpart in accordance with part 40	6,500	9,000
(b) Failure to permit access to facilities	8,500	11,000
(c) Failure to provide access to results of railroad alcohol and drug testing programs	8,500	11,000

¹ A penalty may be assessed against an individual only for a willful violation. The FRA Administrator reserves the right to assess a penalty of up to \$27,000 for any violation, including ones not listed in this penalty schedule, where circumstances warrant. See 49 CFR part 209, appendix A.

PART 220—[AMENDED]

Authority: 49 U.S.C. 20102–20103, 20107, 21301–21302, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

14. Appendix C to part 220 is revised to read as follows:

13. The authority citation for part 220 continues to read as follows:

APPENDIX C TO PART 220.—SCHEDULE OF CIVIL PENALTIES ¹

Section	Violation	Willful violation
220.9 Requirements for trains	\$8,500	\$11,000
220.11 Requirements for roadway workers	6,500	9,000
220.21 Railroad Operating rules; radio communications:		
(a)	8,500	11,000
(b)	6,500	9,000
220.23 Publication of radio information	5,000	7,500
220.25 Instruction of employees	8,500	11,000
220.27 Identification	6,500	9,000
220.29 Statement of letters and numbers	6,500	9,000
220.31 Initiating a transmission	3,000	4,500
220.33 Receiving a transmission	5,000	7,500
220.35 Ending a transmission	5,000	7,500
220.37 Voice test	6,500	9,000
220.39 Continuous monitoring	5,000	7,500
220.41 [Reserved].		
220.43 Communication consistent with the rules	6,500	9,000
220.45 Complete communications	8,500	11,000
220.47 Emergencies	8,500	11,000
220.49 Switching, backing or pushing	8,500	11,000
220.51 Signal indications	6,500	9,000
220.61 Radio transmission of mandatory directives	8,500	11,000

¹ A penalty may be assessed against and only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

PART 221—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

16. Appendix C to part 221 is revised to read as follows:

15. The authority citation for part 221 continues to read as follows:

APPENDIX C TO PART 221.—SCHEDULE OF CIVIL PENALTIES ¹

Section	Violation	Willful violation
221.13 Marking device display:		
(a) device not present, not displayed, or not properly illuminated	\$5,000	\$7,500
(d) device too close to rail	3,000	4,500
221.14 Marking devices: Use of unapproved or noncomplying device	3,000	4,500
221.15 Marking device inspection:		
(a) Failure to inspect at crew change	3,000	4,500
(b), (c) improper inspection	3,000	4,500
221.16 Inspection procedure:		
(a) Failure to obtain protection	5,000	7,500
(b) Improper protection	5,000	7,500
221.17 Movement of defective equipment	15,000	17,500

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. Where the conditions for movement of defective equipment set forth in § 221.17 of this Part are not met, the movement constitutes a violation of § 221.13 of this part.

PART 222—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

18. Appendix G to part 222 is revised to read as follows:

17. The authority citation for part 222 continues to read as follows:

APPENDIX G TO PART 222.—SCHEDULE OF CIVIL PENALTIES¹

Section	Violation	Willful violation
Subpart B—Use of Locomotive Horns		
222.21 Use of locomotive horn:		
(a) Failure to sound horn at grade crossing	\$5,000	\$7,500
Failure to sound horn in proper pattern	5,000	7,500
(b) Failure to sound horn at least 15 and no more than 20 seconds before crossing	3,000	4,500
Routine sounding of the locomotive horn more than ¼-mile in advance of crossing	3,000	4,500
222.33		
Failure to sound horn when conditions of § 222.33 are not met	6,500	9,000
222.45		
Routine sounding of the locomotive horn at a grade crossing within a quiet zone	3,000	4,500
222.49		
(b) Failure to provide Grade Crossing Inventory Form information	1,500	2,500
222.59		
(d) Routine sounding of the locomotive horn at a grade crossing equipped with wayside horn	1,500	2,500

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

PART 223—[AMENDED]

Authority: 49 U.S.C. 20102–03, 20133, 20701–20702, 21301–02, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

20. Appendix B to part 223 is revised to read as follows:

19. The authority citation for part 223 continues to read as follows:

APPENDIX B TO PART 223.—SCHEDULE OF CIVIL PENALTIES¹

Section	Violation	Willful violation
223.9 New or rebuilt equipment:		
(a) Locomotives	\$3,000	\$4,500
(b) Cabooses	3,000	4,500
(c) Passenger cars	3,000	4,500
(d)(1), (d)(2):		
(i) Window not marked or instructions not posted	5,000	7,500
(ii) Window improperly marked or instructions improperly posted	3,000	4,500
223.11(c) Existing locomotives	3,000	4,500
(d) Repair of window	1,500	2,500
223.13(c) Existing cabooses	3,000	4,500
(d) Repair of window	1,500	2,500
223.15(c) Existing passenger cars	3,000	4,500
(d) Repair of window	1,500	2,500
223.17 Identification of units	1,500	2,500

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A. The penalty schedule uses section numbers from 49 CFR part 223. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 224—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461; and 49 CFR 1.49.

22. Appendix A to part 224 is revised to read as follows:

21. The authority citation for part 224 continues to read as follows:

APPENDIX A TO PART 224.—SCHEDULE OF CIVIL PENALTIES¹

Section	Violation	Willful violation
224.103 Characteristics of retroreflective sheeting:		
(a)–(d) Retroreflective sheeting applied does not meet the requirements of § 224.103	\$3,000	\$4,500
224.105 Sheeting dimensions and quantity	3,000	4,500
(a) Failure to apply minimum amount of retroreflective sheeting in accordance with Table	3,000	4,500

APPENDIX A TO PART 224.—SCHEDULE OF CIVIL PENALTIES¹—Continued

Section	Violation	Willful violation
(b) Applying retroreflective sheeting of wrong dimensions	3,000	4,500
224.106 Location of retroreflective sheeting:		
(a), (b) Applying retroreflective sheeting in nonconforming pattern	3,000	4,500
224.107 Implementation schedule:		
(a)(1), (b)(1) Failure to apply retroreflective sheeting to new freight car or locomotive before equipment placed in service	3,000	4,500
(a)(2), (b)(2), (b)(4) Failure to apply retroreflective sheeting to existing freight car or locomotive in accordance with minimum schedule of paragraphs, (a)(2), (b)(2), (b)(4)	3,000	4,500
224.109 Inspection, repair, and replacement:		
(a)(1) Failure to perform inspection	3,000	4,500
(2) Failure to properly notify car owner of defect	3,000	4,500
(3) Failure to retain written notification of defect for two years	3,000	4,500
(4) Failure to repair defect after notification	3,000	4,500
(b)(1) Failure to perform inspection	3,000	4,500
(2) Failure to repair defect	3,000	4,500

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. The penalty schedule uses section numbers from 49 CFR part 224. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 225—[AMENDED]

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

24. Appendix A to part 225 is revised to read as follows:

23. The authority citation for part 225 continues to read as follows:

APPENDIX A TO PART 225.—SCHEDULE OF CIVIL PENALTIES¹

Section	Violation	Willful violation
225.9 Telephonic reports of certain accidents/incidents	\$1,500	\$2,500
225.11 Reports of accidents/incidents	6,500	9,000
225.12(a):		
Failure to file Railroad Employee Human Factor Attachment properly.		
(1) Employee identified	6,500	9,000
(2) No employee identified	3,000	4,500
225.12(b):		
(1) Failure to notify employee properly	6,500	9,000
(2) Notification of employee not involved in accident	6,500	9,000
225.12(c):		
Failure of employing railroad to provide requested information properly	1,500	2,500
225.12(d):		
(1) Failure to revise report when identity becomes known	6,500	9,000
(2) Failure to notify after late identification	6,500	9,000
225.12(f)(1):		
Submission of notice if employee dies as result of the reported accident	6,500	9,000
225.12(g):		
Willfully false accident statement by employee		9,000
225.13 Late reports	1,500	2,500
225.17(d) Alcohol or drug involvement	8,500	11,000
225.23 Joint operations	(¹)	(¹)
225.25 Recordkeeping	5,000	7,500
225.27 Retention of records	1,500	2,500
225.33:		
(1) Failure to adopt the Internal Control Plan	6,500	9,000
(2) Inaccurate reporting due to failure to comply with the Internal Control Plan	6,500	9,000
(3) Failure to comply with the intimidation/harassment policy in the Internal Control Plan	6,500	9,000
225.35 Access to records and reports	8,500	11,000

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. A failure to comply with § 225.23 constitutes a violation of § 225.11. For purposes of §§ 225.25 and 225.27 of this part, each of the following constitutes a single act of noncompliance: (1) a missing or incomplete log entry for a particular employee's injury or illness; or (2) a missing or incomplete log record for a particular rail equipment accident or incident. Each day a violation continues is a separate offense. The penalty schedule uses section numbers from 49 CFR part 225. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 228—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 21101–21108; 28 U.S.C. 2461, note and 49 CFR 1.49.

26. Appendix B to part 228 is revised to read as follows:

25. The authority citation for part 228 continues to read as follows:

APPENDIX B TO PART 228.—SCHEDULE OF CIVIL PENALTIES ¹

Section	Violation	Willful violation
Subpart B—Records and Reporting		
228.9 Railroad records	\$5,000	\$7,500
228.11 Hours of duty records	1,500	2,500
228.17 Dispatcher's record	5,000	7,500
228.19 Monthly reports of excess service	1,500	2,500

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

PART 229—[AMENDED]

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20137–20138, 20143, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49 (c), (m).

28. Appendix B to part 229 is revised to read as follows:

27. The authority citation for part 229 continues to read as follows:

APPENDIX B TO PART 229.—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
Subpart A—General		
229.7 Prohibited acts: Safety deficiencies not governed by specific regulations: To be assessed on relevant facts	\$1,500–6,500	\$2,500–9,000
229.9 Movement of noncomplying locomotives	(¹)	(¹)
229.11 Locomotive identification	1,500	2,500
229.13 Control of locomotives	5,000	7,500
229.17 Accident reports	3,000	4,500
219.19 Prior waivers	(¹)	(¹)
Subpart B—Inspection and Tests		
229.21 Daily inspection:		
(a)(b):		
(1) Inspection overdue	3,000	4,500
(2) Inspection report not made, improperly executed, or not retained	1,500	2,500
(3) Inspection not performed by a qualified person	1,500	2,500
229.23 Periodic inspection: General		
(a)(b):		
(1) Inspection overdue	3,000	4,500
(2) Inspection performed improperly or at a location where the underneath portion cannot be safely inspected	3,000	4,500
(c)(d):		
(1) Form missing	1,500	2,500
(2) Form not properly displayed	1,500	2,500
(3) Form improperly executed	1,500	2,500
(e) Replace Form FRA F 6180–49A by April 2	1,500	2,500
(f) Secondary record of the information reported on Form FRA F 6180.49A	1,500	2,500
229.25		
(a) through (e)(4) Tests: Every periodic inspection	3,000	4,500
(e)(5) Ineffective maintenance	6,500	9,000
229.27 Annual tests	3,000	4,500
229.29 Biennial tests	3,000	4,500
229.31		
(a) Biennial hydrostatic tests of main reservoirs	3,000	4,500
(b) Biennial hammer tests of main reservoirs	3,000	4,500
(c) Drilled telltale holes in welded main reservoirs	3,000	4,500
(d) Biennial tests of aluminum main reservoirs	3,000	4,500
229.33 Out-of-use credit	1,500	2,500
Subpart C—Safety Requirements		
229.41 Protection against personal injury	5,000	7,500
229.43 Exhaust and battery gases	5,000	7,500
229.45 General condition: To be assessed based on relevant facts	1,500–6,500	2,500–9,000
229.46 Brakes: General	5,000	7,500

APPENDIX B TO PART 229.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
229.47 Emergency brake valve	5,000	7,500
229.49 Main reservoir system:		
(a)(1) Main reservoir safety valve	5,000	7,500
(2) Pneumatically actuated control reservoir	5,000	7,500
(b)(c) Main reservoir governors	5,000	7,500
229.51 Aluminum main reservoirs	5,000	7,500
229.53 Brake gauges	5,000	7,500
229.55 Piston travel	5,000	7,500
229.57 Foundation brake gear	5,000	7,500
229.59 Leakage	5,000	7,500
229.61 Draft system	3,000	4,500
229.63 Lateral motion	3,000	4,500
229.64 Plain bearing	3,000	4,500
229.65 Spring rigging	3,000	4,500
229.67 Trucks	5,000	7,500
229.69 Side bearings	5,000	7,500
229.71 Clearance above top of rail	1,500	2,500
229.73 Wheel sets	5,000	7,500
229.75 Wheel and tire defects:		
(a), (d) Slid flat or shelled spot(s):		
(1) One spot 2½" or more but less than 3" in length	5,000	7,500
(2) One spot 3" or more in length	6,500	9,000
(3) Two adjoining spots each of which is 2" or more in length but less than 2½" in length	5,000	7,500
(4) Two adjoining spots each of which are at least 2" in length, if either spot is 2½" or more in length	6,500	9,000
(b) Gouge or chip in flange of:		
(1) more than 1½" but less than 1⅝" in length; and more than ½" but less than ⅝" in width	5,000	7,500
(2) 1⅝" or more in length and 5/8" or more in width	6,500	9,000
(c) Broken rim	8,500	11,000
(e) Seam in tread	5,000	7,500
(f) Flange thickness of:		
(1) 7/8" or less but more than 13/16"	5,000	7,500
(2) 13/16" or less	6,500	9,000
(g) Tread worn hollow	5,000	7,500
(h) Flange height of:		
(1) 1½" or greater but less than 1⅝"	5,000	7,500
(2) 1⅝" or more	6,500	9,000
(i) Tire thickness	5,000	7,500
(j) Rim thickness:		
(1) Less than 1" in road service and ¾" in yard service	5,000	7,500
(2) 15/16" or less in road service and 11/16" in yard service	6,500	9,000
(k):		
(1) Crack of less than 1"	5,000	7,500
(2) Crack of 1" or more	6,500	9,000
(3) Break	8,500	11,000
(l) Loose wheel or tire	8,500	11,000
(m) Welded wheel or tire	5,000	7,500
229.77 Current collectors	3,000	4,500
229.79 Third rail shoes and beams.	3,000	4,500
229.81 Emergency pole; shoe insulation	5,000	7,500
229.83 Insulation or grounding	6,500	9,000
229.85 Door and cover plates marked "Danger"	3,000	4,500
229.87 Hand operated switches	3,000	4,500
229.89 Jumpers; cable connections:		
(a) Jumpers and cable connections; located and guarded	5,000	7,500
(b) Condition of jumpers and cable connections	5,000	7,500
229.91 Motors and generators	5,000	7,500
229.93 Safety cut-off device	5,000	7,500
229.95 Venting	5,000	7,500
229.97 Grounding fuel tanks	5,000	7,500
229.99 Safety hangers	5,000	7,500
229.101 Engines:		
(a) Temperature and pressure alarms, controls, and switches	3,000	4,500
(b) Warning notice	5,000	7,500
(c) Wheel slip/slide protection	3,000	4,500
229.103 Safe working pressure; factor of safety	5,000	7,500
229.105 Steam generator number	1,500	2,500
229.107 Pressure gauge	5,000	7,500
229.109 Safety valves	5,000	7,500
229.111 Water-flow indicator	5,000	7,500
229.113 Warning notice	5,000	7,500
229.115 Slip/slide alarms	5,000	7,500

APPENDIX B TO PART 229.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
229.117 Speed indicators	5,000	7,500
229.119 Cabs, floors, and passageways:		
(a)(1) Cab set not securely mounted or braced	3,000	4,500
(2) Insecure or improper latching device	3,000	4,500
(b) Cab windows of lead locomotive	3,000	4,500
(c) Floors, passageways, and compartments	3,000	4,500
(d) Ventilation and heating arrangement	5,000	7,500
(e) Continuous barrier	5,000	7,500
(f) Containers for fuses and torpedoes	5,000	7,500
229.121 Locomotive cab noise	5,000	7,500
229.123 Pilots, snowplows, end plates	3,000	4,500
229.125		
(a) Headlights	5,000	7,500
(d) Auxiliary lights	5,000	7,500
229.127 Cab lights	3,000	4,500
229.129 Audible warning device:		
(a) prescribed sound levels	5,000	7,500
arrangement of device	5,000	7,500
(b) testing	5,000	7,500
(c) test procedures	5,000	7,500
(c)(10) records of tests	5,000	7,500
229.131 Sanders	1,500	2,500
229.135 Event Recorders:		
(a) Lead locomotive without in-service event recorder	5,000	7,500
(b) Failure to meet equipment requirements	5,000	7,500
(c) Unauthorized removal or failure to remove from service	5,000	7,500
(d) Improper response to out of service event recorder	5,000	7,500
(e) Failure to preserve data or unauthorized extraction of data	5,000	7,500
(g) Tampering with device or data	5,000	7,500
229.137 Sanitation, general:		
(a) Sanitation compartment in lead unit, complete failure to provide required items	5,000	7,500
(1) Ventilation	3,000	4,500
(2) Door missing	3,000	4,500
(2)(i) Door doesn't close	3,000	4,500
(2)(ii) No modesty lock	1,500	2,500
(3) Not equipped with toilet in lead	5,000	7,500
(4) Not equipped with washing system	3,000	4,500
(5) Lack of paper	3,000	4,500
(6) Lack of trash receptacle	3,000	4,500
(b) Exceptions:		
(1)(i) Commuter service, failure to meet conditions of exception	1,500	2,500
(1)(ii) Switching service, failure to meet conditions of exception	1,500	2,500
(1)(iii) Transfer service, failure to meet conditions of exception	1,500	2,500
(1)(iv) Class III, failure to meet conditions of exception	1,500	2,500
(1)(v) Tourist, failure to meet conditions of exception	1,500	2,500
(1)(vi) Control cab locomotive, failure to meet conditions of exception	1,500	2,500
(2) Noncompliant toilet	3,000	4,500
(c) Defective/unsanitary toilet in lead unit	3,000	4,500
(1)–(5) Failure to meet conditions of exception	3,000	4,500
(d) Defective/unsanitary unit; failure to meet conditions for trailing position	3,000	4,500
(e) Defective/sanitary unit; failure to meet conditions for switching/transfer service	3,000	4,500
(f) Paper, washing, trash holder; failure to equip prior to departure	3,000	4,500
(g) Inadequate ventilation; failure to repair or move prior to departure	3,000	4,500
(h) Door closure/modesty lock; failure to repair or move	1,500	2,500
(i) Failure to retain/maintain of equipped units	3,000	4,500
(j) Failure to equip new units/in-cab facility	3,000	4,500
(k) Failure to provide potable water	3,000	4,500
229.139 Servicing requirements:		
(a) Lead occupied unit not sanitary	3,000	4,500
(b) Components not present/operating	1,500	2,500
(c) Occupied unit in switching, transfer service, in trailing position not sanitary	1,500	2,500
(d) Defective unit used more than 10 days	3,000	4,500
(e) Failure to repair defective modesty lock	1,500	2,500

APPENDIX B TO PART 229.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
229.141 Body structure, MU locomotives	5,000	7,500

¹ A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single locomotive that is used by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$11,000 per day. However, a failure to perform, with respect to a particular locomotive, any of the inspections and tests required under subpart B of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that locomotive. Moreover, the Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. Failure to observe any condition for movement set forth in § 229.9 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the locomotive at the time of movement. Failure to comply with § 229.19 will result in the lapse of any affected waiver.

² The penalty schedule uses section numbers from 49 CFR part 229. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 230—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

30. Appendix D to part 230 is revised to read as follows:

29. The authority citation for part 230 continues to read as follows:

APPENDIX D TO PART 230.—SCHEDULE OF CIVIL PENALTIES

Section	Violation	Willful violation
Subpart A—General		
230.11 Repair of non-complying conditions:		
(a) Failure to repair non-complying steam locomotive prior to use in service	\$3,000	\$4,500
(b) Failure of owner and/or operator to approve repairs made prior to use of steam locomotive	3,000	4,500
230.12 Movement of non-complying steam locomotive	(1)	(1)
230.13 Daily inspection:		
(a) (b):		
(1) Inspection overdue	5,000	7,500
(2) Inspection not performed by qualified person	3,000	4,500
(c) Inspection report not made, improperly executed or not retained	3,000	4,500
230.14 Thirty-one service day inspection:		
(a):		
(1) Inspection overdue	5,000	7,500
(2) Inspection not performed by qualified person	3,000	4,500
(b) Failure to notify FRA	3,000	4,500
(c) Inspection report not made, improperly executed, not properly filed	3,000	4,500
230.15 Ninety-two service day inspection:		
(a):		
(1) Inspection overdue	5,000	7,500
(2) Inspection not performed by qualified person	3,000	4,500
(b) Inspection report not made, improperly executed, not properly filed	3,000	4,500
230.16 Annual inspection:		
(a):		
(1) Inspection overdue	5,000	7,500
(2) Inspection not performed by qualified person	3,000	4,500
(b) Failure to notify FRA	3,000	4,500
(c) Inspection report not made, improperly executed, not properly filed	3,000	4,500
230.17 One thousand four hundred seventy-two service day inspection:		
(a):		
(1) Inspection overdue	5,000	7,500
(2) Inspection not performed by qualified person	3,000	4,500
(b) Inspection report not made, improperly executed, not properly maintained, not properly filed	3,000	4,500
230.18 Service days:		
(a) Service day record not available for inspection	3,000	4,500
(b) Failure to file service day report with FRA Regional Administrator	3,000	4,500
(c) Failure to complete all 1,472 service day inspection items prior to returning retired steam locomotive to service	5,000	7,500
230.19 Posting of forms:		
(a) FRA Form No. 1:		
(1) FRA Form No. 1 not properly filled out	3,000	4,500
(2) FRA Form No. 1 not properly displayed	3,000	4,500
(b) FRA Form No. 3:		
(1) FRA Form No. 3 not properly filled out	3,000	4,500
(2) FRA Form No. 3 not properly displayed	3,000	4,500

APPENDIX D TO PART 230.—SCHEDULE OF CIVIL PENALTIES—Continued

Section	Violation	Willful violation
230.20 Alteration and repair reports:		
(a) Alterations:		
(1) Failure to properly file FRA Form No. 19 with FRA Regional Administrator	3,000	4,500
(2) FRA Form No. 19 not properly filled out	3,000	4,500
(3) FRA Form No. 19 not properly maintained	3,000	4,500
(b) Repairs to unstayed portions of the boiler:		
(1) FRA Form No. 19 not properly filled out	3,000	4,500
(2) FRA Form No. 19 not properly maintained	3,000	4,500
(c) Repairs to stayed portions of the boiler:		
(1) FRA Form No. 19 not properly filled out	3,000	4,500
(2) FRA Form No. 19 not properly maintained	3,000	4,500
230.21 Failure to properly document steam locomotive number Change	3,000	4,500
Subpart B—Boilers and Appurtenances		
230.22 Failure to properly report accident resulting from failure of steam locomotive boiler or part or appurtenance thereof	5,000	7,500
230.23 Responsibility for general construction and safe working pressure:		
(a) Failure to properly establish safe working pressure for steam locomotive boiler	8,500	11,000
(b) Placing steam locomotive in service before safe working pressure for boiler has been established	8,500	11,000
230.24 Maximum allowable stress values on boiler components:		
(a) Use of materials not of sufficient tensile strength	3,000	4,500
(b) Use of a safety factor value of less than 4 when using the code of original construction in boiler calculations	6,500	9,000
230.25 Maximum allowable stresses on stays and braces:		
(a) Exceeding allowable stress values on fire box and/or combustion chamber	3,000	4,500
(b) Exceeding allowable stress values on round, rectangular or gusset braces	3,000	4,500
230.29 Inspection and repair:		
(a):		
(1) Failure of owner and/or operator to inspect and repair any steam locomotive boiler and/or appurtenance under control thereof	5,000	7,500
(2) Failure to remove steam locomotive from service when considered necessary to do so	6,500	9,000
(b):		
(1) Failure of perform repairs in accordance with accepted industry standards	6,500	9,000
(2) Owner and/or operator returning steam locomotive boiler and/or appurtenances to service before they are in good condition and safe and suitable for service	6,500	9,000
230.30 Lap-joint seam boilers, Failure to properly inspect	6,500	9,000
230.31 Flues to be removed:		
(a):		
(1) Failure to remove all flues when inspecting boiler	5,000	7,500
(2) Failure to enter boiler and clean and inspect	5,000	7,500
(b) Failure to remove superheater flues when deemed necessary to do so	3,000	4,500
230.32 Time and method of inspection:		
(a) Failure to perform 1,472 service day inspection when required to do so	5,000	7,500
(b) Failure to properly inspect boiler during 1,472 service day inspection	5,000	7,500
230.33 Welded repairs and alterations:		
(a) Failure to obtain permission before welding on unstayed portions of boiler containing alloy or carbon steel with carbon content over .25 percent carbon	5,000	7,500
(b) Failure to perform welding on unstayed portions of boiler containing carbon steel not exceeding .25 percent carbon in accordance with a nationally accepted standard for boiler repairs	5,000	7,500
(c):		
(1) Failure to submit written request for approval before performing weld buildup on wasted areas of unstayed boiler surfaces that exceed 100 square inches or the smaller of 25 percent of minimum required wall thickness or 1/2 inch	5,000	7,500
(2) Repairing wasted sheets	5,000	7,500
230.34 Riveted repairs and alterations:		
(a) Failure to obtain approval before making riveted alterations on unstayed portions of the boiler; failure to do riveting in accordance with established railroad practices or accepted national standards for boiler repairs	5,000	7,500
(b) Failure to perform riveted repairs on unstayed boiler portions in accordance with established railroad practices or accepted national standards for boiler repairs	5,000	7,500
(c) Failure to perform riveted repairs on stayed boiler portions in accordance with established railroad practices or accepted national standards for boiler repairs	3,000	4,500
230.35 Failure to raise temperature of steam locomotive boiler to 70 degrees F. before applying hydrostatic pressure to the boiler	3,000	4,500
230.36 Hydrostatic testing of boilers:		
(a) Failure to perform hydrostatic test of boiler as required	5,000	7,500
(b) Failure to properly perform hydrostatic test	5,000	7,500
(c) Failure to properly inspect boiler after conducting hydrostatic test above MAWP	5,000	7,500
230.37 Failure to perform proper steam test or inspection of boiler after completion of repair or alteration to boiler	3,000	4,500

APPENDIX D TO PART 230.—SCHEDULE OF CIVIL PENALTIES—Continued

Section	Violation	Willful violation
230.38 Telltale holes:		
(a) Failure to have telltale holes as required in staybolts	3,000	4,500
(b) Failure to have proper telltale holes in reduced body staybolts	3,000	4,500
(c) Failure to keep telltales holes when so required	3,000	4,500
230.39 Broken staybolts:		
(a) Boiler in service with excess number of broken staybolts	5,000	7,500
(b) Failure to replace staybolts when required to do so; to properly replace staybolts when so required; to inspect adjacent staybolts when replacing broken staybolts	5,000	7,500
(c) Failure to count leaking, plugged, or missing telltale holes as broken staybolts	5,000	7,500
(d) Closing telltale holes by prohibited means	5,000	7,500
230.40 Time and method of staybolt testing:		
(a) Failure to hammer test staybolts when so required	3,000	4,500
(b) Failure to properly hammer test staybolts	3,000	4,500
230.41 Flexible staybolts with caps:		
(a) Failure to inspect flexible staybolts as required	3,000	4,500
(b) Failure to replace broken flexible staybolts; failure to close inner ends of telltale holes as required	3,000	4,500
(c) Failure to report removal of flexible staybolts caps and other tests on FRA Form No. 3 when so required	3,000	4,500
(d) Failure to remove staybolt caps or otherwise test when FRA inspector or steam locomotive owner and/or operator consider it necessary to do so	3,000	4,500
230.42 Failure to have accurate boiler steam gauge where engine crew can conveniently read	6,500	9,000
230.43 Failure to have gauge siphon of proper capacity on steam gauge supply pipe; failure to properly clean, maintain the steam gauge supply pipe	3,000	4,500
230.44 Failure to test steam gauge when so required	3,000	4,500
230.45 Failure to properly test and/or set steam gauge	3,000	4,500
230.46 Failure to attach to boiler backhead metal badge plate showing allowable steam pressure	3,000	4,500
230.47 Boiler Number:		
(a) (b) (c) Failure to stamp builder's number on boiler when number is known	3,000	4,500
230.48 Number and capacity of safety relief valves:		
(a) Failure to equip steam locomotive boiler with proper safety relief valves	6,500	9,000
(b) Failure to provide additional safety relief valve capacity when so required	6,500	9,000
230.49 Setting of safety relief valves:		
(a) Safety relief valve(s) set and/or adjusted by person not competent to do so	6,500	9,000
(b) Safety relief valve(s) not set to open at prescribed pressure(s)	6,500	9,000
(c) Safety relief valve(s) not properly set	6,500	9,000
(d) Set pressure of lowest safety relief valve not properly indicated	3,000	4,500
230.50 Failure to test and adjust safety relief valves when required to do so	5,000	7,500
230.51 Failure to equip steam locomotive boiler with at least 2 properly installed water glasses	3,000	4,500
230.52 Failure to properly equip water glasses	6,500	9,000
230.53 Failure to properly clean water glass valves and/or gauge cocks when required to do so	3,000	4,500
230.54 Testing and maintenance:		
(a) Failure to properly test water glasses and/or gauge cocks	3,000	4,500
(b) Failure to properly maintain gauge cocks, water column drain valves, and/or water glass valves	5,000	7,500
230.55 Tubular type water and lubricator glasses and shields:		
(a) Failure to renew tubular type water glasses as required	3,000	4,500
(b) Failure to properly shield tubular water glasses and/or lubricator glasses	3,000	4,500
(c) Failure to properly locate and/or maintain water glasses and/or water glass shields	3,000	4,500
230.56 Failure to equip water glass with suitable lamp	3,000	4,500
230.57 Injectors and feedwater pumps:		
(a) Failure to equip steam locomotive with proper means for delivering water to the boiler	6,500	9,000
(b) Failure to properly test and/or maintain injectors, feedwater pumps, boiler checks, delivery pipes, feed water pipes, tank hose, tank valves	6,500	9,000
(c) Failure to properly brace injectors, feedwater pumps, and/or associated piping	3,000	4,500
230.58 Flue plugs:		
(a) Plugging flue plugs when not otherwise permitted	3,000	4,500
(b) Improperly plugging flue plugs, when otherwise permitted	3,000	4,500
230.59 Failure to remove and properly clean fusible boiler plugs when required to do so; failure to properly note removal	5,000	7,500
230.60 Time of washing:		
(a) Failure to thoroughly wash boiler when required to do so	3,000	4,500
(b) Failure to remove washout plugs, arch tube plugs, thermic siphon plugs, circulator plugs, water bar plugs when washing locomotive boiler	5,000	7,500
(c) Failure to examine and/or properly maintain washout plugs, washout plug sleeves, threaded openings	5,000	7,500
(d) Failure to clean fusible plugs when required to do so	5,000	7,500
230.61 Arch tubes, water bar tubes, circulators and thermic siphons:		
(a) Failure to clean, wash, inspect arch tubes, water bar tubes, circulators and thermic siphons as required	3,000	4,500
(b) Failure to renew arch tubes, water bar tubes; failure to repair or renew circulators, thermic siphons when required	5,000	7,500
(c) Failure to properly inspect and/or replace as necessary arch tubes, water bar tubes, circulators	5,000	7,500
230.62 Failure to properly inspect and/or repair or replace as necessary dry pipes subject to pressure	6,500	9,000

APPENDIX D TO PART 230.—SCHEDULE OF CIVIL PENALTIES—Continued

Section	Violation	Willful violation
230.63 Failure to properly inspect smoke box, steam pipes, pressure parts when required to do so	5,000	7,500
230.64 Failure to remove from service steam locomotive boiler leaking under lagging from condition which may reduce safety and/or repair the boiler before returning to service	5,000	7,500
230.65 Failure to keep steam locomotive boiler, piping, appurtenances in repair so steam does not obscure vision	3,000	4,500
230.66 Failure to properly oversee general design, construction, maintenance of steam locomotive(s) and tender(s)	3,000	4,500
230.67 Failure to ensure all steam locomotives and tenders are properly inspected and repaired and/or all defects are properly repaired and steam locomotive and/or tender are in good condition, safe and suitable for service before being returned to service	6,500	9,000
230.68 Failure to equip steam locomotive that operates in excess of 20 miles per hour over the general system with speed indicator maintained to ensure accurate functioning	3,000	4,500
230.69 Failure to equip steam locomotive with properly supported ash pan with operating mechanism that may be safely operated and securely closed	3,000	4,500
230.70 Safe condition:		
(a) Failure to perform proper pre-departure inspection when so required	3,000	4,500
(b) Failure to properly equip steam locomotive with brake pipe valve clearly identified as "Emergency Brake Valve"	3,000	4,500
230.71 Orifice testing of air compressors:		
(a)(b):		
Failure to properly test and/or maintain air compressor(s) capacity	3,000	4,500
230.72 Testing main reservoirs:		
(a) Failure to properly test main reservoir(s) when required	3,000	4,500
(b) Impermissibly or improperly drilling main reservoir	3,000	4,500
(c) Impermissibly using NDE method to measure wall thickness of main reservoirs	3,000	4,500
(d) Failure to use appropriate method of NDE testing of wall thickness of welded or riveted longitudinal lap seam main reservoir(s); failure to withdraw main reservoir(s) from service when testing reveals insufficient wall thickness	5,000	7,500
230.73 Air gauges:		
(a) Failure to equip steam locomotive with properly located air gauge(s) that are no more than 3 psi in error	3,000	4,500
(b) Failure to test air gauge(s) when so required	3,000	4,500
(c) Failure to properly test air gauge(s)	3,000	4,500
230.74 Failure to properly clean and/or test all air brake valves, related dirt collectors, filters when required to do so	3,000	4,500
230.75 Failure to properly stencil or display date of testing and cleaning and initials of shop or station performing work	3,000	4,500
230.76 Piston travel:		
(a) Insufficient minimum piston travel	3,000	4,500
(b) Excessive piston travel when steam locomotive is stationary	3,000	4,500
230.77 Foundation brake gear:		
(a) Failure to properly maintain foundation brake gear	3,000	4,500
(b) Foundation brake gear less than 2.5 inches above rail	3,000	4,500
230.78 Leakage:		
(a):		
(1) Failure to test for leakage from main reservoir or related piping as required	3,000	4,500
(2) Failure to repair excessive leakage from main reservoir or related piping leakage	3,000	4,500
(b) Failure to test for brake cylinder as required	3,000	4,500
(c):		
(1) Failure to test for leakage from steam locomotive brake pipe as required	3,000	4,500
(2) Failure to repair excessive brake pipe leakage	3,000	4,500
230.79 Train signal system:		
(1) Failure to test the train signal system or other form of on-board communication as required	3,000	4,500
(2) Failure to repair train signal system or other on-board communication when not safe or suitable for service	3,000	4,500
230.80 Cabs:		
(a) Steam locomotive cab not safe and suitable for service	3,000	4,500
(b) Steam pipes: Construction, attachment	3,000	4,500
(c) Oil-burning steam locomotive, cab-enclosed	3,000	4,500
230.81 Cab aprons:		
(a) Cab apron, general provisions	3,000	4,500
(b) Cab apron, insufficient width	3,000	4,500
230.82 Fire doors:		
(a) Safe and suitable for service, general provisions	3,000	4,500
(b) Construction and maintenance of mechanically operated fire doors	3,000	4,500
(c) Construction and maintenance of hand-operated fire doors.	3,000	4,500
230.83 Cylinder cocks:		
(1) Failure to properly equip with cylinder cocks	3,000	4,500
(2) Failure to properly maintain cylinder cocks	3,000	4,500
230.84 Sanders:		
(1) Inoperable sanders	3,000	4,500

APPENDIX D TO PART 230.—SCHEDULE OF CIVIL PENALTIES—Continued

Section	Violation	Willful violation
(2) Failure to test sanders	3,000	4,500
230.85 Audible warning devices:		
(a) General provisions	3,000	4,500
(b) Sound level measurements, Failure to properly take	3,000	4,500
230.86 Required illumination:		
(a) General provisions	3,000	4,500
(b) Dimming device, Failure to properly equip with	3,000	4,500
(c) Multiple locomotives, Failure of lead locomotive to display headlight	3,000	4,500
230.87 Cab lights: Failure to properly equip with	3,000	4,500
230.88 Throttles: Failure to properly maintain, equip	3,000	4,500
230.89 Reverse gear:		
(a) General provisions	3,000	4,500
(b) Air-operated power reverse gear	3,000	4,500
(c) Power reverse gear reservoirs	3,000	4,500
230.90 Draw gear and draft systems:		
(a) Maintenance and testing	3,000	4,500
(b) Safety bars and chains, general	3,000	4,500
(c) Safety bars and chains, minimum length	3,000	4,500
(d) Lost motion between steam locomotive and tender	3,000	4,500
(e) Spring buffers: Improper application, compression	3,000	4,500
230.91 Chafing irons: Improper application, maintenance	3,000	4,500
230.92 Draw gear, draft systems: Improperly maintained, fastened	3,000	4,500
230.93 Pistons and piston rods:		
(a) Failure to properly inspect, maintain, renew	3,000	4,500
(b) Fasteners: Failure to keep tight, properly equip	3,000	4,500
230.94 Crossheads: Improperly maintained, excess clearance	3,000	4,500
230.95 Guides: Failure to securely fasten, properly maintain	3,000	4,500
230.96 Main, side, valve motion rods:		
(a) General	3,000	4,500
(b) Repairs	3,000	4,500
(1) Failure to make in accordance with accepted national standard	3,000	4,500
(2) Failure to submit written request for approval prior to welding	3,000	4,500
(c) Bearings and bushings	3,000	4,500
(d) Rod side motion: Excessive motion	3,000	4,500
(e) Oil, grease cups: Failure to securely fasten, properly equip	3,000	4,500
(f) Main rod bearings:		
(1) excessive bore	3,000	4,500
(2) excessive lost motion	3,000	4,500
(g) Side rod bearings, excessive bore	3,000	4,500
230.97 Crank pins:		
(a) General provisions	3,000	4,500
(b) Maintenance: Failure to maintain in safe, suitable condition	3,000	4,500
230.98 Driving, trailing, engine truck axles:		
(a) Condemning defects	3,000	4,500
(b) Journal diameter: Failure to stamp on end of axle	1,500	2,500
230.99 Tender truck axle: Insufficient diameter	3,000	4,500
230.100 Defects in tender truck axles and journals:		
(a) Tender truck axle condemning defects	3,000	4,500
(b) Tender truck journal condemning defects	3,000	4,500
230.101 Steam locomotive driving journal boxes:		
(a) Driving journal boxes: Failure to properly maintain	3,000	4,500
(b) Broken bearings: Failure to renew	3,000	4,500
(c) Loose bearings: Failure to repair or renew	3,000	4,500
230.102 Tender plain bearing journal boxes: Failure to repair	3,000	4,500
230.103 Tender roller bearing journal boxes: Failure to properly maintain	3,000	4,500
230.104 Driving box shoes and wedges: Failure to properly maintain	3,000	4,500
230.105 Lateral motion:		
(a) Condemning limits: Total lateral motion in excess of	3,000	4,500
(b) Limits exceeded, failure to demonstrate conditions require additional lateral motion	3,000	4,500
(c) Interferes with other parts of steam locomotive	3,000	4,500
230.106 Steam locomotive frame:		
(a) Failure to properly inspect and/or maintain	3,000	4,500
(b) Broken frames, not properly patched or secured	6,500	9,000
230.107 Tender frame and body:		
(a) Failure to properly maintain	3,000	4,500
(b) Height difference between tender deck and steam locomotive cab floor or deck excessive	3,000	4,500
(c) Gangway minimum width excessive	3,000	4,500
(d) Tender frame condemning defects	5,000	7,500
230.108 Steam locomotive leading and trailing trucks:		
(a) Failure to properly maintain	3,000	4,500
(b) Safety chain, suitable safety chain not provided	3,000	4,500

APPENDIX D TO PART 230.—SCHEDULE OF CIVIL PENALTIES—Continued

Section	Violation	Willful violation
(c) Insufficient truck clearance	3,000	4,500
230.109 Tender trucks:		
(a):		
(1) Tender truck frames	3,000	4,500
(2) Tender truck center plate	3,000	4,500
(b) Tender truck bolsters: Failure to properly maintain	5,000	7,500
(c) Condemning defects, springs and/or spring rigging	3,000	4,500
(d) Truck securing arrangement: Not properly maintained	3,000	4,500
(e) Side bearings, truck centering devices	3,000	4,500
(f) Friction side bearings: Run in contact	3,000	4,500
(g):		
(1) Side bearings, failure to equip rear trucks with	3,000	4,500
(2) Insufficient clearance of	3,000	4,500
230.110 Pilots:		
(a) General provisions	3,000	4,500
(b) Clearance, insufficient or excessive	3,000	4,500
230.111 Spring rigging:		
(a) Arrangement of springs and equalizers	3,000	4,500
(b) Spring or spring rigging condemning defects	3,000	4,500
230.112 Wheels and tires:		
(a) Improperly Mounted, excess variance in axle diameter	5,000	7,500
(b) Out of gage	3,000	4,500
(c) Flange distance variance, excessive	3,000	4,500
(d) Tire thickness, insufficient	3,000	4,500
(e) Tire width, insufficient	3,000	4,500
230.113 Wheels and tire defects:		
(1) Failure to repair	3,000	4,500
(2) Welding on, except as otherwise provided for	5,000	7,500
(a) Cracks or breaks in	3,000	4,500
(b) Flat spots	3,000	4,500
(c) Chipped flange	3,000	4,500
(d) Broken rim	3,000	4,500
(e) Shelled-out spots	3,000	4,500
(f) Seams	3,000	4,500
(g) Worn flanges, excessive wear	3,000	4,500
(h) Worn treads, excessive wear	3,000	4,500
(i) Flange height, insufficient or excessive	3,000	4,500
(j) Rim thickness, insufficient	3,000	4,500
(k) Wheel diameter, excessive variance	3,000	4,500
230.114 Wheel centers:		
(a) Filling blocks and shims	3,000	4,500
(b) Wheel center condemning limits, failure to repair	3,000	4,500
(c) Wheel center repairs	3,000	4,500
(d) Counterbalance maintenance	3,000	4,500
230.115 Feed water tanks:		
(a) General provisions	3,000	4,500
(b) Inspection frequency, failure to inspect as required	3,000	4,500
(c) Top of tender: Improperly maintained and/or equipped	3,000	4,500
230.116 Oil tanks:		
(1) Failure to properly maintain	6,500	9,000
(2) Failure to equip with complying safety cut-off device	8,500	11,000

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. Failure to observe any condition for movement set forth in §230.12 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the locomotive at the time of movement. Failure to comply with §230.12 will result in the lapse of any affected waiver. Generally, when two or more violations of these regulations are discovered with respect to a single locomotive that is used by a railroad, the appropriate penalties set forth are aggregated up to a maximum of \$11,000 per day. However, a failure to perform, with respect to a particular locomotive, any of the inspections and tests required under this part, will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that locomotive. The penalty schedule uses section numbers from 49 CFR part 230. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 231—[AMENDED]

31. The authority citation for part 231 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

32. Appendix A to part 231 is revised to read as follows:

APPENDIX A TO PART 231.—SCHEDULE OF CIVIL PENALTIES¹

Section	Violation	Willful violation	
110.A1	Hand Brake or Hand Brake Part Missing	\$6,500	\$9,000
110.A2	Hand Brake or Hand Brake Part Broken	6,500	9,000
110.A3	Hand Brake or Hand Brake Part Loose or Worn	5,000	7,500
110.B1	Hand Brake Inoperative	6,500	9,000
110.B2	Hand Brake Inefficient	5,000	7,500
110.B3	Hand Brake Improperly Applied	5,000	7,500
110.B4	Hand Brake Incorrectly located	3,000	4,500
110.B5	Hand Brake Shaft Welded or Wrong Dimension	3,000	4,500
110.B6	Hand Brake Shaft Not Retained in Operating Position	3,000	4,500
110.B8	Hand Brake or Hand Brake Parts Wrong Design	3,000	4,500
114.B2	Hand Brake Wheel or Lever Has Insufficient Clearance Around Rim or Handle	3,000	4,500
114.B3	Hand Brake Wheel/Lever Clearance Insufficient to Vertical Plane Through Inside Face of Knuckle	3,000	4,500
120.A1	Brake Step Missing Except by Design	6,500	9,000
120.A2	Brake Step or Brace Broken or Decayed	6,500	9,000
120.A3	Brake Step or Brace Loose	5,000	7,500
120.B1	Brake Step or Brace Bent	5,000	7,500
120.B2	Brake Step or Wrong Dimensions	3,000	4,500
120.C1	Brake Step Improperly Applied	3,000	4,500
120.C2	Brake Step Improperly Located	3,000	4,500
120.C3	Brake Step With Less Than 4" Clearance to Vertical Plane through Inside Face of Knuckle	3,000	4,500
120.C4	Brake Step Obstructed or Otherwise Unsafe	5,000	7,500
124.A1	Running Board Missing or Part Missing Except By Design	6,500	9,000
124.A2	Running Board Broken or Decayed	6,500	9,000
124.A3	Running Board Loose Presents a Tripping Hazard or Other Unsafe Condition	6,500	9,000
124.A4	Running Board Wrong Material	3,000	4,500
124.B1	Running Board Bent to the Extent that It is Unsafe	5,000	7,500
124.B2	Running Board Wrong Dimensions	3,000	4,500
124.B3	Running Board Wrong Location	3,000	4,500
124.C1	Running Board Improperly Applied	3,000	4,500
124.C2	Running Board Obstructed	5,000	7,500
126.A1	End Platform Missing or Part Except By Design	6,500	9,000
126.A2	End Platform Broken or Decayed	6,500	9,000
126.A3	End Platform Loose	5,000	7,500
126.B1	End Platform or Brace Bent	3,000	4,500
126.B2	End Platform Wrong Dimensions	3,000	4,500
126.C1	End Platform Improperly Applied	3,000	4,500
126.C2	End Platform With Less Than Required Clearance to Vertical Plane Through Inside Knuckle	3,000	4,500
126.C3	End Platform Improperly Located	3,000	4,500
126.C4	End Platform Obstructed	5,000	7,500
128.A1	Platform or Switching Step Missing	6,500	9,000
128.A2	Platform or Switching Step Broken or Decayed	6,500	9,000
128.A3	Platform or Switching Step Loose	5,000	7,500
128.B1	Platform or Switching Step Bent	5,000	7,500
128.B2	Platform or Switching Step Does Not Meet the Required Location or Dimensions	3,000	4,500
128.C1	Platform or Switching Step Improperly Applied or Repaired	5,000	7,500
128.C2	Platform or Switching Step Obstructed	5,000	7,500
128.D1	Switching Step Back Stop or Kick Plate Missing	3,000	4,500
128.D2	Switching Step Not Illuminated When Required	3,000	4,500
128.D3	Non-Illuminated Step Not Painted Contrasting Color	1,500	2,500
130.A1	Sill Step or Additional Tread, Missing	6,500	9,000
130.A2	Sill Step or Additional Tread, Broken	6,500	9,000
130.A3	Sill Step or Additional Tread, Loose	5,000	7,500
130.B1	Sill Step or Additional Tread, Bent	5,000	7,500
130.B2	Sill Step or Additional Tread, Having Wrong Dimensions or Improperly Located	3,000	4,500
130.B3	Sill Step Improperly Applied	3,000	4,500
132.A1	Side Missing Step	6,500	9,000
132.A2	Side Door Step Broken	6,500	9,000
132.A3	Side Door Step Loose	5,000	7,500
132.B1	Side Door Step Bent	5,000	7,500
132.B2	Side Door Step Having Wrong Dimensions	3,000	4,500
134.A1	Ladder Missing	6,500	9,000
134.A2	Ladder Broken	6,500	9,000
134.A3	Ladder Loose	5,000	7,500
134.B1	Ladder Bent	5,000	7,500
134.B2	Ladder Having Wrong Dimensions	3,000	4,500
134.C1	Ladder Improperly Applied	3,000	4,500
134.C2	Ladder Having Insufficient Clearance or Improperly Located	3,000	4,500
134.C3	Ladder Wrong Design	3,000	4,500
134.C4	Ladder Wrong Material	3,000	4,500
134.D1	End Clearance Insufficient	3,000	4,500
136.A1	Ladder Tread or Handholds Missing	6,500	9,000

APPENDIX A TO PART 231.—SCHEDULE OF CIVIL PENALTIES¹

Section	Violation	Willful violation
136.A2 Ladder Tread or Handhold Broken	6,500	9,000
136.A3 Ladder Tread or Handhold Loose Except By Design	5,000	7,500
136.B1 Ladder Tread or Handhold Bent to The Extent That It May Be Unsafe	5,000	7,500
136.B2 Ladder Tread or Handhold Wrong Dimensions	3,000	4,500
136.C1 Ladder Tread or Handhold Improperly Applied	3,000	4,500
136.C2 Ladder Tread or Handhold Having Wrong Clearance	3,000	4,500
136.C3 Ladder or Handhold Improperly Located	3,000	4,500
136.C4 Ladder Tread or Handhold Obstructed	5,000	7,500
136.C5 Ladder Tread Without Footguards	5,000	7,500
138.A1 Hand or Safety Railing Missing	6,500	9,000
138.A2 Hand or Safety Railing Broken	6,500	9,000
138.A3 Hand or Safety Railing Loose Except by Design	5,000	7,500
138.B1 Hand or Safety Railing Bent	5,000	7,500
138.B2 Hand or Safety Railing Wrong Dimensions	3,000	4,500
138.C1 Hand or Safety Railing Improperly Applied	3,000	4,500
138.C2 Hand or Safety Railing Having Less Than the Required Clearance	3,000	4,500
138.C3 Hand or Safety Railing Improperly Located	3,000	4,500
140.A1 Uncoupling Lever Missing	5,000	7,500
140.A2 Uncoupling Lever Broken or Disconnected	5,000	7,500
140.B1 Uncoupling Lever Bent Will Not Safely and Reasonably Function As Intended	5,000	7,500
140.C1 Uncoupling Lever Bracket Bent Lever Will Not Function Properly	5,000	7,500
140.C2 Uncoupling Lever Bracket Broken or Missing	5,000	7,500
140.D1 Uncoupling Lever Wrong Dimension	3,000	4,500
140.D2 Uncoupling Lever With Improper Handle Clearance	3,000	4,500
144.A1 Coupler Missing	6,500	9,000
144.B1 Coupler Height Incorrect	3,000	4,500
144.C1 Coupler Inoperative	5,000	7,500
145.A1 Kick Plates Missing	3,000	4,500
145.A2 Kick Plates Broken	3,000	4,500
145.B1 Kick Plates Wrong Dimensions	3,000	4,500
145.B2 Kick Plates Improper Clearance	3,000	4,500
145.B3 Kick Plates Insecure Or Improperly Applied	3,000	4,500
146.A Notice or Stencil not Posted on Caboose with Running Boards Removed	1,500	2,500
146.B Safe Means not Provided to Clean or Maintain Windows of Caboose	1,500	2,500
231.31 Drawbars, standard height	5,000	7,500

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

² This schedule uses section numbers from FRA's Safety Appliance Defect Code, a restatement of the CFR text in a reorganized format. For convenience, and as an exception to FRA's general policy, penalty citations will cite the defect code rather than the CFR. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR and/or statutory citation in place of the defect code section cited in the penalty demand letter.

PART 232—[AMENDED]

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

34. Appendix A to part 232 is revised to read as follows:

33. The authority citation for part 232 continues to read as follows:

APPENDIX A TO PART 232.—SCHEDULE OF CIVIL PENALTIES

Section	Violation	Willful violation
Subpart A—General		
232.15 Movement of power brake defects:		
(a) Improper movement, general	(¹)	(¹)
(1) Failure to make determinations and provide notification of en route defect	\$5,000	\$7,500
(b) Complete failure to tag	5,000	7,500
(1) Insufficient tag or record	1,500	2,500
(2), (4) Improper removal of tag	5,000	7,500
(3) Failure to retain record of tag	5,000	7,500
(c) Improper loading or purging	5,000	7,500
(e) Improper placement of defective equipment	5,000	7,500
232.19 Availability of records	(¹)	(¹)
Subpart B—General Requirements		
232.103 All train brake systems:		
(a)–(c), (h)–(i) Failure to meet general design requirements	5,000	7,500
(d) Failure to have proper percentage of operative brakes from Class I brake test	6,500	9,000

APPENDIX A TO PART 232.—SCHEDULE OF CIVIL PENALTIES—Continued

Section	Violation	Willful violation
(e) Operating with less than 85 percent operative brakes	6,500	9,000
(f) Improper use of car with inoperative or ineffective brakes	5,000	7,500
(g) Improper display of piston travel	5,000	7,500
(m) Failure to stop train with excess air flow or gradient	5,000	7,500
(n) Securement of unattended equipment:		
(1) Failure to apply sufficient number of hand brakes; failure to develop or implement procedure to verify number applied	6,500	9,000
(2) Failure to initiate emergency	5,000	7,500
(3) Failure to apply hand brakes on locomotives	5,000	7,500
(4) Failure to adopt or comply with procedures for securing unattended locomotive	6,500	9,000
(o) Improper adjustment of air regulating devices	5,000	7,500
(p) Failure to hold supervisors jointly responsible	5,000	7,500
232.105 Locomotives:		
(a) Air brakes not in safe and suitable condition	6,500	9,000
(b) Not equipped with proper hand or parking brake	6,500	9,000
(c)(1) Failure to inspect/repair hand or parking brake	5,000	7,500
(2) Failure to properly stencil, tag, or record	3,000	4,500
(d) Excess leakage from equalizing reservoir	5,000	7,500
(e) Improper use of feed or regulating valve braking	5,000	7,500
(f) Improper use of passenger position	5,000	7,500
(g) Brakes in operative condition	6,500	9,000
232.107 Air sources/cold weather operations:		
(a)(1), (2) Failure to adopt or comply with monitoring program for yard air sources	6,500	9,000
(3) Failure to maintain records	5,000	7,500
(b) Failure to blow condensation	6,500	9,000
(c) Use of improper chemicals	6,500	9,000
(d) Failure to equip or drain yard air reservoirs	6,500	9,000
(e) Failure to adopt or comply cold weather operating procedures	6,500	9,000
232.109 Dynamic brakes:		
(a) Failure to provide information	5,000	7,500
(b) Failure to make repairs	5,000	7,500
(c) Failure to properly tag	3,000	4,500
(d) Failure to maintain record of repair	1,500	2,500
(e) Improper deactivation	5,000	7,500
(f) Improper use of locomotive as controlling unit	5,000	7,500
(g) Locomotive not properly equipped with indicator	5,000	7,500
(h) Rebuilt locomotive not properly equipped	5,000	7,500
(j) Failure to adopt or comply with dynamic brake operating rules	6,500	9,000
(k) Failure to adopt or comply with training on operating procedures	6,500	9,000
232.111 Train handling information:		
(a) Failure to adopt and comply with procedures	6,500	9,000
(b) Failure to provide specific information	5,000	7,500
Subpart C—Inspection and Testing Requirements		
232.203 Training requirements:		
(a) Failure to develop or adopt program	8,500	11,000
(b)(1)–(9) Failure to address or comply with specific required item or provision of program	5,000	7,500
(c) Failure to adopt or comply with two-way EOT program	6,500	9,000
(d) Failure to adopt or comply with retaining valve program	6,500	9,000
(e) Failure to maintain adequate records	6,500	9,000
(f) Failure to adopt and comply with periodic assessment plan	8,500	11,000
232.205 Class I brake test—initial terminal inspection:		
(a) Complete failure to perform inspection	¹ 8,500	11,000
(c)(1)–(4), (6)–(8) Partial failure to perform inspection	6,500	9,000
(c)(5) Failure to properly adjust piston travel (per car)	5,000	7,500
(d) Failure to use carman when required	3,000	4,500
(e) Failure to provide proper notification	5,000	7,500
(f) Failure to void compressed air	5,000	7,500
232.207 Class IA brake tests—1,000-mile inspection:		
(a) Complete failure to perform inspection	¹ 6,500	9,000
(b)(1)–(6) Partial failure to perform inspection	5,000	7,500
(c) Failure to properly designate location	5,000	7,500
(c)(1) Failure to perform at designated location	5,000	7,500
(c)(2) Failure to provide notification	5,000	7,500
232.209 Class II brake tests—intermediate inspection:		
(a) Complete failure to perform inspection	¹ 6,500	9,000
(b)(1)–(5), (c) Partial failure to perform inspection	5,000	7,500
(d) Failure to conduct Class I after Class II pick-up	(1)	(1)
232.211 Class III brake tests—trainline continuity inspection:		
(a) Complete failure to perform inspection	6,500	9,000

APPENDIX A TO PART 232.—SCHEDULE OF CIVIL PENALTIES—Continued

Section	Violation	Willful violation
(b)(1)–(4), (c) Partial failure to perform inspection	5,000	7,500
(d) Failure to restore air pressure at rear	5,000	7,500
232.213 Extended haul trains:		
(a)(1) Failure to properly designate an extended haul train	6,500	9,000
(a)(2)–(3), (5)(i), (8) Failure to perform inspections	(¹)	(¹)
(a)(4) Failure to remove defective car (per car)	3,000	4,500
(a)(5)(ii), (6) Failure to conduct inbound inspection	6,500	9,000
(a)(7) Failure to maintain record of defects (per car)	3,000	4,500
(b) Improper movement or use of extended haul train	6,500	9,000
232.215 Transfer train brake tests:		
(a) Failure to perform inspection	6,500	9,000
(b) Failure to perform on cars added	5,000	7,500
232.217 Train brake system tests conducted using yard air:		
(a) Failure to use suitable device	5,000	7,500
(b) Improper connection of air test device	6,500	9,000
(c) Failure to properly perform inspection	(¹)	(¹)
(d) Failure to calibrate test device	5,000	7,500
(e) Failure to use accurate device	5,000	7,500
232.219 Double heading and helper service:		
(a) Failure to perform inspection or inability to control brakes	5,000	7,500
(b) Failure to make visual inspection	5,000	7,500
(c) Use of improper helper link device	5,000	7,500
Subpart D—Periodic Maintenance and Testing Requirements		
232.303 General requirements:		
(b)–(d) Failure to conduct inspection or test when car on repair track	5,000	7,500
(e) Improper movement of equipment for testing	5,000	7,500
(e)(1) Failure to properly tag equipment for movement	3,000	4,500
(e)(2)–(4) Failure to retain record or improper removal of tag or card	3,000	4,500
(f) Failure to stencil or track test information	5,000	7,500
232.305 Single car tests:		
(a) Failure to test in accord with required procedure	5,000	7,500
(b)–(c) Failure to perform test	5,000	7,500
232.309 Repair track air brake test and single car test equipment and devices:		
(a)–(f) Failure to properly test or calibrate	5,000	7,500
Subpart E—End-of-Train Devices		
232.403 Design standards for one-way devices:		
(a)–(g) Failure to meet standards	5,000	7,500
232.405 Design standards for two-way devices:		
(a)–(i) Failure to meet standards	5,000	7,500
232.407 Operating requirements for two-way devices:		
(b) Failure to equip a train	6,500	9,000
(c) Improper purchase	5,000	7,500
(f)(1) Failure of device to be armed and operable	6,500	9,000
(f)(2) Insufficient battery charge	5,000	7,500
(f)(3) Failure to activate the device	5,000	7,500
(g) Improper handling of en route failure, freight or other non-passenger	6,500	6,500
(h) Improper handling of en route failure, passenger	6,500	9,000
232.409 Inspection and testing of devices:		
(a) Failure to have unique code	5,000	7,500
(b) Failure to compare quantitative values	5,000	7,500
(c) Failure to test emergency capability	6,500	9,000
(d) Failure to properly calibrate	5,000	7,500
Subpart F—Introduction of New Brake System Technology		
232.503 Process to introduce new technology:		
(b) Failure to obtain FRA approval	8,500	11,000
232.505 Pre-revenue service acceptance testing plan:		
(a) Failure to obtain FRA approval	6,500	9,000
(b) Failure to comply with plan	5,000	7,500
(f) Failure to test previously used technology	6,500	9,000

¹ A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single unit of equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$11,000 per day. Although the penalties listed for failure to perform the brake inspections and tests under § 232.205 through § 232.209 may be assessed for each train that is not properly inspected, failure to perform any of the inspections and tests required under those sections will be treated as a violation separate and distinct from, and in addition to, any substantive volatile conditions found on the equipment contained in the train consist. Moreover, the Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Failure to observe any condition for movement of defective equipment set forth in §232.15(a) will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the equipment at the time of movement.

Failure to provide any of the records or plans required by this part pursuant to §232.19 will be considered a failure to maintain or develop the record or plan and will make the railroad liable for penalty under the particular regulatory section(s) concerning the retention or creation of the document involved.

Failure to properly perform any of the inspections specifically referenced in §232.209, §232.213, and §232.217 may be assessed under each section of this part or this chapter, or both, that contains the requirements for performing the referenced inspection.

PART 233—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

36. Appendix A to part 233 is revised to read as follows:

35. The authority citation for part 233 continues to read as follows:

APPENDIX A TO PART 233.—SCHEDULE OF CIVIL PENALTIES ¹

Section	Violation	Willful violation
233.5 Accidents resulting from signal failure	\$5,000	\$7,500
233.7 Signal failure reports	3,000	4,500
233.9 Annual reports	1,500	2,500

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

PART 234—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

38. Appendix A to part 234 is revised to read as follows:

37. The authority citation for part 234 continues to read as follows:

APPENDIX A TO PART 234.—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
Subpart B—Reports		
234.7 Accidents involving grade crossing signal failure	\$5,000	\$7,500
234.9 Grade crossing signal system failure reports	3,000	4,500
Subpart C—Response to Reports of Warning System Malfunction		
234.101 Employee notification rules	3,000	4,500
234.103 Timely response to report of malfunction	6,500	9,000
234.105 Activation failure:		
(a) Failure to notify—train crews	8,500	11,000
Other railroads	8,500	11,000
(b) Failure to notify law enforcement agency	3,000	4,500
(c) Failure to comply with—flagging requirements	6,500	9,000
Speed restrictions	6,500	9,000
(d) Failure to activate horn or whistle	3,000	4,500
234.106 Partial activation:		
(a) Failure to notify—train crews	5,000	7,500
Other railroads	5,000	7,500
(b) Failure to notify law enforcement agency	3,000	4,500
(c) Failure to comply with—flagging requirements speed restrictions	5,000	7,500
(d) Failure to activate horn or whistle	3,000	4,500
234.107 False activation:		
(a) Failure to notify—train crews	6,500	9,000
Other railroads	6,500	9,000
(b) Failure to notify law enforcement agency	3,000	4,500
(c) Failure to comply with—flagging requirements	5,000	7,500
Speed restrictions	5,000	7,500
(d) Failure to activate horn or whistle	3,000	4,500
234.109 Recordkeeping	1,500	2,500
Subpart D—Maintenance, Inspection, and Testing		
Maintenance Standards:		
234.201 Location of plans	3,000	4,500
234.203 Control circuits	5,000	7,500
234.205 Operating characteristics of warning system apparatus	6,500	9,000
234.207 Adjustment, repair, or replacement of component	6,500	9,000
234.209 Interference with normal functioning of system	8,500	11,000
234.211 Locking of warning system apparatus	3,000	4,500

APPENDIX A TO PART 234.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
234.213 Grounds	5,000	7,500
234.215 Standby power system	8,500	11,000
234.217 Flashing light units	3,000	4,500
234.219 Gate arm lights and light cable	3,000	4,500
234.221 Lamp voltage	5,000	7,500
234.223 Gate arm	3,000	4,500
234.225 Activation of warning system	8,500	11,000
234.227 Train detection apparatus	8,500	11,000
234.229 Shunting sensitivity	8,500	11,000
234.231 Fouling wires	6,500	9,000
234.233 Rail joints	6,500	9,000
234.235 Insulated rail joints	8,500	11,000
234.237 Switch equipped with circuit controller	3,000	4,500
234.239 Tagging of wires and interference of wires or tags with signal apparatus	3,000	4,500
234.241 Protection of insulated wire; splice in underground wire	5,000	7,500
234.243 Wire on pole line and aerial cable	5,000	7,500
234.245 Signs	3,000	4,500
Inspections and Tests:		
234.247 Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements	6,500	9,000
234.249 Ground tests	6,500	9,000
234.251 Standby power	5,000	7,500
234.253 Flashing light units and lamp voltage	3,000	4,500
234.255 Gate arm and gate mechanism	3,000	4,500
234.257 Warning system operation	6,500	9,000
234.259 Warning time	5,000	7,500
234.261 Highway traffic signal pre-emption	5,000	7,500
234.263 Relays	5,000	7,500
234.265 Timing relays and timing devices	5,000	7,500
234.267 Insulation resistance tests, wires in trunking and cables	5,000	7,500
234.269 Cut-out circuits	8,500	11,000
234.271 Insulated rail joints, bond wires, and track connections	5,000	7,500
234.273 Results of tests	1,500	2,500
234.275 Processor-Based Systems	6,500	9,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR part 234. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 235—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

40. Appendix A to part 235 is revised to read as follows:

39. The authority citation for part 235 continues to read as follows:

APPENDIX A TO PART 235.—SCHEDULE OF CIVIL PENALTIES ¹

Section	Violation	Willful violation
235.5 Changes requiring filing of application	\$3,000	\$4,500

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

PART 236—[AMENDED]

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note and 49 CFR 1.49.

42. Appendix A to part 236 is revised to read as follows:

41. The authority citation for part 236 continues to read as follows:

APPENDIX A TO PART 236.—SCHEDULE OF CIVIL PENALTIES ¹

Section	Violation	Willful violation	
Subpart A—Rules and Instructions—All Systems			
General:			
236.0	Applicability, minimum requirements	\$5,000	\$7,500
236.1	Plans, where kept	6,500	9,000
236.2	Grounds	6,500	9,000
236.3	Locking of signal apparatus housings:		
	(a) Power interlocking machine cabinet not secured against unauthorized entry	3,000	4,500
	(b) other violations	3,000	4,500
236.4	Interference with normal functioning of device	8,500	11,000
236.5	Design of control circuits on closed circuit principle	8,500	11,000
236.6	Hand-operated switch equipped with switch circuit controller	6,500	9,000
236.7	Circuit controller operated by switch-and-lock movement	6,500	9,000
236.8	Operating characteristics of electro-magnetic, electronic, or electrical apparatus	5,000	7,500
236.9	Selection of circuits through indicating or annunciating instruments	3,000	4,500
236.10	Electric locks, force drop type; where required	3,000	4,500
236.11	Adjustment, repair, or replacement of component	6,500	9,000
236.12	Spring switch signal protection; where required	5,000	7,500
236.13	Spring switch; selection of signal control circuits through circuit controller	5,000	7,500
236.14	Spring switch signal protection; requirements	5,000	7,500
236.15	Timetable instructions	3,000	4,500
236.16	Electric lock, main track releasing circuit:		
	(a) Electric lock releasing circuit on main track extends into fouling circuit where turnout not equipped with derail at clearance point either pipe-connected to switch or independently locked, electrically ...	6,500	9,000
	(b) other violations	6,500	9,000
236.17	Pipe for operating connections, requirements	3,000	4,500
236.18	Software management control plan:		
	Failure to develop and adopt a plan	5,000	7,500
	Failure to fully implement plan	5,000	7,500
	Inadequate plan	5,000	7,500
Roadway Signals and Cab Signals—			
236.21	Location of roadway signals	6,500	9,000
236.22	Semaphore signal arm; clearance to other objects	3,000	4,500
236.23	Aspects and indications	5,000	7,500
236.24	Spacing of roadway signals	6,500	9,000
236.26	Buffing device, maintenance	6,500	9,000
Track Circuits—			
236.51	Track circuit requirements:		
	(a) Shunt fouling circuit used where permissible speed through turnout greater than 45 m.p.h	6,500	9,000
	(b) Track relay not in de-energized position or device that functions as track relay not in its most restrictive state when train, locomotive, or car occupies any part of track circuit, except fouling section of turnout of hand-operated main-track crossover	8,500	11,000
	(c) other violations	6,500	9,000
236.52	Relayed cut-section	6,500	9,000
236.53	Track circuit feed at grade crossing	6,500	9,000
236.54	Minimum length of track circuit	6,500	9,000
236.55	Dead section; maximum length	6,500	9,000
236.56	Shunting sensitivity	6,500	9,000
236.57	Shunt and fouling wires:		
	(a) Shunt or fouling wires do not consist of at least two discrete conductors	6,500	9,000
	(b) other violations	5,000	7,500
236.58	Turnout, fouling section:		
	(a) Rail joint in shunt fouling section not bonded	6,500	9,000
	(b) other violations	5,000	7,500
236.59	Insulated rail joints	6,500	9,000
236.60	Switch shunting circuit; use restricted	6,500	9,000
Wires and Cables—			
236.71	Signal wires on pole line and aerial cable	6,500	9,000
236.73	Open-wire transmission line; clearance to other circuits	5,000	7,500
236.74	Protection of insulated wire; splice in underground wire	5,000	7,500
236.76	Tagging of wires and interference of wires or tags with signal apparatus	3,000	4,500
Inspections and Tests; All Systems—			
236.101	Purpose of inspection and tests; removal from service or relay or device failing to meet test requirements	5,000	7,500
236.102	Semaphore or search-light signal mechanism	6,500	9,000
236.103	Switch circuit controller or point detector	6,500	9,000
236.104	Shunt fouling circuit	5,000	7,500
236.105	Electric lock	5,000	7,500
236.106	Relays	5,000	7,500
236.107	Ground tests	5,000	7,500
236.108	Insulation resistance tests, wires in trunking and cables:		

APPENDIX A TO PART 236.—SCHEDULE OF CIVIL PENALTIES¹—Continued

Section	Violation	Willful violation
(a) Circuit permitted to function on a conductor having insulation resistance value less than 200,000 ohms	6,500	9,000
(b) other violations	5,000	7,500
236.109 Time releases, timing relays and timing devices	5,000	7,500
236.110 Results of tests	1,500	2,500
Subpart B—Automatic Block Signal Systems		
236.201 Track circuit control of signals	6,500	9,000
236.202 Signal governing movements over hand-operated switch	6,500	9,000
236.203 Hand-operated crossover between main tracks; protection	6,500	9,000
236.204 Track signaled for movements in both directions, requirements	6,500	9,000
236.205 Signal control circuits; requirements	8,500	11,000
236.206 Battery or power supply with respect to relay; location	5,000	7,500
Subpart C—Interlocking		
236.207 Electric lock on hand-operated switch; control:		
(a) Approach or time locking of electric lock on hand-operated switch can be defeated by unauthorized use of emergency device which is not kept sealed in the non-release position	6,500	9,000
(b) other violations	5,000	7,500
236.301 Where signals shall be provided	5,000	7,500
236.302 Track circuits and route locking	6,500	7,500
236.303 Control circuits for signals, selection through circuit controller operated by switch points or by switch locking mechanism	6,500	9,000
236.304 Mechanical locking or same protection effected by circuits	6,500	9,000
236.305 Approach or time locking	6,500	9,000
236.306 Facing point lock or switch-and-lock movement	5,000	7,500
236.307 Indication locking	6,500	9,000
236.308 Mechanical or electric locking or electric circuits; requisites	6,500	9,000
236.309 Loss of shunt protection; where required	6,500	9,000
(a) Loss of shunt of five seconds or less permits release of route locking of power-operated switch, movable point frog, or derail	6,500	9,000
(b) Other violations	5,000	7,500
236.310 Signal governing approach to home signal	5,000	7,500
236.311 Signal control circuits, selection through track relays or devices functioning as track relays and through signal mechanism contacts and time releases at automatic interlocking	6,500	9,000
236.312 Movable bridge, interlocking of signal appliances with bridge devices:		
(a) Emergency bypass switch or device not locked or sealed	6,500	9,000
(b) other violations	6,500	9,000
236.314 Electric lock for hand-operated switch or derail:		
(a) Approach or time locking of electric lock at hand-operated switch or derail can be defeated by unauthorized use of emergency device which is not kept sealed in non-release position	6,500	9,000
(b) other violations	6,500	9,000
Rules and Instructions—		
236.326 Mechanical locking removed or disarranged; requirement for permitting train movements through interlocking	5,000	7,500
236.327 Switch, movable-point frog or split-point derail	6,500	9,000
236.328 Plunger of facing-point	5,000	7,500
236.329 Bolt lock	6,500	9,000
236.330 Locking dog of switch and lock movement	5,000	7,500
236.334 Point detector	6,500	9,000
236.335 Dogs, stops and trunnions of mechanical locking	3,000	4,500
236.336 Locking bed	3,000	4,500
236.337 Locking faces of mechanical locking; fit	3,000	4,500
236.338 Mechanical locking required in accordance with locking sheet and dog chart	3,000	4,500
236.339 Mechanical locking; maintenance requirements	3,000	4,500
236.340 Electromechanical interlocking machine; locking between electrical and mechanical levers	3,000	4,500
236.341 Latch shoes, rocker links, and quadrants	3,000	4,500
236.342 Switch circuit controller	6,500	9,000
Inspection and Tests—		
236.376 Mechanical locking	5,000	7,500
236.377 Approach locking	5,000	7,500
236.378 Time locking	5,000	7,500
236.379 Route locking	5,000	7,500
236.380 Indication locking	5,000	7,500
236.381 Traffic locking	5,000	7,500
236.382 Switch obstruction test	6,500	9,000
236.383 Valve locks, valves, and valve magnets	5,000	7,500
236.384 Cross protection	5,000	7,500
236.386 Restoring feature on power switches	5,000	7,500

APPENDIX A TO PART 236.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section	Violation	Willful violation
236.387 Movable bridge locking	6,500	9,000
Subpart D—Traffic Control Systems Standards		
236.401 Automatic block signal system and interlocking standards applicable to traffic control systems:		
236.402 Signals controlled by track circuits and control operator	8,500	11,000
236.403 Signals at controlled point	8,500	11,000
236.404 Signals at adjacent control points	8,500	11,000
236.405 Track signaled for movements in both directions, change of direction of traffic	8,500	11,000
236.407 Approach or time locking; where required	8,500	11,000
236.408 Route locking	8,500	11,000
236.410 Locking, hand-operated switch; requirements:		
(a) Hand-operated switch on main track not electrically or mechanically locked in normal position where signal not provided to govern movement to main track, movements made at speeds in excess of 20 m.p.h., and train or engine movements may clear main track	6,500	9,000
(b) Hand-operated switch on signaled siding not electrically or mechanically locked in normal position where signal not provided to govern movements to signaled siding, train movements made at speeds in excess of 30 m.p.h., and train or engine movements may clear signaled siding	6,500	9,000
(c) Approach or time locking of electric lock at hand-operated switch can be defeated by use of emergency release device of electric lock which is not kept sealed in non-release position	6,500	9,000
(d) other violations	5,000	7,500
Rules and Instructions—		
236.426 Interlocking rules and instructions applicable to traffic control systems	1,500	2,500
236.476 Interlocking inspections and tests applicable to traffic control systems	1,500	2,500
Subpart E—Automatic Train Stop, Train Control and Cab Signal Systems Standards		
236.501 Forestalling device and speed control	5,000	7,500
236.502 Automatic brake application, initiation by restrictive block conditions stopping distance in advance	6,500	9,000
236.503 Automatic brake application; initiation when predetermined rate of speed exceeded	6,500	9,000
236.504 Operations interconnected with automatic block-signal system	5,000	7,500
236.505 Proper operative relation between parts along roadway and parts on locomotive	3,000	4,500
236.506 Release of brakes after automatic application	6,500	9,000
236.507 Brake application; full service	5,000	7,500
236.508 Interference with application of brakes by means of brake valve	5,000	7,500
236.509 Two or more locomotives coupled	3,000	4,500
236.511 Cab signals controlled in accordance with block conditions stopping distance in advance	5,000	7,500
236.512 Cab signal indication when locomotive enters blocks	6,500	9,000
236.513 Audible indicator	5,000	7,500
236.514 Interconnection of cab signal system with roadway signal system	3,000	4,500
236.515 Visibility of cab signals	5,000	7,500
236.516 Power supply	3,000	4,500
Rules and Instructions; Roadway—		
236.526 Roadway element not functioning properly	3,000	4,500
236.527 Roadway element insulation resistance	3,000	4,500
236.528 Restrictive condition resulting from open hand-operated switch; requirement	5,000	7,500
236.529 Roadway element inductor; height and distance from rail	3,000	4,500
236.531 Trip arm; height and distance from rail	3,000	4,500
236.532 Strap iron inductor; use restricted	3,000	4,500
236.534 Rate of pressure reduction; equalizing reservoir or brake pipe	5,000	7,500
236.551 Power supply voltage	3,000	4,500
236.552 Insulation resistance	3,000	4,500
236.553 Seal, where required	3,000	4,500
236.554 Rate of pressure reduction; equalizing reservoir or brake pipe	5,000	7,500
236.555 Repaired or rewound receiver coil	1,500	2,500
236.556 Adjustment of relay	3,000	4,500
236.557 Receiver; location with respect to rail	3,000	4,500
236.560 Contact element, mechanical trip type; location with respect to rail	3,000	4,500
236.562 Minimum rail current required	3,000	4,500
236.563 Delay time	5,000	7,500
236.564 Acknowledging time	3,000	4,500
236.565 Provision made for preventing operation of pneumatic brake-applying apparatus by double-heading clock; requirement	3,000	4,500
236.566 Locomotive of each train operating in train stop, train control or cab signal territory; equipped ...	3,000	4,500
236.567 Restrictions imposed when device fails and/or is cut out en route:		
(a) Report not made to designated officer at next available point of communication after automatic train stop, train control, or cab signal device fails and/or is cut out en route	5,000	7,500
(b) Train permitted to proceed at speed exceeding 79 m.p.h. where automatic train stop, train control, or cab signal device fails and/or is cut out en route when absolute block established in advance of train on which device is inoperative	5,000	7,500

APPENDIX A TO PART 236.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section	Violation	Willful violation
(c) other violations	3,000	4,500
236.568 Difference between speeds authorized by roadway signal and cab signal; action	3,000	4,500
Inspection and Tests; Roadway—		
236.576 Roadway element	3,000	4,500
236.577 Test, acknowledgement, and cut-in circuits	3,000	4,500
Inspection and Tests; Locomotive—		
236.586 Daily or after trip test	5,000	7,500
236.587 Departure test:		
(a) Test of automatic train stop, train control, or cab signal apparatus on locomotive not made on departure of locomotive from initial terminal if equipment on locomotive not cut out between initial terminal and equipped territory	6,500	9,000
(b) Test of automatic train stop, train control, or cab signal apparatus on locomotive not made immediately on entering equipped territory, if equipment on locomotive cut out between initial terminal and equipped territory	6,500	9,000
(c) Automatic train stop, train control, or cab signal apparatus on locomotive making more than one trip within 24-hour period not given departure test within corresponding 24-hour period	6,500	9,000
(d) other violations	5,000	7,500
236.588 Periodic test	6,500	9,000
236.589 Relays	5,000	7,500
236.590 Pneumatic apparatus:		
(a) Automatic train stop, train control, or cab signal apparatus not inspected and cleaned at least once every 736 days	5,000	7,500
(b) other violations	5,000	7,500
Subpart F—Dragging Equipment and Slide Detectors and Other Similar Protective Devices; Standards		
236.601 Signals controlled by devices; location	6,500	9,000
Subpart H—Standards for Processor-Based Signal and Train Control Systems		
236.905 Railroad Safety Program Plan (RSPP):		
(a) Failure to develop and submit RSPP when required	6,500	9,000
(b) Failure to obtain FRA approval for a modification to RSPP	6,500	9,000
236.907 Product Safety Plan (PSP):		
(a) Failure to develop a PSP	6,500	9,000
(b) Failure to submit a PSP when required	6,500	9,000
236.909 Minimum Performance Standard:		
(a) Failure to make analyses or documentation available	5,000	7,500
(b) Failure to determine that the standard has been met	6,500	9,000
236.913 Notification to FRA of PSPs:		
(a) Failure to prepare a PSP or PSP amendment as required	6,500	9,000
(b) Failure to submit a PSP or PSP amendment as required	6,500	9,000
(c) Field testing without authorization or approval	8,500	11,000
236.915 Implementation and operation:		
(a) Operation of product without authorization or approval	8,500	11,000
(b) Failure to comply with PSP	5,000	7,500
(c) Interference with normal functioning safety-critical product	8,500	11,000
(d) Failure to determine cause and adjust, repair or replace without undue delay or take appropriate action pending repair	5,000	7,500
236.917 Retention of records:		
(a) Failure to maintain records as required	6,500	9,000
(b) Failure to report inconsistency	6,500	9,000
(c) Failure to take prompt countermeasures	6,500	9,000
(d) Failure to provide final report	3,000	4,500
236.919 Operations and Maintenance Manual	5,000	7,500
236.921 Training and qualification program, general	5,000	7,500
236.923 Task analysis and basic requirements:		
(a) Failure to develop an acceptable training program	3,000	4,500
(b) Failure to train persons as required	3,000	4,500
(c) Failure to conduct evaluation of training program as required	3,000	4,500
(d) Failure to maintain records as required	1,500	2,500
236.925 Training specific to control office personnel	5,000	7,500
236.927 Training specific to locomotive engineers and other operating personnel	5,000	7,500
236.929 Training specific to roadway workers	5,000	7,500

¹ The Administrator reserves the right to assess a civil penalty of up to \$27,000 per day for any violation where circumstances warrant. See 49 CFR part 209, appendix A. A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. The penalty schedule uses section numbers from 49 CFR part 236. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 238—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; 49 CFR 1.49.

44. Appendix A to part 238 is revised to read as follows:

43. The authority citation for part 238 continues to read as follows:

APPENDIX A TO PART 238.—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
Subpart A—General		
238.15 Movement of power brake defects:		
(b) Improper movement from Class I or IA brake test	\$6,500	\$9,000
(c) Improper movement of en route defect	5,000	7,500
(2), (3) Insufficient tag or record	1,500	2,500
(4) Failure to determine percent operative brake	5,000	7,500
(d) Failure to follow operating restrictions	6,500	9,000
(e) Failure to follow restrictions for inoperative front or rear unit	5,000	7,500
238.17 Movement of other than power brake defects: ¹		
(c)(4), (5) Insufficient tag or record	1,500	2,500
(d) Failure to inspect or improper use of roller bearings	5,000	7,500
(e) Improper movement of defective safety appliances	5,000	7,500
238.19 Reporting and tracking defective equipment:		
(a) Failure to have reporting or tracking system	8,500	11,000
(b) Failure to retain records	3,000	4,500
(c) Failure to make records available	1,500	2,500
(d) Failure to list power brake repair points	3,000	4,500
Subpart B—Safety Planning and General Requirements		
238.103 Fire protection plan/fire safety:		
(a) Failure to use proper materials	6,500	9,000
(b) Improper certification	1,500	2,500
(c) Failure to consider fire safety on new equipment	6,500	9,000
(d) Failure to perform fire safety analysis	6,500	9,000
(e) Failure to develop, adopt or comply with procedures	6,500	9,000
238.105 Train electronic hardware and software safety:		
(a), (b), (c) Failure to develop and maintain hardware and software safety	6,500	9,000
(d) Failure to include required design features	6,500	9,000
(e) Failure to comply with hardware and software safety program	6,500	9,000
238.107 Inspection, testing, and maintenance plan:		
(b) Failure to develop plan	6,500	9,000
(b)(1)–(5) Failure of plan to address specific item	5,000	7,500
(d) Failure to conduct annual review	6,500	9,000
238.109 Training, qualification, and designation program:		
(a) Failure to develop or adopt program	6,500	9,000
(b)(1)–(4) Failure of plan to address specific item	5,000	7,500
(b)(5)–(12) Failure to comply with specific required provision the program	5,000	7,500
(b)(13) Failure to maintain adequate records	5,000	7,500
238.111 Pre-revenue service acceptance testing plan:		
(a) Failure to properly test previously used equipment	6,500	9,000
(b)(1) Failure to develop plan	6,500	9,000
(b)(2) Failure to submit plan to FRA	6,500	9,000
(b)(3) Failure to comply with plan	6,500	9,000
(b)(4) Failure to document results of testing	6,500	9,000
(b)(5) Failure to correct safety deficiencies or impose operating limits	6,500	9,000
(b)(6) Failure to maintain records	3,000	4,500
(b)(7) Failure to obtain FRA approval	6,500	9,000
238.113 Emergency window exits	5,000	7,500
238.115 Emergency lighting	5,000	7,500
238.117 Protection against personal injury	5,000	7,500
238.119 Rim-stamped straight plate wheels	5,000	7,500
Subpart C—Specific Requirements for Tier I Equipment		
238.203 Static end strength	5,000	7,500
238.205 Anti-climbing mechanism	5,000	7,500
238.207 Link between coupling mechanism and car body	5,000	7,500
238.209 Forward-facing end structure of locomotives	5,000	7,500
238.211 Collision posts	5,000	7,500
238.213 Corner posts	5,000	7,500
238.215 Rollover strength	5,000	7,500
238.217 Side structure	5,000	7,500
238.219 Truck-to-car-body attachment	5,000	7,500
238.221 Glazing	5,000	7,500
238.223 Fuel tanks	5,000	7,500

APPENDIX A TO PART 238.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
238.225 Electrical System	5,000	7,500
238.227 Suspension system	5,000	7,500
239.229 Safety appliances—general:		
(e) Failure to properly identify equipment (per car)	5,000	7,500
(g) Failure to adopt or comply with inspection plan	5,000	7,500
(h) Failure to use qualified person (per car)	5,000	7,500
(i) Failure to properly conduct initial or periodic inspection (per car)	5,000	7,500
(j) Failure to take proper remedial action (per car)	5,000	7,500
(k) Failure to maintain records (per car)	3,000	4,500
238.230 Safety appliance—new equipment:		
(b)(2) Failure to identify welded appliance (per car)	5,000	7,500
(b)(3) Failure to receive approval for use (per car)	5,000	7,500
(c)(2) Failure to make proper repair (per car)	5,000	7,500
238.231 Brake System (a)–(g), (i)–(n)	5,000	7,500
(h)(1), (2) Hand or parking brake missing or inoperative	6,500	9,000
(h)(3) Hand or parking brake inspection or record (per car)	5,000	7,500
(h)(4) Hand or parking brake not applied to hold equipment unattended on grade or prematurely released	6,500	9,000
238.233 Interior fittings and surfaces	5,000	7,500
238.235 Doors	5,000	7,500
238.237 Automated monitoring	5,000	7,500

Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Equipment

238.303 Exterior mechanical inspection of passenger equipment:		
(a)(1) Failure to perform mechanical inspection	¹ 5,000	7,500
(a)(2) Failure to inspect secondary brake system	5,000	7,500
(b) Failure to perform inspection on car added to train	¹ 5,000	7,500
(c) Failure to utilize properly qualified personnel	5,000	7,500
(e)(1) Products of combustion not released outside cab	5,000	7,500
(e)(2) Battery not vented or gassing excessively	5,000	7,500
(e)(3) Coupler not in proper condition	5,000	7,500
(e)(4) No device under drawbar pins or connection pins	5,000	7,500
(e)(5) Suspension system and spring rigging not in proper condition	5,000	7,500
(e)(6) Truck not in proper condition	5,000	7,500
(e)(7) Side bearing not in proper condition	5,000	7,500
(e)(8) Wheel not in proper condition:		
(i), (iv) Flat spot(s) and shelled spot(s):		
(A) One spot 2½" or more but less than 3" in length	5,000	7,500
(B) One spot 3" or more in length	6,500	9,000
(C) Two adjoining spots each of which is 2" or more in length but less than 2½" in length	5,000	7,500
(D) Two adjoining spots each of which are at least 2" in length, if either spot is 2½" or more in length	6,500	9,000
(ii) Gouge or chip in flange:		
(A) More than 1½" but less than 1⅝" in length; and more than ½" but less than ⅝" in width	5,000	7,500
(B) 1⅝" or more in length and ⅝" or more in width	6,500	9,000
(iii) Broken rim	6,500	9,000
(v) Seam in tread	5,000	7,500
(vi) Flange thickness of:		
(A) ⅞" or less but more than	5,000	7,500
(B) 1⅜" or less	6,500	9,000
(vii) Tread worn hollow	5,000	7,500
(viii) Flange height of:		
(A) 1½" or greater but less than 1⅝"	5,000	7,500
(B) 1⅝" or more	6,500	9,000
(ix) Rim thickness:		
(A) Less than 1"	5,000	7,500
(B) 1⅜" or less	6,500	9,000
(x) Crack or break in flange, tread, rim, plate, or hub:		
(A) Crack of less than 1"	5,000	7,500
(B) Crack of 1" or more	6,500	9,000
(C) Break	6,500	9,000
(xi) Loose wheel	6,500	9,000
(xii) Welded wheel	6,500	9,000
(e)(10) Improper grounding or insulation	6,500	9,000
(e)(11) Jumpers or cable connections not in proper condition	5,000	7,500
(e)(12) Door or cover plate not properly marked	5,000	7,500
(e)(13) Buffer plate not properly placed	5,000	7,500
(e)(14) Diaphragm not properly placed or aligned	5,000	7,500
(e)(15) Secondary braking system not in operating mode or contains known defect	5,000	7,500
(e)(16) Roller bearings:		
(i) Overheated	8,500	11,000

APPENDIX A TO PART 238.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(ii) Cap screw loose or missing	5,000	7,500
(iii) Cap screw lock broken or missing	3,000	4,500
(iv) Seal loose, damaged, or leaks lubricant	5,000	7,500
(g) Record of inspection:		
(1), (4) Failure to maintain record of inspection	5,000	7,500
(2) Record contains insufficient information	3,000	4,500
(e)(17) Air compressor inoperative	5,000	7,500
238.305 Interior mechanical inspection of passenger cars:		
(a) Failure to perform inspection	¹ 3,000	4,500
(b) Failure to utilize properly qualified personnel	3,000	4,500
(c)(1) Failure to protect against personal injury	5,000	7,500
(c)(2) Floors not free of condition that creates hazard	5,000	7,500
(c)(3) Access to manual door release not in place	3,000	4,500
(c)(4) Emergency equipment not in place	3,000	4,500
(c)(5) Emergency brake valve not stenciled or marked	3,000	4,500
(c)(6) Door or cover plates not properly marked	3,000	4,500
(c)(7) Safety signage not in place or legible	3,000	4,500
(c)(8) Trap door unsafe or improperly secured	5,000	7,500
(c)(9) Vestibule steps not illuminated	3,000	4,500
(c)(10) Door not safely operate as intended	5,000	7,500
(c)(11) Seat broken, loose, or not properly attached	5,000	7,500
(e) Record of inspection:		
(1), (4) Failure to maintain record of inspection	3,000	4,500
(2) Record contains insufficient information	1,500	2,500
(f) Record of inspection:		
(1), (4) Failure to maintain record of inspection	3,000	4,500
(2) Record contains insufficient information	1,500	2,500
238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles:		
(a) Failure to perform periodic mechanical inspection	¹ 5,000	7,500
(b) Failure to utilize properly qualified personnel	5,000	7,500
(c)(1) Seat or seat attachment broken or loose	5,000	7,500
(c)(2) Luggage rack broken or loose	5,000	7,500
(c)(3) Bed, bunks, or restraints broken or loose	5,000	7,500
(c)(4) Emergency window exit not properly operate	5,000	7,500
(c)(5) Emergency lighting not operational	5,000	7,500
(c)(6) Switches not in proper condition	5,000	7,500
(c)(7) Coupler not in proper condition	5,000	7,500
(c)(8) Truck not equipped with securing arrangement	5,000	7,500
(c)(9) Truck center casting cracked or broken	6,500	9,000
(c)(10) General conditions endangering crew, passengers	5,000	7,500
(c)(13) Hand or parking brake test not performed	5,000	7,500
(d)(1) Manual door release does not operate as intended	5,000	7,500
(d)(2) Hand or parking brake inspection not performed	5,000	7,500
(e)(1) Failure to maintain record of inspection	3,000	4,500
(i)–(iv) Record contains insufficient information	3,000	4,500
(f)(1) Record of inspection:		
(i) Failure to maintain record of inspection	3,000	4,500
(ii) Record contains insufficient information	1,500	2,500
238.309 Periodic brake equipment maintenance:		
(b) Failure to perform on MU locomotive	5,000	7,500
(c) Failure to perform on conventional locomotive	5,000	7,500
(d) Failure to perform on passenger coaches or other unpowered vehicle	5,000	7,500
(e) Failure to perform on cab car	5,000	7,500
(f) Record of periodic maintenance:		
(1), (2) Failure to maintain record or stencil	3,000	4,500
238.311 Single car tests:		
(a) Failure to test in accord with required procedure	5,000	7,500
(b) Failure to utilize properly qualified personnel	5,000	7,500
(c), (e) Failure to perform single car test	5,000	7,500
(f) Improper movement of car for testing	3,000	4,500
(g) Failure to test after repair or replacement of component	3,000	4,500
238.313 Class I brake test:		
(a) Failure to perform on commuter or short distance intercity passenger train	¹ 8,500	11,000
(b) Failure to perform on long-distance intercity passenger train	¹ 8,500	11,000
(c) Failure to perform on cars added to passenger train	6,500	9,000
(d) Failure to utilized properly qualified personnel	6,500	9,000
(f) Passenger train used from Class I brake test with less than 100% operative brakes	6,500	9,000
(g) Partial failure to perform inspection on a passenger train	6,500	9,000
(3) Failure to adjust piston travel (per car)	5,000	7,500
(h) Failure to maintain record	3,000	4,500
(j) Failure to perform additional Class I brake test	8,500	11,000

APPENDIX A TO PART 238.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(j)(3) Failure to maintain record	3,000	4,500
238.315 Class IA brake test:		
(a) Failure to perform inspection	¹ 6,500	9,000
(d) Failure to utilize properly qualified personnel	5,000	7,500
(e) Passenger train used from Class IA brake test with improper percentage of operative brakes	6,500	9,000
(f) Partial failure to perform inspection on passenger train	5,000	7,500
238.317 Class II brake test:		
(a) Failure to perform inspection	¹ 5,000	7,500
(b) Failure to utilize properly qualified personnel	5,000	7,500
(c) Improper use of defective equipment from Class II brake test	5,000	7,500
238.319 Running brake tests:		
(a), (b) Failure to perform test	3,000	4,500
238.321 Out-of-service credit	3,000	4,500
Subpart E—Specific Requirements for Tier II Passenger Equipment		
238.403 Crash energy management	5,000	7,500
238.405 Longitudinal static compressive strength	5,000	7,500
238.407 Anti-climbing mechanism	5,000	7,500
238.409 Forward end structures of power car cabs:		
(a) Center collision post	5,000	7,500
(b) Side collision posts	5,000	7,500
(c) Corner posts	5,000	7,500
(d) Skin	5,000	7,500
238.411 Rear end structures of power car cabs:		
(a) Corner posts	5,000	7,500
(b) Collision posts	5,000	7,500
238.413 End structures of trailer cars	5,000	7,500
238.415 Rollover strength	5,000	7,500
238.417 Side loads	5,000	7,500
238.419 Truck-to-car-body and truck component attachment	5,000	7,500
238.421 Glazing:		
(b) End-facing exterior glazing	5,000	7,500
(c) Alternate glazing requirements	5,000	7,500
(d) Glazing securement	1,500	2,500
(e) Stenciling	3,000	4,500
238.423 Fuel tanks:		
(a) External fuel tanks	5,000	7,500
(b) Internal fuel tanks	5,000	7,500
238.425 Electrical system:		
(a) Circuit protection	5,000	7,500
(b) Main battery system	5,000	7,500
(c) Power dissipation resistors	5,000	7,500
(d) Electromagnetic interference and compatibility	5,000	7,500
238.427 Suspension system	5,000	7,500
238.429 Safety Appliances:		
(a) Couplers	6,500	9,000
(b) Hand/parking brakes	6,500	9,000
(d) Handrail and handhold missing	5,000	7,500
(d)(1)–(8) Handrail or handhold improper design	5,000	7,500
(e) Sill step missing	6,500	9,000
(e)(1)–(11) Sill step improper design	5,000	7,500
(g) Optional safety appliances	5,000	7,500
238.431 Brake system	5,000	7,500
238.433 Draft System	5,000	7,500
238.435 Interior fittings and surfaces	5,000	7,500
238.437 Emergency communication	5,000	7,500
238.439 Doors:		
(a) Exterior side doors	5,000	7,500
(b) Manual override feature	5,000	7,500
(c) Notification to crew of door status	5,000	7,500
(d) Emergency back-up power	5,000	7,500
(f) End door kick-out panel or pop-out window	5,000	7,500
(g) Marking and instructions	[Reserved]	.....
238.441 Emergency roof hatch entrance location	5,000	7,500
238.443 Headlights	5,000	7,500
238.445 Automated monitoring	5,000	7,500
238.447 Train operator's controls and power car cab layout	5,000	7,500

Subpart F—Inspection, Testing, and Maintenance Requirements for Tier II Passenger Equipment

238.503 Inspection, testing, and maintenance requirements:

APPENDIX A TO PART 238.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(a) Failure to develop inspection, testing, and maintenance program or obtain FRA approval	8,500	11,000
(b) Failure to comply with provisions of the program	6,500	9,000
(c) Failure to ensure equipment free of conditions which endanger safety of crew, passengers, or equipment	5,000	7,500
(d) Specific safety inspections:		
(1)(i) Failure to perform Class I brake test or equivalent	8,500	11,000
(1)(ii) Partial failure to perform Class I brake test or equivalent	6,500	9,000
(2)(i) Failure to perform exterior mechanical inspection	¹ 5,000	7,500
(2)(ii) Failure to perform interior mechanical inspection	¹ 3,000	4,500
(g) Failure to perform scheduled maintenance as required in program	5,000	7,500
(h) Failure to comply with training, qualification and designation program	6,500	9,000
(i) Failure to develop or comply with standard procedures for performing inspection, tests, and maintenance	5,000	7,500
(j) Failure to conduct annual review	6,500	9,000
(k) Failure to establish or utilize quality control program	6,500	9,000

Subpart G—Specific Safety Planning Requirements for Tier II Passenger Equipment

238.603 Safety plan:		
(a) Failure to develop safety operating plan	6,500	9,000
(b) Failure to develop procurement plan	6,500	9,000
(1)–(7) Failure to develop portion of plan	5,000	7,500
(c) Failure to maintain documentation	5,000	7,500

¹ A penalty may be assessed against an individual only for a willful violation. Generally when two or more violations of these regulations are discovered with respect to a single unit of passenger equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$11,000 per day. However, failure to perform, with respect to a particular unit of passenger equipment, any of the inspections and tests required under subparts D and F of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that unit of passenger equipment. Moreover, the Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. Failure to observe any condition for movement of defective equipment set forth in §238.17 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the unit of passenger equipment at the time of movement. Failure to observe any condition for the movement of passenger equipment containing defective safety appliances, other than power brakes, set forth in §238.17(e) will deprive the railroad of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) contained in part 231 of this chapter or §238.429 concerning the substantive defective condition. The penalties listed for failure to perform the exterior and interior mechanical inspections and tests required under §238.303 and §238.305 may be assessed for each unit of passenger equipment contained in a train that is not properly inspected. Whereas, the penalties listed for failure to perform the brake inspections and tests under §238.313 through §238.319 may be assessed for each train that is not properly inspected.

² The penalty schedule uses section numbers from 49 CFR part 238. If more than one item is listed as a type of violation of a given section, each item is also designated by a “penalty code,” which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 239—[AMENDED]

45. The authority citation for part 239 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(c), (g), (m).

46. Appendix A to part 239 is revised to read as follows:

APPENDIX A TO PART 239.—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
Subpart B—Specific Requirements		
239.101 (a) Failure of a railroad to adopt a written emergency preparedness plan	\$8,500	\$11,000
(a)(1) Failure of the plan to provide for:		
(i) Initial or on-board notifications by an on-board crewmember	5,000	7,500
(ii) Notification of outside emergency responders by control center	5,000	7,500
(a)(2) Failure of the plan to provide for:		
(i) Initial or periodic training of on-board personnel	5,000	7,500
(ii) Initial or periodic training of control center personnel	5,000	7,500
(iii) Completion of initial training of all on-board and control center personnel by the specified date	5,000	7,500
(iv) Completion of initial training of all newly hired on-board and control center personnel by the specified date	5,000	7,500
(v) Adequate procedures to evaluate and test on-board and control center personnel for qualification under the emergency preparedness plan	5,000	7,500
(vi) Adequate on-board staffing	5,000	7,500

APPENDIX A TO PART 239.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(a)(3) Failure of a host railroad involved in joint operations to coordinate applicable portions of the emergency preparedness plan with the railroad or railroads providing or operating a passenger train service operation	5,000	7,500
(a)(4) Failure of the plan to address:		
(i) Readiness procedures for emergencies in tunnels	5,000	7,500
(ii) Readiness procedures for emergencies on an elevated structure or in electrified territory	5,000	7,500
(iii) Coordination efforts involving adjacent rail modes of transportation	5,000	7,500
(a)(5) Failure of the plan to address relationships with on-line emergency responders by providing for:		
(i) The development and availability of training programs	5,000	7,500
(ii) Invitations to emergency responders to participate in emergency simulations	5,000	7,500
(iii) Distribution of applicable portions of the current emergency preparedness plan	5,000	7,500
(a)(6) Failure of the plan to provide for, or the railroad to include on board each train and maintain and replace:		
(i) Emergency equipment	5,000	7,500
(ii) First-aid kits	5,000	7,500
(iii) Emergency lighting	5,000	7,500
(a)(7) Failure of the plan to provide for emergency instructions inside each passenger car or to include additional safety awareness information	3,000	4,500
239.103 Failure to conduct a required full-scale simulation in accordance with the frequency schedule	5,000	7,500
239.105 Debriefing and critique:		
(a) Failure to conduct a debriefing and critique session after an emergency or full-scale simulation	5,000	7,500
(d)(1) Failure to maintain a record	3,000	4,500
(i) Failure to include date or location of the emergency or simulation	1,500	2,500
(ii) Failure to include date or location of the debriefing and critique session	1,500	2,500
(iii) Failure to include names of participants in the debriefing and critique session	1,500	2,500
(d)(2) Failure to make record available	1,500	2,500
239.107 Emergency exits:		
(a)(1), (a)(2):		
(i) Door not marked or instructions not posted	5,000	7,500
(ii) Door improperly marked or instructions 1,000–2,000 improperly posted	5,000	7,500
(b)(1) Failure to provide for scheduled inspection, maintenance, and repair of emergency windows and doors	5,000	7,500
(b)(2):		
(i) Failure to test a representative sample of emergency windows	5,000	7,500
(ii) Emergency windows tested too infrequently	3,000	4,500
(b)(3) Failure to repair an inoperative emergency window or door exit	5,000	7,500
(c):		
(i) Failure to maintain a record	5,000	7,500
(ii) Failure to make record available	1,500	2,500
(d)(1) Insufficient limits or controls on accessibility to records	5,000	7,500
(d)(2) Missing terminal	1,500	2,500
(d)(3) Inability of railroad to produce information in a usable format for immediate review	1,500	2,500
(d)(4) Failure by railroad to designate an authorized representative	1,500	2,500
(d)(5) Failure to make record available	1,500	2,500

Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans

239.201 Filing and approval:		
(a):		
(i) Failure of a railroad to file a written emergency preparedness plan	6,500	9,000
(ii) Failure to designate a primary person to contact for plan review	1,500	2,500
(iii) Failure of a railroad to file an amendment to its plan	5,000	7,500
(b)(1), (b)(2):		
(i) Failure of a railroad to correct a plan deficiency	1,500	2,500
(ii) Failure to provide FRA with a corrected copy of the plan	1,500	2,500
(b)(3):		
(i) Failure of a railroad to correct an amendment deficiency	1,500	2,500
(ii) Failure to file a corrected plan amendment with FRA	1,500	2,500
239.203 Retention of emergency preparedness plan:		
(1) Failure to retain a copy of the plan or an amendment to the plan	5,000	7,500
(2) Failure to make record available	1,500	2,500

Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping

239.301 Operational (efficiency) tests:		
(a) Testing Program	5,000	7,500
(b)(1) Failure to maintain a record	5,000	7,500
(b)(2) Record improperly completed	1,500	2,500
(c)(1) Failure to retain a copy of the record	1,500	2,500
(c)(2) Failure to make record available	1,500	2,500
239.303 Electronic recordkeeping:		

APPENDIX A TO PART 239.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(a) Insufficient limits or controls on accessibility to records	3,000	4,500
(b) Missing terminal	1,500	2,500
(c) Inability of railroad to produce information in a usable format for immediate review	1,500	2,500
(d) Failure by railroad to designate an authorized representative	1,500	2,500
(e) Failure to make record available	1,500	2,500

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A.

²The penalty schedule uses section numbers from 49 CFR part 239. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 240—[AMENDED]

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 149.

48. Appendix A to part 240 is revised to read as follows:

47. The authority citation for part 240 continues to read as follows:

APPENDIX A TO PART 240.—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
Subpart B—Component Elements		
240.101 Program Failures:		
(a) Failure to have program	\$8,500	\$11,000
(b) Program that fails to address a subject	5,000	7,500
240.103 Failure to:		
(a) follow Appendix B	1,500	2,500
(d) resubmit, when directed by FRA	1,500	2,500
240.104 Allowing uncertified person to operate non-traditional locomotives	6,500	9,000
240.105 Failure to have or execute adequate procedure for selection of supervisors	5,000	7,500
240.107 Classes of Service:		
(a) Failure to designate classes of service	5,000	7,500
240.109 Limitations on considering prior conduct records:		
(a) Failure to have procedure for determining eligibility	5,000	7,500
(e) Considering excluded data	5,000	7,500
(f), (g) Failure to provide timely review opportunity	5,000	7,500
240.111 Furnishing Motor Vehicle Records:		
(a) Failure to action required to make information available	1,500	2,500
(b) Failure to request:		
(1) local record	1,500	2,500
(2) NDR record	1,500	2,500
(f) Failure to request additional record	1,500	2,500
(g) Failure to notify of absence of license	1,500	2,500
(h) Failure to submit request in timely manner	1,500	2,500
(i) Failure to report within 48 hours or railroad taking certification action for not reporting earlier than 48 hours	1,500	2,500
240.113 Furnishing prior employment information:		
(a) Failure to take action required to make information available	1,500	2,500
(b) Failure to request record	1,500	2,500
240.115 Criteria for considering prior motor vehicle conduct:		
(b) Considering excluded data	5,000	7,500
(c) Failure to:		
(1) consider data	8,500	11,000
(3)–(4) properly act in response to data	3,000	4,500
240.117 Consideration of Operational Rules Compliance Records:		
(a) Failure to have program and procedures	8,500	11,000
(b)–(j) Failure to have adequate program or procedure	5,000	7,500
240.119 Consideration of substance abuse/rules compliance Records:		
(a) Failure to have program and procedures	8,500	11,000
(b)–(e) Failure to have adequate program or procedure	5,000	7,500
240.121 Failure to have adequate procedure for determining acuity	5,000	7,500
(f) Failure of engineer to notify	5,000	7,500
240.123 Failure to have—		
(b) adequate procedures for continuing education	5,000	7,500
(c) adequate procedures for training new engineers	5,000	7,500
240.125 Failure to have—		
(a) adequate procedures for testing knowledge	5,000	7,500

APPENDIX A TO PART 240.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(d) adequate procedures for documenting testing	5,000	7,500
240.127 Failure to have—		
(a) adequate procedures for evaluating skill performance	5,000	7,500
(c) adequate procedures for documenting skills testing	5,000	7,500
240.129 Failure to have—		
(a)–(b) adequate procedures for monitoring performance	5,000	7,500
Subpart C—Implementation of the Process		
240.201 Schedule for implementation:		
(a) Failure to select supervisors by specified date	1,500	2,500
(b) Failure to identify grandfathered engineers	3,000	4,500
(c) Failure to issue certificate to engineer	1,500	2,500
(d) Allowing uncertified person to operate	5,000	7,500
(e)–(g) Certifying without complying with subpart C	5,000	7,500
(h)–(i) Failure to issue certificate to engineer	1,500	2,500
240.203 (a) Designating a person as a supervisor without determining that—		
(1) person knows and understands this part	5,000	7,500
(2) person can test and evaluate engineers	8,500	11,000
(3) person has experience to prescribe remedies	5,000	7,500
(b) Certifying a person without determining that—		
(1) person meets the eligibility criteria	8,500	11,000
(2) person meets the medical criteria	5,000	7,500
(3) person has demonstrated knowledge	5,000	7,500
(4) person has demonstrated skills	5,000	7,500
(c) Certifying a person without determining that—		
(1) person has completed training program	5,000	7,500
(2) person meets the eligibility criteria	5,000	7,500
(3) time has elapsed	5,000	7,500
240.205 Procedures for determining eligibility based on prior safety conduct:		
(a) Selecting person lacking eligibility	8,500	11,000
(d) Failure to have basis for taking action	5,000	7,500
240.207 Ineligibility based on medical condition:		
(a) Selecting person lacking proper acuity	6,500	9,000
(b) Failure to have basis for finding of proper acuity	1,500	2,500
(c) Acuity examinations performed by unauthorized person	1,500	2,500
(d) Failure to note need for device to achieve acuity	1,500	2,500
(e) Failure to use device needed for proper acuity	1,500	2,500
240.209 Demonstrating knowledge:		
(b) Failure to properly determine knowledge	6,500	9,000
(c) Improper test procedure	5,000	7,500
(d) Failure to document test results	1,500	2,500
(e) Allowing person to operate despite test failure	5,000	7,500
240.211 Demonstrating skills:		
(b) Failure to properly determine knowledge	5,000	7,500
(c) Improper test procedure	3,000	4,500
(d) Failure to document test results	1,500	2,500
(e) Allowing person to operate despite test failure	5,000	7,500
240.213 Completion of approved training program:		
(a) Failure to properly determine	5,000	7,500
(b) Failure to document successful program completion	3,000	4,500
240.215 Supporting information:		
(a), (f)–(h) Failure to have a record	1,500	2,500
(b) Failure to have complete record	1,500	2,500
(i) Falsification of record	(—)	11,000
240.217 Time limits for making determinations:		
(a), (c) Exceeding time limit	3,000	4,500
240.219 Denial of certification:		
(a) Failure to notify or provide opportunity for comment	3,000	4,500
(c) Failure to notify, provide data, or untimely notification	3,000	4,500
240.221 Identification of persons:		
(a)–(c) Failure to have a record	3,000	4,500
(d) Failure to update a record	3,000	4,500
(e)–(f) Failure to make a record available	1,500	2,500
240.223 Certificate criteria:		
(a) Improper certificate	1,500	2,500
(b) Failure to designate those with signatory authority	1,500	2,500
(d) Falsification of certificate	(—)	11,000
240.225 Railroad Relying on Determination of Another:		
(a) Failure to address in program or failure to require newly hired engineer to take entire training program	8,500	11,000
(2) Reliance on wrong class of service	3,000	4,500

APPENDIX A TO PART 240.—SCHEDULE OF CIVIL PENALTIES ¹—Continued

Section ²	Violation	Willful violation
(3) Failure to familiarize person with new operational territory	3,000	4,500
(4) Failure to determine knowledge	3,000	4,500
(5) Failure to determine performance skills	3,000	4,500
240.227 Railroad Relying on Requirements of a Different Country:		
(a) Joint operator reliance:		
(1) on person not employed	1,500	2,500
(2) on person who fails to meet Canadian requirements	1,500	2,500
(b) Canadian railroad reliance:		
(1) on person not employed	1,500	2,500
(2) on person who fails to meet Canadian requirements	1,500	2,500
240.229 Requirements for Joint Operations Territory:		
(a) Allowing uncertified person to operate	3,000	4,500
(b) Certifying without making determinations or relying on another railroad	6,500	9,000
(c) Failure of:		
(1) controlling railroad certifying without determining certification status, knowledge, skills, or familiarity with physical characteristics	8,500	11,000
(2) employing railroad to determine person's certified and qualified status for controlling railroad	8,500	11,000
(3) person to notify employing railroad of lack of qualifications	8,500	11,000
(d) Failure to provide qualified person	3,000	4,500
240.231 Persons Qualified on Physical Characteristics in Other Than Joint Operations:		
(a) Person unqualified, no exception applies or railroad does not adequately address in program	8,500	11,000
(b) Failure to have a pilot:		
(1) for engineer who has never been qualified	8,500	11,000
(2) for engineer previously qualified	5,000	7,500
Subpart D—Program Administration		
240.301 Failure to have system for certificate replacement	3,000	4,500
240.303 Monitoring operations:		
(a) Failure to have program	8,500	11,000
(b) Failure to observe each person annually	1,500	2,500
(c) Failure to test each person annually	1,500	2,500
(d) Failure to test properly	1,500	2,500
240.305 Prohibited Conduct:		
(a) Unlawful:		
(1) passing of stop signal	6,500	9,000
(2) control of speed	6,500	9,000
(3) brake tests	6,500	9,000
(4) occupancy of main track	6,500	9,000
(5) tampering or operation with disabled safety device	6,500	9,000
(6) supervisor, pilot, or instructor fails to take appropriate action	6,500	9,000
(b) Failure of engineer to:		
(1) carry certificate	1,500	2,500
(2) display certificate when requested	1,500	2,500
(c) Failure of engineer to notify railroad of limitations or railroad requiring engineer to exceed limitations ..	8,500	11,000
(d) Failure of engineer to notify railroad of denial or revocation	8,500	11,000
240.307 Revocation of Certification:		
(a) Failure to withdraw person from service	3,000	4,500
(b) Failure to notify, provide hearing opportunity, or untimely procedures	3,000	4,500
(c)–(h) Failure of railroad to comply with hearing or waiver procedures	3,000	4,500
(j) Failure of railroad to make record	3,000	4,500
(k) Failure of railroad to conduct reasonable inquiry or make good faith determination	6,500	9,000
240.309 Oversight Responsibility Report:		
(a) Failure to report or to report on time	1,500	2,500
(b)–(h) Incomplete or inaccurate report	3,000	4,500

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR part 240. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

PART 241—[AMENDED]

49. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301,
21304, 21311; 28 U.S.C. 2461, note; 49 CFR
1.49.

50. Appendix B to part 241 is revised to read as follows:

APPENDIX B TO PART 241.—SCHEDULE OF CIVIL PENALTIES ¹

Section ²	Violation	Willful violation
241.9 (a) Requiring or permitting extraterritorial dispatching of a railroad operation	\$6,500	\$9,000
(b) Failing to notify FRA about extraterritorial dispatching of a railroad operation in an emergency situation	6,500	9,000
241.11 Conducting a railroad operation that is extraterritorially dispatched:		
(a)(1) Generally	6,500	9,000
(a)(2) In an emergency situation—where dispatching railroad fails to notify FRA of the extraterritorial dispatching	1,500	2,500
241.13 Requiring or permitting track to be used for the conduct of a railroad operation that is extraterritorially dispatched:		
(a)(1) Generally	6,500	9,000
(a)(2) In an emergency situation—where dispatching railroad fails to notify FRA of the extraterritorial dispatching	1,500	2,500

¹A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304 and 49 CFR part 209, appendix A.

²The penalty schedule uses section numbers from 49 CFR part 241. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

Issued in Washington, DC on November 16, 2006.

Joseph H. Boardman,

Administrator.

[FR Doc. E6-20031 Filed 12-4-06; 8:45 am]

BILLING CODE 4910-06-P



Federal Register

**Tuesday,
December 5, 2006**

Part III

The President

**Executive Order 13415—Assignment of
Certain Pay-Related Functions**

Presidential Documents

Title 3—**Executive Order 13415 of December 1, 2006****The President****Assignment of Certain Pay-Related Functions**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Assignment of Functions.* The functions of the President under sections 4505a, 5305, and 5377 of title 5, United States Code, are assigned to the Director of the Office of Personnel Management.

Sec. 2. *Revocations.* (a) Sections 3 and 6 of Executive Order 12748 of February 1, 1991, as amended, are revoked. Sections 4, 5, 7, 8, and 9 of Executive Order 12748 are renumbered as sections 3, 4, 5, 6, and 7, respectively.

(b) Section 2 of Executive Order 12828 of January 5, 1993, is revoked. Section 3 of Executive Order 12828 is renumbered as section 2.

Sec. 3. *General Provision.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.



THE WHITE HOUSE,
December 1, 2006.

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Sierra National Forest Land Exchange Act of 2006 (Dec. 1, 2006; 120 Stat. 2656)

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To provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District, El Paso County, Texas. (Dec. 1, 2006; 120 Stat. 2659)

H.R. 1129/P.L. 109-377

Pitkin County Land Exchange Act of 2006 (Dec. 1, 2006; 120 Stat. 2660)

H.R. 3085/P.L. 109-378

To amend the National Trails System Act to update the feasibility and suitability study originally prepared for the Trail of Tears National Historic Trail and provide for the inclusion of new trail segments, land components, and campgrounds associated with that trail, and for other purposes. (Dec. 1, 2006; 120 Stat. 2664)

H.R. 5842/P.L. 109-379

Pueblo of Isleta Settlement and Natural Resources Restoration Act of 2006 (Dec. 1, 2006; 120 Stat. 2666)

S. 101/P.L. 109-380

To convey to the town of Frannie, Wyoming, certain land withdrawn by the

Commissioner of Reclamation. (Dec. 1, 2006; 120 Stat. 2671)

S. 1140/P.L. 109-381

To designate the State Route 1 Bridge in the State of Delaware as the "Senator William V. Roth, Jr. Bridge". (Dec. 1, 2006; 120 Stat. 2672)

S. 4001/P.L. 109-382

New England Wilderness Act of 2006 (Dec. 1, 2006; 120 Stat. 2673)

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