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

WHEN: Tuesday, 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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Presidential Documents

Title 3—

The President

Presidential Determination No. 2007–4 of November 22, 2006

Presidential Determination on Waiving Prohibition on United States Military Assistance With Respect to Comoros and Saint Kitts and Nevis

Memorandum for the Secretary of State

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002 (the ''Act''), title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby:

• Determine that Comoros and Saint Kitts and Nevis have each entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such countries; and

• Waive the prohibition of section 2007(a) of the Act with respect to these countries for as long as such agreements remain in force.

You are authorized and directed to report this determination to the Congress, and to arrange for its publications in the **Federal Register**.

THE WHITE HOUSE,
Washington, November 22, 2006.

[FR Doc. 06–9664
Filed 12–11–06; 8:45 am]
Billing code 4710–10–P

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2007–5 of November 27, 2006

Waiving the Prohibition on the Use of Fiscal Year 2006 Economic Support Funds With Respect to Various Parties to the Rome Statute Establishing the International Criminal Court

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 574 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (the ''Act''), Public Law 109–102, I hereby:

• Determine that it is important to the national interests of the United States to waive the prohibition of section 574(a) of the Act with respect to Bolivia, Costa Rica, Cyrus, Ecuador, Kenya, Mali, Mexico, Namibia, Niger, Paraguay, Peru, Samoa, South Africa, and Tanzania; and

• Waive the prohibition of section 574(a) of the Act with respect to these countries.

You are authorized and directed to report this determination to the Congress, and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washginton, November 27, 2006.

[FR Doc. 06–9665
Filed 12–11–06; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC13

Common Crop Insurance Regulations; Nursery Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Nursery Crop Insurance Provisions by amending the definition of ''liners.'' FCIC also finalizes the Nursery Peak Inventory Endorsement to clarify that the peak amount of insurance is limited to 200 percent of the amount of insurance established under the Nursery Crop Insurance Provisions. The amendments will be applicable to the 2008 and succeeding crop years.

DATES: *Effective date:* This rule is effective January 11, 2007.

Applicability: This rule is applicable to the 2008 and succeeding crop years.

FOR FURTHER INFORMATION CONTACT: For further information, contact Claire Elsea, Economist, Product Management, Product Administration and Standards Division, Risk Management Agency, 6501 Beacon Dr., Stop 0812, Room 421, Kansas City, MO, 64118, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through November 30, 2007.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule preempts State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes proposed changes made to 7 CFR 457.162 (Nursery Crop Insurance Provisions) and 7 CFR 457.163 (Nursery Peak Inventory Endorsement) that were published by FCIC on September 1, 2006, as a notice

of proposed rulemaking in the **Federal Register** at 71 FR 52013–52014. In the Nursery Crop Provisions, FCIC proposed to amend the definition of ''liners'' to remove language that specifies an established root system for a liner plant must reach the sides of the container and removed language regarding the firm root ball. These changes were necessary because liners are also known as starter plants, which often have not developed a root system that reaches the sides of the containers. In the Nursery Peak Inventory Endorsement, FCIC proposed to amend provisions to clarify that the maximum increase in the amount of insurance under the Nursery Peak Inventory Endorsement is limited to twice the amount of insurance under the Nursery Crop Insurance Provisions. As currently written in the Nursery Peak Inventory Endorsement, the peak amount of insurance is limited to 200 percent of the basic unit value. This means that if a basic unit value is $50 the producer could increase the peak amount of insurance to $100 (200 percent of $50 basic unit value), which is a four fold increase in liability. FCIC never intended to allow such an increase. It meant to only allow increases up to twice the amount of insurance under the policy, not on a per unit basis.

The public was afforded 60 days to submit written comments after the regulation was published in the **Federal Register.** One comment was received from three commenters. The commenters were a reinsured company, an insurance services organization and a grower association. The comment received and FCIC's response are as follows:

Comment: All three commenters stated they are in agreement with the proposed changes. One commenter also commends FCIC's willingness to move forward with the amendment to the definition of ''liners.'' The commenter states the current language has been an obstacle for most liner producers from purchasing nursery crop insurance policies. Another commenter agrees the amendment to the policy provisions is necessary and a major improvement to the nursery program.

Response: FCIC agrees the changes to the Peak Inventory Endorsement and the definition of ''liners'' in the Nursery Crop Insurance Provisions will provide a better risk management tool to nursery producers.

List of Subjects in 7 CFR Part 457

Crop insurance, Nursery, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 the Common Crop Insurance Regulations, for the 2008 and succeeding crop years, as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

■ 2. Revise the definition of ''liners'' in section 1 of § 457.162 to read as follows:

§ 457.162 Nursery crop insurance provisions.

* * * * *

1. Definitions.

* * * * *

Liners. Plants produced in standard nursery containers that are equal to or greater than 1 inch in diameter (including trays containing 200 or fewer individual cells, unless specifically provided by the Special Provisions) but less than 3 inches in diameter at the widest point of the container or cell interior, have an established root system, and meet all other conditions specified in the Special Provisions.

* * * * *

■ 3. Revise paragraph 7 of § 457.163 to read as follows:

§ 457.163 Nursery peak inventory endorsement.

* * * * *

7. Liability Limit.

The peak amount of insurance is limited to 200 percent of the amount of insurance established under the Nursery Crop Insurance Provisions.

Signed in Washington, DC, on November 30, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E6–21033 Filed 12–11–06; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE262; Special Conditions No. 23–202–SC]

Special Conditions: AmSafe, Incorporated; Pilatus Aircraft Ltd., Models PC–12, PC–12/45 and PC–12/47; Inflatable Three-Point Restraint Safety Belt With an Integrated Airbag Device

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to AmSafe, Inc. for the installation of an AmSafe, Inc., Inflatable Three-Point Restraint Safety Belt with an Integrated Airbag Device on Pilatus models PC–12, PC–12/45 and PC–12/47. These airplanes, as modified by AmSafe, Inc. for the installation of this inflatable safety belt, will have novel and unusual design features associated with the lap-belt restraint portions of the three-point safety belt, which contains an integrated airbag device. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 29, 2006. We must receive your comments on or before January 11, 2007.

ADDRESSES: Mail two copies of your comments on these special conditions to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE262, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered two copies to the Regional Counsel at the above address. Mark your comments: Docket No. CE262. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Stegeman, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4140, fax 816–329–4090, e-mail *Robert.Stegeman@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and

opportunity for prior public comment is impractical because these procedures would significantly delay issuance of approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective on issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 4, 2006, AmSafe, Inc., applied for a supplemental type certificate. The application covers the installation of a three-point safety belt restraint system incorporating an inflatable airbag for the pilot, co-pilot, and passenger seats of the Pilatus Aircraft Ltd., models PC–12, PC–12/45 and PC–12/47 airplanes. The Pilatus models PC–12, PC–12/45 and PC–12/47 are single engine, two-pilot, nine-passenger airplanes.

The inflatable restraint system is a three-point safety belt restraint system consisting of a lap belt and shoulder harness. An inflatable airbag is attached to the lap belt. The inflatable portion of the restraint system will rely on sensors to electronically activate the inflator for deployment. The inflatable restraint system will be installed on the pilot, co-pilot, and passenger seats.

If an emergency landing occurs, the airbag will inflate and provide a protective cushion between the occupant's head and the structure within the airplane. This will reduce the potential for head and torso injury. The inflatable restraint behaves in a manner similar to an automotive airbag; however, in this case, the airbag is integrated into the lap belt. While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable three-point restraint system is novel for general aviation operations.

The FAA has determined that this project will be accomplished by providing the same current level of safety as the Pilatus Aircraft Ltd., models PC–12, PC–12/45 and PC–12/47 airplane occupant restraint systems. The FAA has two primary safety concerns with the installation of airbags or inflatable restraints:

- That they perform properly under foreseeable operating conditions; and
- That they do not perform in a manner or at such times as to impede the pilot's ability to maintain control of the airplane or constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. An unexpected deployment while conducting the takeoff or landing phases of flight may result in an unsafe condition. The unexpected deployment may either startle the pilot or generate a force sufficient to cause a sudden movement of the control yoke. Either action could result in a loss of control of the airplane, the consequences of which are magnified due to the low operating altitudes during these phases of flight. The FAA has considered this when establishing these special conditions.

The inflatable restraint system relies on sensors to electronically activate the inflator for deployment. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. AmSafe, Inc., must show that the effects of an inadvertent deployment in flight are not a hazard to the airplane or that an inadvertent deployment is extremely improbable. In addition, general aviation aircraft are susceptible to a large amount of cumulative wear and tear on a restraint system. The potential for inadvertent deployment may increase as a result of this cumulative damage. Therefore, the impact of wear and tear on inadvertent deployment must be considered. The effect of this cumulative damage means a life limit must be established for the appropriate system components in the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. General aviation airplanes are exposed to a unique operating environment, since the same airplane may be used by both experienced and student pilots. The effect of this environment on inadvertent deployment must be understood. Therefore, qualification testing of the firing hardware/software must consider the following:

- The airplane vibration levels appropriate for a general aviation airplane; and
- The inertial loads that result from typical flight or ground maneuvers, including gusts and hard landings.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include high intensity electromagnetic fields (HIRF) and lightning. Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. To comply with HIRF and lightning requirements, the AmSafe, Inc., inflatable restraint system is considered a critical system, since its inadvertent deployment could have a hazardous effect on the airplane.

Given the level of safety of the current Pilatus Aircraft Ltd., models PC–12, PC–12/45 and PC–12/47 occupant restraints, the inflatable restraint system must show that it will offer an equivalent level of protection for an emergency landing. If an inadvertent deployment occurs, the restraint must still be at least as strong as a Technical Standard Order approved belt and shoulder harnesses. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

The inflatable restraint system must deploy and provide protection for each occupant under an emergency landing condition. The seats of the models PC–12, PC–12/45 and PC–12/47 are certificated to the structural requirements of § 23.562; therefore, the test emergency landing pulses identified in § 23.562 must be used to satisfy this requirement.

A wide range of occupants may use the inflatable restraint; therefore, the

protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male. Energy absorption must be performed in a consistent manner for this occupant range.

In support of this operational capability, there must be a means to verify the integrity of this system before each flight. AmSafe, Inc., may establish inspection intervals where they have demonstrated the system to be reliable between these intervals.

An inflatable restraint may be ''armed'' even though no occupant is using the seat. While there will be means to verify the integrity of the system before flight, it is also prudent to require unoccupied seats with active restraints not constitute a hazard to any occupant. This will protect any individual performing maintenance inside the cockpit while the aircraft is on the ground. The restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

In addition, the design must prevent the inflatable seatbelt from being incorrectly buckled and/or installed such that the airbag would not properly deploy. AmSafe, Inc., may show that such deployment is not hazardous to the occupant and will still provide the required protection.

The cabins of the Pilatus model airplanes identified in these special conditions are confined areas, and the FAA is concerned that noxious gasses may accumulate if the airbag deploys. When deployment occurs, either by design or inadvertently, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit.

An inflatable restraint should not increase the risk already associated with fire. Therefore, the inflatable restraint should be protected from the effects of fire to avoid creating an additional hazard by, for example, a rupture of the inflator.

Finally, the airbag is likely to have a large volume displacement, and it could impede the egress of an occupant. Since the bag deflates to absorb energy, it is likely that the inflatable restraint would be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restraint may not impede rapid egress. Ten seconds has been chosen as reasonable time. This time limit will offer a level of protection throughout the impact event.

Type Certification Basis

Under 14 CFR 21.101, AmSafe, Inc., must show the Pilatus Aircraft Ltd., models PC–12, PC–12/45 and PC–12/47, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A78EU (Pilatus Aircraft Ltd., models PC–12, PC–12/45 and PC–12/47) or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The following models are covered by this special condition:

Pilatus Aircraft Ltd., Models PC–12, PC–12/45 and PC–12/47:

Type Certificate No. A78EU, Revision 14, dated April 13, 2006.

For the models listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and special conditions not relevant to the special conditions adopted by this rulemaking action.

If the Administrator determines that the applicable airworthiness regulations (i.e., part 23 as amended) do not contain adequate or appropriate safety standards for the AmSafe, Inc., inflatable restraint as installed on these Pilatus Aircraft Ltd., models because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to that model under § 21.101.

Novel or Unusual Design Features

The Pilatus Aircraft Ltd., models PC–12, PC–12/45 and PC–12/47 will incorporate the following novel or unusual design feature:

The AmSafe, Inc., Three-Point Safety Belt Restraint System incorporates an inflatable airbag for the pilot, co-pilot, and passenger seats. The purpose of the airbag is to reduce the potential for injury in the event of an accident. In a severe impact, an airbag will deploy from the lap belt, in a manner similar to an automotive airbag. The airbag will deploy between the head of the occupant and airplane interior structure, which will provide some protection to the head of the occupant. The restraint will rely on sensors to electronically activate the inflator for deployment.

The Code of Federal Regulations state performance criteria for seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints. Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of this inflatable restraint.

Therefore, these special conditions are adopted for the Pilatus Aircraft Ltd. models equipped with the AmSafe, Inc., three-point inflatable restraint. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Applicability

As discussed above, these special conditions are applicable to the Pilatus Aircraft Ltd., models PC–12, PC–12/45 and PC–12/47 equipped with the AmSafe, Inc., three-point inflatable restraint system.

Conclusion

This action affects only certain novel or unusual design features on the previously identified Pilatus models. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, the substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, and because a delay would significantly affect the delivery of the airplane(s), the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions on issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

The FAA has determined that this project will be accomplished without lowering the current level of safety of the Pilatus Aircraft Ltd., models PC–12, PC–12/45 and PC–12/47 occupant restraint system. Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for these models, as modified by AmSafe, Incorporated.

Inflatable Three-Point Restraint Safety Belt with an Integrated Airbag Device for the Pilot, Co-pilot, and Passenger Seats of the Pilatus Aircraft Ltd., Models PC–12, PC–12/45 and PC–12/47.

1. It must be shown that the inflatable restraint will deploy and provide protection under emergency landing conditions. Compliance will be demonstrated using the dynamic test condition specified in 14 CFR, part 23, § 23.562(b)(2). It is not necessary to account for floor warpage, as required by § 23.562(b)(3), or vertical dynamic loads, as required by § 23.562(b)(1). The means of protection must take into consideration a range of stature from a 5th percentile female to a 95th percentile male. The inflatable restraint must provide a consistent approach to energy absorption throughout that range.

2. The inflatable restraint must provide adequate protection for each occupant. In addition, unoccupied seats that have an active restraint must not constitute a hazard to any occupant.

3. The design must prevent the inflatable restraint from being incorrectly buckled and/or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required protection.

4. It must be shown that the inflatable restraint system is not susceptible to inadvertent deployment as a result of wear and tear or the inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) that are likely to be experienced in service.

5. It must be extremely improbable for an inadvertent deployment of the restraint system to occur, or an inadvertent deployment must not impede the pilot's ability to maintain control of the airplane or cause an unsafe condition (or hazard to the airplane). In addition, a deployed inflatable restraint must be at least as strong as a Technical Standard Order (C114) certificated belt and shoulder harness.

6. It must be shown that deployment of the inflatable restraint system is not hazardous to the occupant or will not result in injuries that could impede rapid egress. This assessment should include occupants whose restraint is loosely fastened.

7. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person is improbable. In addition, the restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

8. It must be shown that the inflatable restraint will not impede rapid egress of the occupants 10 seconds after its deployment.

9. To comply with HIRF and lightning requirements, the inflatable restraint system is considered a critical system since its deployment could have a hazardous effect on the airplane.

10. It must be shown that the inflatable restraints will not release hazardous quantities of gas or particulate matter into the cabin.

11. The inflatable restraint system installation must be protected from the effects of fire such that no hazard to occupants will result.

12. There must be a means to verify the integrity of the inflatable restraint activation system before each flight or it must be demonstrated to reliably operate between inspection intervals.

13. A life limit must be established for appropriate system components.

14. Qualification testing of the internal firing mechanism must be performed at vibration levels appropriate for a general aviation airplane.

Issued in Kansas City, Missouri, on November 29, 2006.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–21018 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26527; Directorate Identifier 2006–NM–220–AD; Amendment 39–14850; AD 2006–25–09]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11F Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–11F airplanes. This AD requires a general visual inspection for installation of conduit and chafing damage on the auxiliary power unit (APU) power feeder wires and the upper surface of the auxiliary fuel tank and repair if necessary. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to detect and correct unprotected APU power feeder wires that come into close proximity to the upper surface of the auxiliary ''piggy back'' fuel tank, which could result in a potential ignition source, and in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective December 27, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 27, 2006.

We must receive comments on this AD by February 12, 2007.

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

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

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

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

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

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

Boeing also conducted an investigation and analysis on McDonnell Douglas Model MD–11 airplanes that revealed that eleven airplanes had two locations of unprotected auxiliary power unit (APU) power feeder wires that come into close proximity to the upper surface of the auxiliary ''piggy back'' fuel tank. Unprotected APU power feeder wires that come into close proximity to the upper surface of the auxiliary ''piggy back'' fuel tank, could result in a potential ignition source and, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin (ASB) MD11–24A222, dated August 16, 2006. The ASB describes procedures for performing a general visual inspection for installation of conduit and chafing damage on the APU feeder wires and upper surface of the auxiliary fuel tank. If protective conduit is installed, the ASB specifies that no further action is necessary. If no protective conduit is installed and no chafing is found, the ASB describes procedures for installing sleeving and high temperature tape and replacing clamps below the cabin floor beams. If no protective conduit is installed and chafing is found, the ASB describes procedures to repair any damaged APU power feeder wires and any damaged upper surface of the auxiliary fuel tank structure, as well as installing sleeving and high temperature tape and replacing clamps below the cabin floor beams. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design that may be registered in the U.S. at some time in the future. Therefore, we are issuing this AD to detect and correct unprotected APU power feeder wires that come into close proximity to the upper surface of the auxiliary ''piggy back'' fuel tank, which, if not corrected, could result in a potential ignition source, and in combination with fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane. This AD requires accomplishing the actions specified in the service information described previously.

Costs of Compliance

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

If an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD would be $80 per airplane.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26527; Directorate Identifier 2006–NM–220–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

personnel concerning this AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–25–09 McDonnell Douglas: Amendment 39–14850. Docket No. FAA–2006–26527; Directorate Identifier 2006–NM–220–AD.

Effective Date

(a) This AD becomes effective December 27, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain McDonnell Douglas Model MD–11F airplanes, identified in Boeing Alert Service Bulletin MD11–24A222, dated August 16, 2006; certificated in any category.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to detect and correct unprotected auxiliary power unit (APU) power feeder wires that come into close proximity to the upper surface of the auxiliary ''piggy back'' fuel tank, which could result in a potential ignition source, and in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

Compliance

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

General Visual Inspection

(f) Within 24 months after the effective date of this AD, perform a general visual inspection for installation of conduit and chafing damage on APU power feeder wires and upper surface of the auxiliary fuel tank, in accordance with Boeing Alert Service Bulletin MD11–24A222, dated August 16, 2006. Before further flight, accomplish any applicable repair or replacement in accordance with the alert service bulletin.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin MD11–24A222, dated August 16, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on November 30, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–20951 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25554; Directorate Identifier 2006–NM–123–AD; Amendment 39–14852; AD 2006–25–11]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Lockheed Model L–1011 series airplanes. This AD requires a one-time detailed inspection of the C112 harness clamp assembly for proper installation, a one-time detailed inspection of the C112 and C162 harness assemblies for damage, and corrective actions if necessary. This AD results from a report of electrical arcing of the essential bus feeder cables behind hinged circuit breaker panel CB3 P–K. We are issuing this AD to prevent arcing of essential bus feeder cables due to improper installation of the harness C112 clamp assembly, which could result in loss of electrical systems and smoke and/or fire behind the CB3 P–K hinged circuit breaker panel in the flight compartment.

DATES: This AD becomes effective January 16, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publications listed in the AD as of January 16, 2007.

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

Contact Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Robert Chupka, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6070; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Lockheed Model L–1011 series airplanes. That NPRM was published in the **Federal Register** on August 9, 2006 (71 FR 45447). That NPRM proposed to require a one-time detailed inspection of the C112 harness clamp assembly for proper installation, a one-time detailed inspection of the C112 and C162 harness assemblies for damage, and corrective actions if necessary.

Comments

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

Request to Make Service Documents Available to the Public by Incorporation by Reference and Publication in the Docket Management System (DMS)

The Modification and Replacement Parts Association (MARPA) requests that we incorporate by reference the essential service documents in the NPRM. MARPA states that ADs are typically based upon service information originating with the type certificate holder or its suppliers. MARPA asserts that, if a service document is used as a mandatory element of compliance, it should not only be referred to, but also incorporated into the AD. MARPA adds that manufacturer's service documents are privately authored instruments, generally having copyright protection against duplication and distribution. When a service document is incorporated by reference into a public document, such as an AD, pursuant to 5 U.S.C. 552(a) and 1 CFR part 51, it loses its private, protected status and becomes a public document. MARPA notes that the NPRM is one of these public documents, but does not incorporate by reference that service document. Therefore, the NPRM, as proposed, attempts to require compliance with a public law by reference to a private writing. MARPA believes that public laws, by definition, should be public and that they cannot rely on private writings.

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

MARPA also requests that essential service documents be published in DMS. MARPA states that service documents incorporated by reference should be made available to the public by publication in either the **Federal Register** or DMS. MARPA also states that the purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals. MARPA adds that, traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA further adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. This new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and/or organizations repairing or servicing alternatively certified parts under section 21.303 (''Parts Manufacturer Approval'') of the Federal Aviation Regulations (14 CFR 21.303). MARPA states that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper.

In regard to MARPA's request that service documents be made available to the public by publication in the **Federal Register**, we agree that incorporation by reference was authorized to reduce the volume of material published in the **Federal Register** and the Code of Federal Regulations. However, as specified in the Federal Register Document Drafting Handbook, the

Director of the OFR decides when an agency may incorporate material by reference. As the commenter is aware, the OFR files documents for public inspection on the workday before the date of publication of the rule at its office in Washington, DC. As stated in the Federal Register Document Drafting Handbook, when documents are filed for public inspection, anyone may inspect or copy file documents during the OFR's hours of business. Further questions regarding publication of documents in the **Federal Register** or incorporation by reference should be directed to the OFR.

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

Conclusion

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

Costs of Compliance

There are about 126 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection of clamp assembly	2	$80	$0	$160	53	$8,480

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–25–11 Lockheed: Amendment 39–14852. Docket No. FAA–2006–25554; Directorate Identifier 2006–NM–123–AD.

Effective Date

(a) This AD becomes effective January 16, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Lockheed Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 series airplanes, certificated in any category; having serial numbers 93A through 193Y inclusive and 293A through 293F inclusive: –1002 through –1250 inclusive.

Unsafe Condition

(d) This AD results from a report of electrical arcing of the essential bus feeder cables behind hinged circuit breaker panel CB3 P–K. We are issuing this AD to prevent arcing of essential bus feeder cables due to improper installation of the harness C112 clamp assembly, which could result in loss of electrical systems and smoke and/or fire behind the CB3 P–K hinged circuit breaker panel in the flight compartment.

Compliance

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

Detailed Inspection of the C112 Harness Clamp Assembly

(f) Within 90 days after the effective date of this AD: Do the actions in paragraphs (f)(1) and (f)(2) of this AD by accomplishing all the actions specified in the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–24–142, dated November 16, 2005. Do all applicable corrective actions before further flight.

(1) Perform a one-time detailed inspection of the C112 harness clamp assembly to find incorrectly installed harness clamps, and do all applicable corrective actions.

(2) Perform a one-time detailed inspection of the C112 and C162 harness assemblies to find evidence of chafing, arcing, or deterioration, and do all applicable corrective actions.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate.

Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(h) You must use Lockheed L–1011 Service Bulletin 093–24–142, dated November 16, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 1, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–20953 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25920; Directorate Identifier 2006–NM–137–AD; Amendment 39–14851; AD 2006–25–10]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ airplanes. This AD requires calculating the current life of each lift spoiler jack, and eventually replacing each lift spoiler jack. This AD results from a review of all system components as part of the life-extension program for the affected airplanes that indicated the fatigue life limit of certain lift spoiler jacks cannot be extended from the current life limit. We are issuing this AD to prevent failure of the lift spoiler jack, and consequent increased drag and uncommanded roll inputs, which could reduce the flightcrew's ability to control the airplane.

DATES: This AD becomes effective January 16, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 16, 2007.

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

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ airplanes. That NPRM was published in the **Federal Register** on September 28, 2006 (71 FR 56903). That NPRM proposed to require calculating the current life of each lift spoiler jack, and eventually replacing each lift spoiler jack.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Determine the life of each lift spoiler jack	1	$80	None	$80	53	$4,240
Replace each lift spoiler jack (6 per airplane).	6	80	$102,000	102,480	53	5,431,440

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–25–10 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14851. Docket No. FAA–2006–25920; Directorate Identifier 2006–NM–137–AD.

Effective Date

(a) This AD becomes effective January 16, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes specified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, having lift spoiler jacks with part number (P/N) P308–45–0002, P308–45–0102, or P308–45–0202.

(1) All BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes.

(2) All Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes.

Unsafe Condition

(d) This AD results from a review of all system components as part of the life-extension program for the affected airplanes that indicated the fatigue life of certain lift spoiler jacks cannot be extended from the current life limit. We are issuing this AD to prevent failure of the lift spoiler jack, and consequent increased drag and uncommanded roll inputs, which could reduce the flightcrew's ability to control the airplane.

Compliance

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

Calculating the Life Limit

(f) Within 18 months after the effective date of this AD: Calculate the current life of each lift spoiler jack in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin ISB.27–178, dated January 14, 2005.

Note 1: BAE Systems (Operations) Limited Modification Service Bulletin ISB.27–178 refers to the service information listed in Table 1 of this AD as additional sources of service information for the actions in paragraphs (f) and (g) of this AD.

TABLE 1.—ADDITIONAL SOURCES OF SERVICE INFORMATION

This service document—	Is an additional source of service information for—
BAE Systems (Operations) Limited Modification Service Bulletin SB.27–179–70675A, dated January 19, 2005.	Replacing lift spoiler jacks having P/N P308–45–0002 and –0102.
BAE Systems (Operations) Limited Inspection Service Bulletin ISB.05–005, Revision 1, dated June 9, 2005.	Calculating the theoretical life when complete utilization records do not exist.
Smiths Service Newsletter P308–27–003, dated March 12, 2004	Resolving anomalies with the P/Ns.

Replacement

(g) Within 18 months after the effective date of this AD or before the accumulation of 55,000 total flight cycles on the lift spoiler jack, whichever occurs later: Replace each P/N P308–45–0002, P308–45–0102, or P308–45–0202 lift spoiler jack with a serviceable unit, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin ISB.27–178, dated January 14, 2005. Thereafter, replace each lift spoiler jack with a serviceable unit at intervals not to exceed 55,000 flight cycles.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) European Aviation Safety Agency airworthiness directive 2006–0138, dated May 23, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use BAE Systems (Operations) Limited Modification Service Bulletin ISB.27–178, dated January 14, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR

part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 1, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–20952 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NE–19–AD; Amendment 39–13197; AD 2004–26–05]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524 Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to airworthiness directive (AD) 2004–26–05 applicable to certain Rolls-Royce plc (RR) RB211–524 series turbofan engines that was published in the **Federal Register** on January 5, 2005. The part number UL29916 in the Applicability section is incorrect. This document corrects that part number. In all other respects, the original document remains the same.

DATES: *Effective Date:* December 12, 2006.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive FR Doc, 05–85 applicable to RR RB211–524 series turbofan engines, was published in the **Federal Register** on January 5, 2005 (70 FR 681). The following correction is needed:

§ 39.13 [Corrected]

■ On page 682, in the first column, in the PART 39—AIRWORTHINESS DIRECTIVES Section, in the Applicability paragraph, in the second line, ''UL29916'' is corrected to read ''UL26916''.

Issued in Burlington, Massachusetts, on December 5, 2006.

Diane M. Cook,

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

[FR Doc. E6–21122 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, A Division of Eli Lilly & Co. The supplemental NADA provides for an alternate feeding regimen for tylosin phosphate in Type C medicated swine feeds used for the control of swine proliferative enteropathies.

DATES: This rule is effective December 12, 2006.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 12–491 that provides for use of TYLAN (tylosin phosphate) Type A medicated articles. The supplement provides for an alternate feeding regimen for the control of swine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*. In addition, Elanco Animal Health revised the names of other enteric pathogens of swine to reflect changes in the scientific nomenclature for these bacteria. The supplemental NADA is approved as of November 7, 2006, and the regulations in 21 CFR 558.625 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning November 7, 2006.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.625, revise paragraphs (f)(1)(i)(*b*), (f)(1)(vi)(*b*)(*1*), (f)(1)(vi)(*c*)(*1*), and (f)(1)(vi)(*e*)(*1*) to read as follows:

§ 558.625 Tylosin.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(*b*) *Indications for use.* For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium (Actinomyces) pyogenes*.

* * * * *

(vi) * * *

(*b*) * * *

(*1*) *Indications for use.* For control of swine dysentery associated with *Brachyspira hyodysenteriae*, and for control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*.

* * * * *

(*c*) * * *

(*1*) *Indications for use.* For treatment and control of swine dysentery associated with *B. hyodysenteriae*.

* * * * *

(*e*) * * *

(*1*) *Indications for use.* For control of porcine proliferative enteropathies (ileitis) associated with *L. intracellularis*.

Dated: November 29, 2006.

David R. Newkirk,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E6–21021 Filed 12–11–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9301]

RIN 1545–BF89

Reduction in Taxable Income for Housing Hurricane Katrina Displaced Individuals

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the reduction in taxable income under section 302 of the Katrina Emergency Tax Relief Act of 2005. The regulations affect taxpayers who provide housing in their principal residences to individuals displaced by Hurricane Katrina. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 11, 2006.

Applicability Date: For date of applicability, see § 1.9300–1T(g).

FOR FURTHER INFORMATION CONTACT: Marnette M. Myers, 202–622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to the reduction in taxable income for housing provided to displaced individuals under section 302 of the Katrina Emergency Tax Relief Act of 2005 (Pub. L. No. 109–73, 119 Stat. 2016) (KETRA).

For taxable years beginning in 2005 and 2006, a taxpayer may reduce taxable income by $500 for each Hurricane Katrina displaced individual to whom the taxpayer provides free housing in the taxpayer's principal residence for a period of 60 consecutive days that ends in the taxable year. No reduction is allowed if the taxpayer receives rent or other compensation from any source for providing the housing.

A taxpayer may not claim a reduction in taxable income with respect to the same Hurricane Katrina displaced individual in more than one taxable year and must include the Hurricane Katrina displaced individual's tax identification number on the taxpayer's return. Generally, the total reduction for all taxable years is $2,000.

A Hurricane Katrina displaced individual is defined as a natural person who was displaced from a principal place of abode that, on August 28, 2005, was in the Hurricane Katrina core disaster area. A Hurricane Katrina displaced individual also is defined as an individual whose principal place of abode was located in the Hurricane Katrina disaster area, but outside the core disaster area, if the abode was damaged by Hurricane Katrina or the individual was evacuated from the abode because of Hurricane Katrina. A Hurricane Katrina displaced individual may not be the taxpayer's spouse or dependent.

Under section 2(1) of KETRA, the Hurricane Katrina disaster area is the area with respect to which a major disaster by reason of Hurricane Katrina has been declared by the President before September 14, 2005, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) (Stafford Act). For purposes of relief provided under KETRA, this area comprises the states of Louisiana, Mississippi, Alabama, and Florida. Under section 2(2) of KETRA, the Hurricane Katrina core disaster area is the portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the Federal government under the Stafford Act. See Appendix to Notice 2005–73 (2005–42 I.R.B. 723) (Oct. 17, 2005) (listing parishes and counties designated for assistance under the Stafford Act).

Explanation of Provisions

Provision of Housing

The temporary regulations provide that a taxpayer is considered to provide housing if the housing is provided either in, or on the site of, the taxpayer's *principal residence*. In addition, the taxpayer must be an owner or lessee of the residence to be treated as providing housing to a Hurricane Katrina displaced individual. The term *principal residence* has the same meaning as in section 121 and the regulations thereunder. Amounts in connection with the provision of housing (for which the taxpayer may not be reimbursed or compensated) include rent and utilities. Amounts for telephone calls, food, clothing and transportation are not amounts in connection with the provision of housing for this purpose.

Limitations on Amount of Reduction

The temporary regulations provide that the $2,000 aggregate limit on the reduction in taxable income applies to unmarried individuals and married taxpayers filing a joint tax return. Married taxpayers who file separate returns may reduce taxable income by $1,000 each for all taxable years.

The temporary regulations clarify that a taxpayer may reduce taxable income with respect to a specific Hurricane Katrina displaced individual in 2005 or 2006, but not both years. Additionally, the temporary regulations provide that a Hurricane Katrina displaced individual may be taken into account by only one taxpayer occupying the same principal residence.

Effective Date

The temporary regulations apply to taxable years beginning after December 31, 2004, and before January 1, 2007, and ending on or after December 11, 2006, which is the date the temporary regulations were filed with the **Federal Register**. Taxpayers may rely on the temporary regulations with respect to taxable years ending before the filing date, but may not rely on the absence of regulations for taxable years ending before the filing date for a result contrary to that under the temporary regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply

to these regulations. Please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** for applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Marnette M. Myers of the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.9300–1T also issued under 26 U.S.C. 6001. * * *

■ **Par. 2.** Section 1.9300–1T is added to read as follows:

§ 1.9300–1T Reduction in taxable income for housing Hurricane Katrina displaced individuals.

(a) *In general.* For a taxable year beginning in 2005 or 2006, a taxpayer who is a natural person may reduce taxable income by $500 for each Hurricane Katrina displaced individual (as defined in paragraph (e)(1) of this section) to whom the taxpayer provides housing free of charge in, or on the site of, the taxpayer's principal residence for a period of 60 consecutive days ending in the taxable year. A taxpayer may not claim the reduction in taxable income unless the taxpayer includes the taxpayer identification number of the Hurricane Katrina displaced individual on the taxpayer's income tax return.

(b) *Provision of housing*—(1) *Principal residence.* For purposes of this section, the term *principal residence* has the same meaning as in section 121 and the regulations thereunder. See § 1.121–1(b)(1) and (b)(2).

(2) *Legal interest required.* A taxpayer is treated as providing housing for purposes of this section only if the taxpayer is an owner or lessee (including a co-owner or co-lessee) of the residence.

(3) *Compensation for providing housing*—(i) *In general.* No reduction in taxable income is allowed under this section to a taxpayer who receives rent or any other amount from any source in connection with the provision of housing.

(ii) *Amounts in connection with the provision of housing.* For purposes of this section, amounts in connection with the provision of housing include (but are not limited to) amounts for rent and utilities. Amounts for telephone calls, food, clothing, and transportation are examples of amounts not in connection with the provision of housing.

(c) *Limitations*—(1) *Dollar limitation*—(i) *In general.* The reduction under paragraph (a) of this section may not exceed the maximum dollar limitation reduced by the amount of the reduction under this section for all prior taxable years. The maximum dollar limitation is—

(A) $2,000 in the case of an unmarried individual;

(B) $2,000 in the case of a husband and wife who file a joint income tax return; and

(C) $1,000 in the case of a married individual who files a separate income tax return.

(ii) *Married individuals with separate principal residences.* The limitations in paragraphs (c)(1)(i)(B) and (c)(1)(i)(C) of this section apply without regard to whether the married individuals occupy the same principal residence. A person is treated as married for purposes of this section if the individual is treated as married under section 7703.

(2) *Spouse or dependent of the taxpayer.* No reduction is allowed for a Hurricane Katrina displaced individual who is the spouse or dependent of the taxpayer.

(3) *Individual taken into account only once.* A taxpayer may not reduce taxable income under paragraph (a) of this section with respect to a Hurricane Katrina displaced individual who was taken into account by the taxpayer for any prior taxable year.

(4) *Taxpayers occupying the same principal residence.* A Hurricane Katrina displaced individual may be taken into account by only one taxpayer occupying the same principal residence for all taxable years.

(d) *Substantiation.* A taxpayer claiming a reduction under this section must prepare and maintain records sufficient to show entitlement to the reduction as provided in Form 8914 (Exemption Amount for Taxpayers Housing Individuals Displaced by Hurricane Katrina) or other forms, instructions, publications or guidance published by the IRS.

(e) *Definitions.* The following definitions apply for purposes of this section.

(1) *Hurricane Katrina displaced individual.* The term *Hurricane Katrina displaced individual* means any natural person if the following requirements are met—

(i) The person's principal place of abode on August 28, 2005, was in the Hurricane Katrina disaster area (as defined in paragraph (e)(2) of this section);

(ii) The person was displaced from that abode; and

(iii) If the abode was located outside the Hurricane Katrina core disaster area (as defined in paragraph (e)(3) of this section)—

(A) The abode was damaged by Hurricane Katrina; or

(B) The person was evacuated from that abode by reason of Hurricane Katrina.

(2) *Hurricane Katrina disaster area.* The term *Hurricane Katrina disaster area* means the states of Alabama, Florida, Louisiana, and Mississippi.

(3) *Hurricane Katrina core disaster area.* The term *Hurricane Katrina core disaster area* means the portion of the Hurricane Katrina disaster area designated by the President to warrant individual or individual and public assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(f) *Examples.* The provisions of this section are illustrated by the following examples in which each Hurricane Katrina displaced individual, who is not a dependent or spouse of the taxpayer, is provided housing (within the meaning of paragraph (b) of this section) in, or on the site of, the taxpayer's principal residence for a period of at least 60 consecutive days ending in the applicable taxable year. The examples are as follows:

Example 1. Taxpayer A provides housing to N, a Hurricane Katrina displaced individual, from September 1, 2005, until March 10, 2006. Under paragraphs (a) and (c)(3) of this section, A may reduce taxable income by $500 on A's 2005 income tax return or A's 2006 income tax return, but not both, with respect to N.

Example 2. The facts are the same as in *Example 1* except that A and B, A's unmarried roommate and co-lessee, provide housing to N. Under paragraphs (a) and (c)(4) of this section, either A or B, but not both, may reduce taxable income by $500 for 2005 with respect to N. If either A or B reduces

taxable income for 2005 with respect to N, neither A nor B may reduce taxable income with respect to N for 2006.

Example 3. Unmarried roommates and co-lessees C and D provide housing to eight Hurricane Katrina displaced individuals during 2005. Under paragraphs (a) and (c)(1)(i)(A) of this section, C and D each may reduce taxable income by $2,000 on their 2005 income tax returns.

Example 4. (i) H and W are married to each other and provide housing to a Hurricane Katrina displaced individual, O, in 2005. H and W file their 2005 income tax return married filing jointly. Under paragraphs (a) and (c)(4) of this section, H and W may reduce taxable income by $500 on their 2005 income tax return with respect to O.

(ii) In 2006, H and W provide housing to O and to another Hurricane Katrina displaced individual, P. H and W file their 2006 income tax return married filing separately. Because H and W reduced their 2005 taxable income with respect to O, under paragraph (c)(3) of this section, neither H nor W may reduce taxable income on their 2006 income tax return with respect to O. Under paragraphs (a) and (c)(4) of this section, either H or W, but not both, may reduce taxable income by $500 on his or her 2006 income tax return with respect to P.

(g) *Effective date.* This section applies for taxable years beginning after December 31, 2004, and before January 1, 2007, and ending on or after December 11, 2006.

Approved: December 1, 2006.

Linda M. Kroening,

Acting Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6–21031 Filed 12–11–06; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–386; FCC 05–29]

Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission re-publishes its announcement that the Office of Management and Budget (OMB) approved for three years the information collection requirements contained in the *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, Report and Order and Further Notice of Proposed Rulemaking on August 30, 2005*. On September 21, 2005, the Commission published an announcement of the effective date of the rules published at 70 FR 32258. This document announces the effective date of corrected rules published at 70 FR 54300.

DATES: The corrected rules for § 64.4002 published at 70 FR 54300, September 14, 2005, are effective December 12, 2006.

FOR FURTHER INFORMATION CONTACT: Lisa Boehley, Policy Division, Consumer & Governmental Affairs Bureau, at (202) 418–2512.

SUPPLEMENTARY INFORMATION: This document announces that OMB approved for three years the information collection requirements contained in *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, Report and Order and Further Notice of Proposed Rulemaking*, FCC 05–29 published at 70 FR 54300, September 14, 2005. The information collections were approved by OMB on August 30, 2005. OMB Control Number 3060–1084. The Commission publishes this notice of the effective date of the corrected rules. If you have any comments on the burden estimates listed below, or how we can improve the collections and reduce any burdens caused thereby, please write to Leslie F. Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number 3060–1084, in your correspondence. We will also accept your comments regarding the Paperwork Reduction Act aspects of the collections via the Internet, if you send them to *Leslie.Smith@fcc.gov* or you may call (202) 418–0217.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC notified the public that it received approval from OMB on August 30, 2005, for the collections of information contained in the Commission's *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, Report and Order and Further Notice of Proposed Rulemaking*. On September 21, 2005, the Commission published an announcement of the effective date of the rules published at 70 FR 32258. The rules became effective on September 21, 2005. This document announces the effective date of the rules published at 70 FR 53400, which contained minor corrections to the rules published at 70 FR 32258. The total annual reporting burden associated with these collections of information, including the time for gathering and maintaining the collections of information, is estimated to be: 1,778 respondents, a total annual hourly burden of 44,576 hours, and $1,114,400 in total annual costs. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

List of Subjects in 47 CFR Part 64

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–20909 Filed 12–11–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216 and 252

RIN 0750–AF44

Defense Federal Acquisition Regulation Supplement; Labor Reimbursement on DoD Non-Commercial Time-and-Materials and Labor-Hour Contracts (DFARS Case 2006–D030)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement

(DFARS) to provide policy for reimbursing labor costs on competitively awarded DoD non-commercial time-and-materials and labor-hour contracts.

DATES: *Effective Date:* February 12, 2007.

Comment Date: Comments on the interim rule should be submitted to the address shown below on or before February 12, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D030, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil*. Include DFARS Case 2006–D030 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Robin Schulze, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

This interim DFARS rule supplements the final Federal Acquisition Regulation (FAR) rule published in Federal Acquisition Circular 2005–15, under FAR Case 2004–015. The FAR rule clarifies payment procedures for non-commercial time-and-materials and labor-hour contracts, and prescribes the following three options for establishing fixed hourly rates on competitively awarded non-commercial time-and-materials and labor-hour contracts:

(1) Separate rates that include profit for each category of labor performed by the contractor and each subcontractor, and for each category of labor transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(2) Blended rates that include profit for each category of labor performed by the contractor and its subcontractors, and labor transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(3) Any combination of separate and blended rates for each category of labor.

The FAR rule also authorizes agencies to select, and make mandatory, one of the three options at the agency level. DoD believes it is in the best interests of the Department to select, and make mandatory, the option requiring separate fixed hourly rates that include profit for each category of labor performed by the contractor and each subcontractor, and for each category of labor transferred between divisions, subsidiaries, or affiliates of the contractor under a common control. The reasons for selection of this option include—

(1) The relatively large dollar value of many DoD non-commercial time-and-materials and labor-hour contracts;

(2) The significant oversight and legislative initiatives that have focused on DoD in recent years; and

(3) The preponderance of DoD non-commercial time-and-materials and labor-hour contracts performed by traditional DoD contractors and subcontractors, who already have the necessary mechanisms in place to establish separate fixed hourly rates for each performing entity without significant administrative burden.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. In accordance with established rulemaking procedures, DoD will coordinate with the Office of Management and Budget regarding public comments received in response to this interim rule prior to the issuance of a final rule.

B. Regulatory Flexibility Act

This rule may impact a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. DoD has prepared an initial regulatory flexibility analysis, which is summarized as follows:

The objective of the rule is to select the FAR option for establishing labor rates that is the most suitable for DoD competitively awarded, non-commercial time-and-materials and labor-hour contracts. The legal basis for the rule is 41 U.S.C. 421. The rule will apply to all entities interested in receiving DoD competitively awarded non-commercial time-and-materials and labor-hour contracts. The impact on small entities is unknown at this time. DoD believes that, for non-commercial time-and-materials and labor-hour contracts, it is in the best interests of the Department to require use of the FAR option that provides for the establishment of separate fixed hourly rates for each category of labor performed by the contractor and each subcontractor, and for each category of labor transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D030.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule provides policy for reimbursing labor costs on competitively awarded DoD non-commercial time-and-materials and labor-hour contracts. DoD believes it is in the best interests of the Department to require the establishment of separate fixed hourly rates for each category of labor performed by the contractor and each subcontractor, and for each category of labor transferred between divisions, subsidiaries, or affiliates of the contractor under a common control. The reasons for this decision include—

(1) The relatively large dollar value of many DoD non-commercial time-and-materials and labor-hour contracts;

(2) The significant oversight and legislative initiatives that have focused on DoD in recent years; and

(3) The preponderance of DoD non-commercial time-and-materials and labor-hour contracts performed by traditional DoD contractors and subcontractors, who already have the necessary mechanisms in place to establish separate fixed hourly rates for each performing entity without significant administrative burden.

Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 216 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 216 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 216—TYPES OF CONTRACTS

■ 2. Section 216.601 is added to read as follows:

216.601 Time-and-materials contracts.

(e) *Solicitation provisions.* Use the provision at FAR 52.216–29, Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition with Adequate Price Competition, with 252.216–7002, Alternate A, in solicitations contemplating the use of a time-and-materials or labor-hour contract type for non-commercial items if the price is expected to be based on adequate competition.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.216–7002 is added to read as follows:

252.216–7002 Alternate A, Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition with Adequate Price Competition.

As prescribed in 216.601(e), substitute the following paragraph (c) for paragraph (c) of the provision at FAR 52.216–29:

ALTERNATE A, TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—NON-COMMERCIAL ITEM ACQUISITION WITH ADEQUATE PRICE COMPETITION (FEB. 2007)

(c) The offeror must establish fixed hourly rates using separate rates for each category of labor to be performed by each subcontractor and for each category of labor to be performed by the offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the offeror under a common control.

[FR Doc. 06–9602 Filed 12–6–06; 9:16 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051128313–6029–02; I.D. 120406C]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Harvested for New York

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

ACTION: Closure of commercial fishery.

SUMMARY: NMFS announces that the Atlantic bluefish commercial quota available to New York has been harvested. Vessels issued a commercial Federal fisheries permit for the Atlantic bluefish fishery may not land bluefish in New York for the remainder of calendar year 2006, unless additional quota becomes available through a transfer. Regulations governing the Atlantic bluefish fishery require publication of this notification to advise New York that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing bluefish in New York.

DATES: Effective 0001 hours, December 12, 2006, through 2400 hours, December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160.

The initial coast wide commercial quota for Atlantic bluefish for the 2006 calendar year was set equal to 4,215,802 lb (1,912 mt) (71 FR 9472, February 24, 2006). The initial commercial quota was adjusted by transferring 3,865,294 lb (1,753 mt) from the recreational allocation, resulting in a total commercial quota of 8,081,096 lb (3,666 mt). The percent allocated to vessels landing bluefish in New York is 10.3851 percent, resulting in an initial commercial quota of 839,230 lb (380,672 kg). The 2006 allocation was reduced to 775,526 lb (351,773 kg) (71 FR 27977, May 15, 2006) due to research set-aside and a quota overage in 2005. New York received transfers of commercial bluefish quota from Virginia (71 FR 42315, July 26, 2006) and Florida (71 FR 51531, August 30, 2006), which resulted in a 2006 allocation of 1,025,526 lb (465,171 kg).

Section 648.161(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing bluefish in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that New York has harvested its quota for 2006.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land bluefish in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 12, 2006, further landings of bluefish in New York by vessels holding Atlantic bluefish commercial Federal fisheries permits are prohibited for the remainder of the 2006 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, December 12, 2006, federally permitted dealers are also notified that they may not purchase bluefish from federally permitted vessels that land in New York for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 5, 2006.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–9624 Filed 12–6–06; 3:08 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 238
Tuesday, December 12, 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.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

Portable Generators; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking (''ANPR'') initiates a rulemaking proceeding that could result in mandatory performance standards for portable generators. The notice discusses a broad range of regulatory approaches that could be used to reduce portable generator-related deaths and injuries, particularly those related to carbon monoxide poisoning.[1] The Commission invites public comment on these alternatives and any other approaches that could reduce portable generator-related deaths and injuries due to carbon monoxide poisoning, as well as shock/electrocution, fire, and burns. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury described in this ANPR. The Commission issued a separate notice of proposed rulemaking (NPR) at 71 FR 50003 on August 24, 2006, relating specifically to enhancing the effectiveness of warning labels for portable generators, and invited public comment on its proposal.

DATES: Written comments and submissions in response to this ANPR must be received by the Office of the Secretary not later than February 12, 2007.

[1] Acting Chairman Nancy A. Nord and Commissioner Thomas H. Moore each filed a statement. The statements are available from the Office of the Secretary or on the Commission's Web site at *http://www.cpsc.gov.*

ADDRESSES: Comments may be filed by e-mail to *cpsc-os@cpsc.gov.* Comments may also be filed by facsimile to (301) 504–0127 or by mail or delivery, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland. Comments should be captioned ''Portable Generator ANPR.''

FOR FURTHER INFORMATION CONTACT: Janet L. Buyer, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–7542; e-mail: *jbuyer@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

One of CPSC's strategic goals is to reduce the number of non-fire carbon monoxide (CO) poisoning deaths associated with consumer products by 20% from the average of the years 1999 and 2000 by the year 2013. The total yearly estimated non-fire related CO deaths for each of the years 1999 through 2002 are 109, 138, 130 and 188, respectively. Since 1999, the percentage of estimated CO poisoning deaths specifically associated with generators has been increasing annually. In 1999, generators were associated with 7 (6%) of the total yearly estimated CO poisoning deaths for that year. In 2000, 2001 and 2002, they were associated with 19 (14%), 22 (17%) and 46 (24%) deaths out of the total estimates for each of those years.

Staff began working on ways to reduce CO emissions from engine-powered equipment, including portable generators, in 2002. This work included testing portable generators, analyzing the CO hazard related to generators, investigating the feasibility of a gas-sensing interlock mechanism and making recommendations to the voluntary standards organization, Underwriters Laboratories, on ways to reduce CO emissions and other hazards associated with portable generators. Staff then sought guidance from the Commission on how to proceed. On October 12, 2005, Commission Chairman Hal Stratton sent a memorandum to the Executive Director directing the staff to undertake a thorough review of the status of portable generator safety in light of CO deaths and injuries attributable to consumer use of portable generators. The staff was directed to address, at a minimum, the following issues: (1) Feasibility of safety cut-offs that would shut down a generator before CO reaches unsafe levels; (2) sufficiency of warning labels to address the danger of CO poisoning associated with portable generators used within or near residences; (3) development of portable generator performance requirements that would substantially reduce CO emissions; (4) feasibility of weatherization of portable generators (including ground fault circuit interrupter (GFCI) protection) for use in wet and/or cold outdoor environments; (5) creation of an information and education campaign; and (6) potential benefits of the creation of a private sector consortium made up of generator manufacturers that would cooperatively develop a technical solution that adequately addresses the current CO poisoning hazard.

B. The Product

Portable generators offer a means of providing electrical power to a location that either temporarily lacks it or is not provided with electrical service at all. A portable generator has an internal combustion engine to produce rotational energy, which is used to generate electricity. The engine may be fueled by gasoline, diesel, natural gas, or liquid propane. Most importantly, it is the engine that produces carbon monoxide as a product of combustion.

The estimated number of portable generators owned by households ranged from about 9.2 million units in 2002 to 10.6 million units in 2005. Over 1 million units are estimated to have been purchased by consumers in each of the years 2003–2005. Approximately 40% of portable units purchased by consumers in these 3 years were in the 5.0 kilowatt (kW) to less than 6.5 kW power output range.

C. Risks Posed by Portable Generators

Generators pose four main hazards: CO poisoning, shock/electrocution, fire, and thermal contact burns. For the 16 year period 1990 through 2005, there have been at least 351 CO poisoning fatalities associated with generators reported to CPSC. For the same 16-year period, there have been at least 10 electrocution deaths and 8 fire-related deaths associated with generators reported to CPSC. Since some deaths are reported to CPSC months or years after

an incident occurred, counts for recent years may not be as complete as counts for earlier years.

Because the majority of deaths reported to CPSC involving portable generators are associated with the CO poisoning hazard, the staff's review of the voluntary standards and proposed alternatives has focused primarily on the CO hazard.

D. Voluntary Standards

Staff reviewed existing voluntary standards to determine the extent to which they may address CO poisoning hazards associated with generators. There is currently no U.S. voluntary safety standard specifically applicable to portable generators.[2]

1. UL 2201 ''Portable Engine-Generator Assemblies,'' Proposed First Edition

Underwriters Laboratories (UL) is currently developing the first edition of UL 2201 ''Portable Engine-Generator Assemblies,'' through an ANSI-accredited committee process using a Standards Technical Panel (STP). There have been four draft versions of the proposed UL 2201 standard since February 2003. CPSC staff has submitted comments and recommended the following for inclusion in the proposed standard: (1) Performance requirements to address consumer exposure to unsafe CO emissions; (2) performance requirements that would permit safe outdoor use of generators in rain and other poor weather conditions; (3) improvements to labeling, markings and instructions for portable generators to adequately warn consumers of the CO hazard and inform them of appropriate safety measures; and (4) requirements for tests to verify safe generator operability when used in cold, damp weather, which may cause icing of the air intake tract of the generator engine, thereby degrading its ability to operate outdoors. In December 2004, the UL STP decided that the draft proposed standard would move forward without performance requirements to address CO emissions and weatherization or testing requirements for cold weather operation.

Because consensus had not yet been achieved on the draft UL standard, in April 2006, UL issued an Outline of Investigation for portable generators which serves as the requirements with which a product must conform in order to be eligible to bear the UL mark. UL's Outline of Investigation includes requirements for cautionary markings and advisory information as well as features that will facilitate safe use in rain (rainproof enclosure, rain tight while-in-use receptacle covers, and ground fault circuit protection on all alternating current output circuits).

Although such Outlines of Investigation are not consensus standards, they represent UL's judgment, together with due consideration of public comments. UL states that it is their intention that the draft proposed standard when finalized be adopted as an American National Standard upon consensus within the Standards Technical Panel (STP) at a later date.

2. International Standard ISO 8528–8:1995(e)

International Standard ISO 8528–8:1995(e) Reciprocating internal combustion engine driven alternating current generating sets—Part 8: Requirements and tests for low-power generating sets is a standard applicable to portable generators sold overseas. Similar to the draft proposed UL 2201, its requirements regarding the CO poisoning hazard are limited to labels and markings. However, in contrast to the proposed UL 2201, it does have a requirement that the generator be able to start up and operate at ambient temperatures between −15 degrees C and 40 degrees C (5 degrees F and 104 degrees F). But this requirement does not specify the ambient relative humidity that is needed to simulate icing conditions that may degrade the engine's ability to run outdoors.

3. CSA C22.2 No. 100–04 Motors and Generators

Canadian Standards Association CSA C22.2 No. 100–04 Motors and Generators is a standard that includes requirements for portable and standby generators sold in Canada. This standard lacks any performance requirements that address the CO poisoning hazard. Also, it does not have any requirements to ensure engine operability in cold, damp conditions.

E. Regulatory Alternatives To Address the Risks of Injury

Following is a discussion of some possible regulatory options available to the Commission.

Under section 7 of the CPSA, the Commission has the authority to adopt a consumer product safety standard consisting of performance requirements for the product and/or requirements that the product be marked with or accompanied by warnings or instructions when such requirements are reasonably necessary to prevent or reduce an unreasonable risk of injury and death associated with the product. Such a rule could also include a certification labeling requirement as authorized by section 14 of the CPSA.

Among performance requirements for portable generators the staff may consider are weatherization, reducing the allowable CO emission rates, and/or interlock devices. The Commission could also consider incorporating a warning label for portable generators into any standard issued under the authority of Section 7 of the CPSA.[3]

Under section 8 of the CPSA, the Commission has the authority to ban portable generators if it finds that no feasible consumer product safety rule would adequately protect the public from an unreasonable risk of injury associated with them.

F. Request for Information and Comments

This ANPR is the first step in developing regulatory actions that will reduce portable generator-related deaths and injuries. The proceeding could result in a mandatory rule for portable generators. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above or any other approaches.

In accordance with section 9(a) of the CPSA, the Commission solicits:

1. Written comments with respect to the risk of injury and death identified by the Commission.

2. Written comments regarding the regulatory alternatives being considered, their costs, and other possible alternatives for addressing the risk.

3. Any existing standard or portion of a standard which could be issued as a proposed regulation.

4. A statement of intention to modify or develop a voluntary standard to

[2] The Occupational Safety and Health Administration (OSHA) does have regulations pertaining to portable generators used in the workplace, but these regulations focus primarily on electrical hazards (see, e.g., 29 CFR 1910.303(b)(1)(i); 29 CFR 1910.304(f)(7); 29 CFR 1910.305(a)(2); 29 CFR 1910.269(i)(3); 29 CFR 1926.403(a); 29 CFR 1926.404(b)(1)(ii); and 16 CFR 1926.404(f)(3).

[3] Under section 27(e) of the CPSA, the Commission has the authority to issue a rule requiring a consumer product manufacturer to provide the Commission with performance and technical data related to performance and safety as may be required to carry out the purposes of the CPSA, and to give notification of such performance and technical data at the time of the original purchase to prospective purchasers and to the first purchaser of the product. On August 24, 2006, the Commission issued a separate notice of proposed rulemaking (NPR) at 71 FR 50003 relating specifically to enhancing the effectiveness of warning labels for portable generators under authority of section 27(e) of the CPSA and invited public comment on its proposal. Depending on the outcome of that proceeding, at some future time the result might be incorporated into any consumer product safety standard issued under the authority of section 7 of the CPSA.

address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

In addition, the Commission is interested in receiving the following information:

1. Any information related to reducing the CO emission rate of engines used on portable generators, weatherization of portable generators, or interlocking device concepts.

2. Information concerning consumer use of generators, specifically, how long they own them, how frequently they use them and for what duration, and product life (in years).

3. Information on portable generator-related shock and electrocutions that have occurred due to use in wet conditions and what conditions are believed to constitute ''wet conditions''?

4. Information or data on the primary reasons consumers purchase and/or use generators and for which appliances, tools, and products they use the generator to supply power.

5. Any technical data on engine performance while operating in temperatures below 40 degrees Fahrenheit combined with high humidity (conditions that induce icing).

6. Any information or technical data to support minimum clearance requirements for placement of an operating generator to address each of the following: Cooling air flow, combustion air flow, avoidance of exhaust impingement on combustible surfaces, and avoidance of CO accumulation in nearby structures.

7. Data on any shelter concepts for generators regarding CO level buildup in and dissipation from the immediate area around the shelter.

8. Any information on the application of an electrical isolation monitor on a generator system to actively measure the insulation resistance between circuit conductors and ground.

9. Any information on death and injury incidents involving CO, electrocution, and thermal hazards (fire and contact burns, etc.) including details of incident scenarios and nature and severity of injuries.

10. Any other relevant information and suggestions about ways in which the safety of consumer use of portable generators might be improved.

Dated: December 6, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–21131 Filed 12–11–06; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 1998N–0337C]

RIN 0910–AD47

Over-the-Counter Human Drugs; Labeling Requirements; Proposed Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its final rule that established standardized format and content requirements for the labeling of over-the-counter (OTC) drug products (Drug Facts Rule, codified at 21 CFR 201.66). This amendment proposes a definition and the option of alternative labeling requirements for ''convenience-size'' OTC drug packages.

DATES: Submit written comments by April 11, 2007; written comments on FDA's economic impact determination by April 11, 2007. See section X of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: You may submit comments, identified by Docket No. 1998N–0337C and/RIN number 0910–AD47, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the Electronic Submissions portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No. and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow or Cazemiro R. Martin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5426, Silver Spring, MD 20993–0002, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA published a final rule establishing standardized format and standardized content requirements for the labeling of OTC drug products (Drug Facts Rule). Those requirements are codified in 21 CFR 201.66.

Section 201.66(a) states that the content and format requirements in § 201.66 apply to the labeling of all OTC drug products. This includes products marketed under a final OTC drug monograph, products marketed under an approved new drug application (NDA) or abbreviated new drug application (ANDA) under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355), and products for which there is no final OTC drug monograph or approved NDA/ANDA.

In the Drug Facts Rule and in subsequent notices, FDA provided dates by which OTC drug products had to be in compliance with the new labeling requirements. FDA provided a chart in the Drug Facts Rule (64 FR 13254 at 13274) that summarized the time periods within which the various categories of marketed OTC drug products were required to comply with the final rule. Unless otherwise stated,

all time periods in the chart began on the effective date of the final rule. The chart was subsequently updated on June 20, 2000 (65 FR 38191 at 38193) and April 5, 2002 (67 FR 16304 at 16306 to 16307).

In the June 20, 2000, update, FDA clarified the applicable compliance dates in situations where relabeling was required by both the Drug Facts Rule and another rule. In the April 5, 2002, update, FDA delayed the compliance dates for ''convenience-size'' OTC drug products. Those products are the subject of this proposed rule.

A. Delay of Compliance Dates for ''Convenience-Size'' OTC Drug Products

FDA's delay notice of April 5, 2002, postponed the Drug Facts Rule compliance dates for all ''convenience-size'' OTC drug product packages that do the following: (1) Contain no more than two doses of an OTC drug, and (2) because of their limited available labeling space, would require more than 60 percent of the total surface area available to bear labeling to meet the requirements set forth in § 201.66(d)(1) through (d)(9) and would therefore qualify for the labeling modifications currently set forth in § 201.66(d)(10). ''Dose'' was defined in the delay notice as the maximum single-serving for an adult (or a child for products marketed only for children) as specified in the product's directions for use. (See 67 FR 16304 at 16306.)

FDA's delay does not include single- or double-dose OTC drug packages that do not qualify for the labeling conditions in § 201.66(d)(10) because they can accommodate the Drug Facts labeling required in § 201.66(d)(1) through (d)(9) using 60 percent or less of their total surface area available to bear labeling. Examples of such products include some enemas, disposable douche products, and ipecac syrup products intended for emergency treatment use in poisonings. (See 67 FR 16304 at 16306 to 16307.)

B. Citizen Petition Requests Definition

FDA published the notice of delay for ''convenience-size'' OTC drug product packages in response to a citizen petition (Ref. 1) submitted by Lil' Drug Store Products, Inc. (Lil'). Lil' asked FDA to define ''convenience-size'' OTC drug products and to modify the labeling and content requirements of the Drug Facts Rule with respect to such products. Lil' proposed that ''convenience-size'' OTC drug products be defined as packages sold to the public that contain one or two doses of an OTC drug product. Lil' also proposed that ''dose'' be defined as a manufacturer's recommended serving. In addition, Lil' requested that FDA modify the requirements of § 201.66 for these ''convenience-size'' OTC drug products by permitting a reduced version of the OTC Drug Facts labeling to appear on the external packaging of such products, while requiring fully compliant Drug Facts labeling to appear on the inside of the package through the use of package inserts or inner-package printing. Lil' stated that, under its proposal, the labeling on the external packaging would continue to include medically relevant information, would be consistent with the retail environment in which ''convenience-size'' OTC drug products are sold, and would still adequately enable consumers to make the unique purchasing decision associated with OTC drug use. Lil' described the ''convenience-size'' products that it sells as recognized, brand-name, quality OTC drug products packaged in small doses and made available to the consumer at his or her point of need.

Lil' stated that there were medical and policy rationales for its request centering on the dosing limitations of ''convenience-size'' packages. Because such packages contain only one or two doses of an OTC drug product, Lil' reasoned that it is acceptable and appropriate for certain information required under the Drug Facts Rule to appear inside the packages, either in a package insert or by inner-package printing. Lil' proposed that the outer product labeling of a convenience-size package still contain the complete ''Drug Facts'' title, active ingredients, purpose, uses, and inactive ingredients, but that it be allowed to abbreviate certain warnings and omit other required information. Lil' also proposed adding the following statement in bold, italic, seven-point Helvetica font: ''Please read complete Drug Facts information inside prior to use.'' Lil' then proposed that the remaining information required by the Drug Facts Rule, including directions for use, certain warnings, and questions or comments, be allowed to appear inside the package, and it provided supporting reasons. (See section III.C of this document for a summary of Lil's suggestions and reasoning.)

In its response (Ref. 2) to the Lil' citizen petition, FDA stated that it had carefully reviewed the data and information in the petition and agreed that some accommodation for ''convenience-size'' packages might be appropriate. FDA stated that it intended to prepare, for publication in a future issue of the **Federal Register**, a proposed rule that would, if finalized, amend the Drug Facts Rule by defining ''convenience-size'' OTC drug packages and addressing Drug Facts labeling requirements for such products. The proposed rule would also provide all interested parties an opportunity to comment on the viability, desirability, and impact of the proposed rule, and to respond to specific questions posed by FDA.

II. The Basis for Optional Alternative Labeling for Convenience-Size OTC Drug Packages

FDA believes, from a public health perspective, that convenience-size OTC drug packages may not need to have all of the labeling information required by the Drug Facts Rule on the outer package. This belief is based on the reduced risks posed by the limited amount of the active ingredient(s) contained in convenience-size packages, particularly because most of these packages do not provide for repetitive dosing. If a package contains only one or two doses of an OTC drug product, FDA believes there is a significantly reduced likelihood of an overdose occurring from consumption of the entire contents of the package. Further, FDA believes there is a corresponding reduction in the likelihood of other adverse side effects.

FDA also believes, as Lil' asserted in its petition, that many consumers who purchase and use convenience-size packages of an OTC drug product do so because they have an immediate need, often in a location away from home, to take a dose or two of the product. These consumers often purchase convenience size drug packages for immediate consumption or other very short-term use and may not be as concerned at the time of purchase about labeled statements regarding when to stop use of the product and ask a doctor for assistance, overdose warnings, directions for continued dosing, or storage information.

Lil' was also concerned that increasing the standardized size of ''convenience packages'' to comply with the Drug Facts Rule would inhibit the sale of such packages from convenience stores and vending machines, where space is limited and larger packages can not be accommodated.

Thus, given the unique circumstances associated with the purchase and use of ''convenience-size'' OTC drug products, FDA believes that some modification of the current labeling requirements set forth under § 201.66(d)(10) can be achieved without jeopardizing the public health or undermining the important goals of the act or the Drug Facts Rule. FDA considers such a

modification to be especially important if failure to address this issue means that ''convenience-size'' OTC drug products will no longer be as available or accessible to consumers.

FDA has determined, however, that certain critical warnings (e.g., allergic reactions, do not use situations, drug/drug interactions, risks associated with subsequent operation of a motor vehicle or machinery) and other information (e.g., inactive ingredients) must appear on the outer carton of convenience-size packages to allow consumers to accurately assess certain potential risks associated with the selection and use of the drug product at the time of purchase.

Further, FDA believes that complete product information should be provided to consumers with ''convenience-size'' packages, regardless of whether it is available at the point of purchase. For example, information about repeat dosing need not appear on the outside carton or wrapper of a ''convenience-size'' package, but it should appear on the inside package labeling in an insert or in inner-package printing for consumers who may purchase more than one package at a time.

Moreover, FDA strongly believes that the labeling modifications it is proposing for convenience-size packages should be narrowly applied and are not appropriate for packages of the same product that contain more than two doses. FDA believes that consumers who buy packages containing more than two doses customarily intend to take the product over a longer period of time than consumers who buy convenience-size packages. FDA believes that consumers who purchase packages with more than two doses should have complete information available at the time of purchase, so they can make fully informed decisions about prolonged use of the product.

For the reasons stated previously, FDA is proposing to modify the Drug Facts labeling requirements in § 201.66 for convenience-size OTC drug products as set forth in sections III.A, III.B, and III.C of this document. FDA believes its proposal will help achieve an appropriate balance between the consumer safety interests of the act and the Drug Facts Rule and the desire to ensure continued access to convenience-size OTC drug products in the marketplace.

III. FDA's Proposal

A. Definition of a Convenience-Size Package

FDA believes that the definition of a ''convenience-size'' OTC drug package should be a function of both the number of doses contained in the package and the size of the package. FDA's proposed definition of convenience-size is set forth in proposed paragraph 201.66(d)(5). This definition addresses the number of doses and the package size.

1. Number of Doses

FDA considers a limited number of doses as one of the key criteria in any meaningful definition of ''convenience-size.'' FDA proposes that the definition of ''convenience-size'' be limited to OTC drug packages that contain no more than two doses of an OTC drug product. In the notice of April 5, 2002, partial delay of compliance dates, FDA defined a ''dose'' as the maximum single-serving for an adult (or a child for products marketed only for children), as specified in the product's directions for use (67 FR 16304 at 16306). FDA is including the same definition in this proposal.

FDA has found that some currently marketed OTC convenience-size drug products have directions for both adults and children. In most cases, the child's dose is one-half the adult dose. For example, in many products where the adult dose is two dosage units, the child's dose is one dosage unit. FDA did not address this type of package in the April 5, 2002, partial delay of compliance dates. For safety reasons, FDA is proposing that, for products marketed with directions for use for both adults and children, a ''dose'' be defined as the maximum single serving based on the child's dose.

Those OTC drug monographs that provide directions for both children and adults generally give manufacturers the flexibility to market the OTC drug package to adults only, or to children only, or to both adults and children, so long as the package labeling bears the warnings that correspond to the age group(s) for whom the product is intended (see, e.g., 21 CFR 341.74(c) and 341.80(c)). Therefore, FDA does not believe that its proposed definition of ''dose'' will unduly hamper a manufacturer's ability to market convenience size packages to adults, but instead will provide a necessary safeguard against potential overdose in children in those instances where such products are marketed for children's use.

This proposed definition of ''dose'' would also apply to sample and trial-size packages that contain only one or two dosage units of an OTC drug. It would not apply to trial-size packages, or to any other small package sizes, that contain more than two doses and are sold in a retail setting.

2. Package Size

With respect to package size, FDA proposes that the definition of convenience-size be limited to those packages that qualify for the current labeling modification in § 201.66(d)(10) but which, because of their limited available labeling space, would require more than 60 percent of the total surface area available to bear labeling to meet the requirements set forth in § 201.66(d)(10). Thus, under the proposed rule, one or two dose OTC drug packages that qualify for, and can accommodate, the current labeling modifications provided in § 201.66(d)(10) with 60 percent or less of their available labeling space would not meet the definition of ''convenience-size'' package in proposed § 201.66(b)(5). Only those ''convenience-size'' OTC drug packages that are so small that they cannot accommodate the modified drug facts labeling in § 201.66(d)(10) with 60 percent or less of their available labeling space would be allowed to bear the optional alternative labeling set forth in new § 201.66(d)(11). We note that there are many single-dose OTC products that are packaged in containers that are too large to qualify for the modifications in § 201.66(d)(10) (e.g., most enemas and disposable medicated douche products).

FDA invites specific comment on the following issues:

1. Whether the definition of ''dose'' should be different from that proposed and, if so, why. For those suggesting that the definition of dose be either expanded or narrowed, please explain the precise rationale for such a suggestion and explain how your proposed definition could be implemented to be meaningfully limited;

2. Whether the criteria regarding package size in proposed § 201.66(b)(5) should be different and, if so, why. For those suggesting that the size criteria be either expanded or narrowed, please explain the precise rationale for such a suggestion;

3. Whether there are any data or evidence to support Lil's assertion that increasing package size to accommodate all of the information currently required under § 201.66(d)(10) will force traditional OTC convenience-size drug products out of the retail marketplace and/or reduce consumer access to such packages;

4. The relative public health risks associated with use of OTC convenience-size drug packages and the types of labeling information that must (or need not) be available at the point of

purchase to ensure the safe and effective use of such products;

5. How the proposed definition of ''dose'' (or any other suggested definition of ''dose'') might apply to topical products and how it might be possible to include OTC ''convenience-size'' topical drug products within this proposed labeling modification;

6. Whether there are any data to support Lil's assertion that most OTC convenience-size drug products are purchased for an immediate need to take a dose or two of the drug (as opposed to repeat dosing); and

7. Whether there are reasons to oppose any labeling modification for OTC convenience-size drug products. For those opposing any modification to the Drug Facts Rule for OTC convenience-size packages, please explain the precise rationale for your position and provide evidence, if any, to support your concerns.

B. Exceptions to the Proposed Definition

For public health reasons, FDA proposes to exempt from the definition of ''convenience-size'' several OTC drug products used for poison treatment that are marketed in single-dose containers. These include syrup of ipecac and activated charcoal. Syrup of ipecac is limited by regulation (21 CFR 201.308(c)) to 1 fluid ounce (30 milliliter (mL)) packages for OTC sale. The usual dosage is one tablespoon (15 mL) in persons over 1 year of age (§ 201.308(c)(3)). FDA has proposed that the dosage be revised to 2 tablespoonsful (30 mL) for adults and children 12 years of age and over and to 1 tablespoonful (15 mL) for children 1 to under 12 years of age. (See proposed § 357.54(d), 50 FR 2244 at 2261, January 15, 1985). Activated charcoal is usually marketed in packages containing a minimum of one dose of 20 grams. (See proposed section 357.52(d)(1), 50 FR 2244 at 2261).

FDA considers it important that all of the labeling information for these products be available to consumers at the time of purchase. FDA also believes that, unlike most convenience-size OTC drug products, poison treatments are not purchased for immediate use, but are often acquired for subsequent access within the home in case of an emergency. FDA is therefore concerned that if some of the important information for using these products only appeared on a package insert and that insert got separated from the package before the product was used, the consumer would not have the necessary information at the time the product was needed, possibly resulting in serious health consequences. Those single dose OTC syrup of ipecac and activated charcoal packages that qualify for the labeling modification in § 201.66(d)(10) may still be labeled according to the modifications set forth in that section. However, for the reasons stated above, FDA proposes to exclude them from the definition of ''convenience-size'' in § 201.66(b)(5) and the additional labeling modifications proposed in § 201.66(d)(11), regardless of package size.

Because there currently is no final monograph for OTC poison treatment drug products, FDA does not know how many manufacturers, repackers, and distributors of these products have attempted to develop Drug Facts labeling for these products. FDA invites comment, especially from companies that prepare labeling for these products, about how the labeling proposed in § 357.52 and 357.54 (50 FR 2244 at 2261) would best fit on the immediate and outside containers when converted to the new Drug Facts format. Interested parties are invited to submit draft labeling in response to this proposed rule for FDA to evaluate. FDA also invites specific comment on whether there are other OTC drug products that should not be eligible for the proposed ''convenience-size'' labeling format, even if such products otherwise meet the definition set forth in proposed § 201.66(b)(5).

C. Optional Alternative Labeling for Convenience-Size Packages: Discussion

FDA agrees with Lil' that certain Drug Facts information must fully appear on the outer product labeling of a convenience-size OTC drug package, regardless of the size of that package. This information includes the ''Drug Facts'' title, active and inactive ingredients, purpose(s), use(s), certain warnings, and some of the other information required by § 201.66(c)(7). FDA considers this information an essential part of § 201.66 that must be available to all consumers at the point of purchase. FDA also considers the warnings in § 201.66(c)(5)(i), (c)(5)(ii), and (c)(5)(iii) essential information that should appear in full on the outside of all OTC convenience-size packages because these sections contain especially important warning information that might influence a consumer's purchase decision at the point of sale. Regarding the other applicable warnings and directions, FDA has the following comments:

1. Section 201.66(c)(5)(iv): This section requires the warning subheading ''Ask a doctor before use if you have'' and includes warnings for certain pre-existing conditions and warnings for persons experiencing certain symptoms. Lil' pointed out that the warnings under this heading are those intended only for situations in which consumers should not use the product until a doctor is consulted. Lil' contended that the information, while important, becomes less so given the low dosage being consumed and the unlikely negative side effects of such a low dosage, and this information can be safely included inside the outer carton of a convenience-size package.

FDA disagrees. Information under this subheading would include disease conditions such as diabetes, glaucoma, high blood pressure, heart disease, thyroid disease, and trouble urinating due to an enlarged prostate gland. Consumers who have these conditions need to be informed at the point of purchase that the product may have an undesired effect because of the pre-existing condition(s). This potential problem for an adverse side effect exists whether the consumer is taking a single dose from a convenience-size or multiple doses over time from a larger package.

2. Section 201.66(c)(5)(v): This section requires the warning subheading ''Ask a doctor or pharmacist before use if you are'' and is followed by all drug-drug and drug-food interaction warnings. Lil' suggested this information need not appear on the outside of the carton because there are generally no pharmacies located in the retail environment in which most OTC convenience-size packages are sold.

FDA disagrees. FDA believes that this information must appear on the outside of the carton to ensure it is accessible to consumers at the point of purchase. For certain OTC drug products, the warnings under this heading inform consumers not to take the product if they are taking sedatives or tranquilizers. FDA believes that most consumers will know if they are taking a sedative or tranquilizer and, thus, can make the informed decision to avoid a product that has this warning, even when the purchase occurs in a non-pharmacy outlet.

3. Section 201.66(c)(5)(vi): This section requires the warning subheading ''When using this product'' and provides information on the side effects that may occur and substances or machinery to avoid when using the product. FDA believes, as Lil' suggested, that all information about potential drowsiness, avoiding alcohol, and using care when driving a motor vehicle or operating machinery must appear in the external package labeling.

However, FDA acknowledges there may be other information that appears under this subheading that could appear on the inside package labeling of convenience-size packages without jeopardizing public health or undermining the basic purpose of § 201.66. Examples include information about not using the product at certain times or certain side effects that may occur (e.g., stomach discomfort, cramps). FDA invites specific comments and suggestions, with supportive reasons, about other information under this subheading that could appear on the inside package labeling or should remain on the outside of the package.

4. Section 201.66(c)(5)(vii): This section requires the warning subheading ''Stop use and ask a doctor if'' and provides information on any signs of toxicity or other reactions that would necessitate immediately discontinuing use of the product. Lil' stated that, based on the dosing limitations of convenience-size packages, this information could be adequately addressed inside the carton.

FDA generally agrees. Most of the signs of toxicity described in this section are expected to occur when the product has been used for more than one or two doses. However, for some products, this section requires a specific warning about potential allergic reactions that could occur even after one or two doses and informs consumers to seek medical help right away. FDA believes this allergy warning information describes a condition that may be serious and that could influence a consumer's decision at the point of purchase. Therefore, FDA is requiring that any warning information about allergic reactions required under this subheading must continue to appear on the outside package.

5. Section 201.66(c)(5)(viii): This section requires warnings that do not fit within one of the paragraphs in § 201.66(c)(5)(i) through (c)(5)(vii), (c)(5)(ix), and (c)(5)(x). An example of such a warning is ''* * * Do not puncture or incinerate. * * *'' for drugs in dispensers pressurized by gaseous propellants set forth in 21 CFR 369.21. Lil' suggested that this section could be addressed case-by-case using the same criteria as used for the other sections. FDA believes that there is little labeling in this category that would apply to convenience-size packages and that most, if not all, of the information that would appear under this heading could appear on the inside package labeling. There may be instances, perhaps in the future, in which a warning required under this section should appear on the outside Drug Facts label. FDA invites specific comment on which warnings included in this category, if any, should be kept on the outside package and how FDA should address the importance of future warnings required under this section.

6. Section 201.66(c)(5)(ix): This section requires the pregnancy/breast-feeding warning set forth in § 201.63(a) and the third trimester warning set forth in § 201.63(e) or in certain approved drug applications. Lil' acknowledged that this information should continue to appear on the external package labeling. FDA concurs that this information is needed at the point of purchase and must appear in the outer package labeling.

7. Section 201.66(c)(5)(x): This section requires the warning to ''Keep out of reach of children'' and the accidental overdose/ingestion warnings set forth in § 330.1(g). Lil' provided a number of reasons why this information could appear inside the package. Lil' stated that convenience-size OTC products are usually not purchased, taken home, and stored. Instead, said Lil', they are usually consumed shortly after purchase to satisfy a consumer's immediate need. Lil' added that it is not industry practice to sell OTC drug products to children, which reduces the likelihood of a child possessing a convenience-size package. Finally, Lil' asserted an overdose is extremely unlikely given the dosing limitations in a ''convenience-size'' package.

FDA agrees. Under § 330.1(g), FDA has authority to grant an exemption from these warnings where appropriate upon petition. FDA is not inclined to use this authority to exempt convenience-size products from these warnings altogether. However, we are proposing to allow these warnings to appear inside OTC convenience-size packages on either an insert or inner-package labeling.

8. Section 201.66(c)(6): This section requires the Drug Facts labeling to include the directions for use described in an applicable OTC drug monograph or approved drug application. The regulations in 21 CFR 201.5 describe adequate directions for use for drugs as ''directions under which the layman can use a drug safely and for the purposes for which it is intended.'' Directions can include: Uses of the drug; quantity of the dose (based on age); frequency, duration, time, and route or method of administration; preparation for use (i.e., shaking, dilution).

Lil' stated that, for one- or two-dose products, having the directions for use at the point of purchase is less important because of the following:

- The package will not contain enough product for continued dosing and overdose, and
- The consumer's likely intent is to take the product immediately.

FDA believes that for all OTC drugs, including convenience-size packages, it is preferable for all of the directions information to appear in one location to best inform consumers how to use the product. Because the directions may be lengthy, FDA is proposing that this information appear in full on the inside package labeling for OTC convenience-size drug products. However, FDA believes that it is important to inform consumers that the directions are inside the package. In addition, FDA believes that it is also important to inform consumers at the point of purchase that the product is not intended for use in certain age groups. Therefore, FDA is proposing that the following information appear in the outer package labeling in 7-point bold type size under the heading Directions: ''See inside for directions. This product is not for children under [insert appropriate age] without asking a doctor.'' FDA believes this approach strikes a balance between package size and the need for information about age limitations at the point of purchase. This will also enable consumers to make appropriate purchase decisions at the point of purchase and use OTC convenience-size packages safely for their intended purposes.

9. Section 201.66(c)(7): This section requires, under the heading ''Other information,'' additional information that is not included under § 201.66(c)(2) through (c)(9), but which is required by or is made optional under an applicable OTC drug monograph, other OTC drug regulation, or is included in the labeling of an approved drug application. Examples include: (1) Required information about certain ingredients in OTC drug products (e.g., sodium in § 201.64(c)), (2) phenylalanine/aspartame content required by § 201.21(b), if applicable, and (3) additional information authorized to appear under this heading, such as the storage temperature and tamper evident statement. Lil' suggested that any reference to sodium, aspartame, or other special ingredients still appear on the outer labeling, while all other statements in this section appear on the inside package labeling. Lil' noted that the contents of convenience-size packages are customarily consumed upon purchase, lessening the need for storage and temperature warnings.

FDA agrees with Lil', except for the location of the tamper evident statement. The regulations in 21 CFR

211.132(c) require the tamper-evident statement to be prominently placed on the package in such a manner that it will be unaffected if the tamper-evident feature of the package is breached or missing. To meet this requirement, FDA has determined that the tamper-evident statement must appear on the outer package labeling. However, the tamper-evident statement is not required to appear within the Drug Facts portion of the labeling and may appear elsewhere on the outer packaging.

10. Section 201.66(c)(9): This section requires the heading ''Questions or Comments,'' followed by the telephone number of a source to answer questions on the product. Lil' stated that, presumably, this section is related to questions and comments about continued consumption of a product. Given the one- and two-dose limitation and the consumer's usual intent for immediate consumption of the product, Lil' contended that this section may be adequately presented inside the package. FDA agrees that this information may appear on the inside labeling of the package.

D. Package Inserts and Inner-Labeling

FDA is also considering different ways to present the Drug Facts labeling inside the package. Currently, FDA favors the following options: (1) A package insert that contains complete Drug Facts labeling in accord with § 201.66(d)(1) through (d)(9), including all the information exempted from the outside labeling under proposed § 201.66(b)(5) and (d)(11); or (2) permitting the Drug Facts labeling that is not required to appear on the outside container or wrapper to be printed on the inside of the outer container or wrapper in the required Drug Facts order. FDA believes the package insert containing the complete Drug Facts labeling is the preferred approach because it will be complete and less confusing to consumers. However, FDA is aware that information can be printed on the inside of cardboard and other containers, and Lil' mentioned inner-package printing as a possible approach. FDA's major concern about labeling appearing on the inside of the outer container or wrapper is whether consumers can (or will) open the package without tearing the part that contains the labeling, and the ease with which the information can be read once the outer container or wrapper is opened. FDA believes if this second option is allowed, it should be conditioned upon the package having an easy way to be opened (e.g., a pull tab), so that when the package is opened, the inside labeling information is readily exposed and can be easily read. FDA invites specific comment on the comparative costs of these methods of providing labeling inside the outer container, and whether there are packaging techniques readily available that would allow for these convenience-size packages to be easily opened without tearing the part of the package that contains labeling information. FDA also invites comment on other ways that Drug Facts labeling information could be presented inside a convenience-size package and comparative costs with the two methods discussed above.

E. Information Available on the Outside Container or Wrapper

FDA discusses in section II of this document its basis for proposing to modify labeling for convenience-size OTC drug packages. FDA believes that convenience-size OTC drug packages, as defined by limited dose and container size in section III of this document, can adequately meet public health needs without presenting on the outer package all of the information required by the Drug Facts Rule. FDA does not believe that such modifications can be justified for larger packages, which contain enough medication for repetitive dosing and/or have sufficient available labeling space to bear all of the information required under the Drug Facts Rule. FDA is seeking feedback about whether the information proposed for the outer package, and available at the time of purchase, is adequate to support safe and effective use of the dose of medication to be allowed in a convenience-size OTC drug package. FDA is seeking comment on whether there should be an additional requirement that provides for full product information to be available at the point of purchase (e.g., a shelf-talker or extender, or a tear-off Drug Facts information sheet) if some of the Drug Facts information is not available on the outer package.

F. Summary of Optional Alternative Labeling for Convenience-Size Packages

In summary, based on the previous discussion, it is FDA's view that as much of the Drug Facts labeling as possible should appear on the outside container or wrapper of convenience-size packages and be available to consumers at the point of purchase. FDA recommends that, when possible, manufacturers of convenience-size OTC drug packages as described in proposed § 201.66(b)(5) try to fit all of the Drug Facts labeling on the outer container or wrapper using the modified format currently available in § 201.66(d)(10). However, given the unique status of convenience-size OTC drug products--including the reduced risks associated with their limited contents, the ''size sensitive'' retail setting in which they are sold, and the fact that many are purchased for immediate consumption--FDA is proposing to allow certain Drug Facts information to appear inside a convenience-size OTC drug package. Accordingly, FDA is proposing a new § 201.66(d)(11) (existing § 201.66(d)(11) is being redesignated as § 201.66(d)(12)) to state that OTC drug products that meet the convenience-size package definition in § 201.66(b)(5) may use an optional alternative version of the Drug Facts labeling in which certain information otherwise required to appear on the outside wrapper or container of an OTC drug product under § 201.66(c)(5)(vi), (c)(5)(vii), (c)(5)(viii), (c)(5)(x), (c)(6), (c)(7), and (c)(9) may appear inside the package. FDA further proposes, under § 201.66(d)(11), that the Drug Facts labeling on the outside container or wrapper contain the statement ''See information inside before using,'' in bold italic type no smaller than 7-point size. This statement would appear either immediately after and on the same line as the ''Drug Facts'' title, or immediately beneath the ''Drug Facts'' title and above the horizontal hairline that would otherwise immediately follow the ''Drug Facts'' title. FDA is also proposing that the following information appear in the outer package labeling in 7-point bold type size under the heading Directions: ''See inside for directions. This product is not for children under [insert appropriate age] without asking a doctor.'' FDA invites specific comment on this wording and format and other wording or formats that would convey the same message.

FDA is also considering different ways to present the exempted Drug Facts labeling inside the OTC drug package. Currently, FDA favors the following options: (1) A package insert that contains complete Drug Facts labeling in accord with § 201.66(d)(1) through (d)(9), including all the information exempted from the outside labeling under proposed § 201.66(b)(5) and (d)(11); or (2) permitting the Drug Facts labeling that is not required to appear on the outside container or wrapper to be printed on the inside of the outer container or wrapper in the required Drug Facts order.

IV. Legal Authority

This rule, if finalized, would not require OTC drug product labeling to bear new kinds of information. Rather, the rule would modify the format of the current OTC Drug Facts labeling to

accommodate the unique circumstances associated with the packaging, marketing, purchase, and use of ''convenience size'' OTC drug packages.

FDA's legal authority to modify § 201.66 arises from the same authority under which FDA initially issued the regulation, including 21 CFR parts 201, 301, 502, 505, 507, and 701 of the act. This authority is described in detail in the **Federal Register** of February 27, 1997 (62 FR 9042 through 9043).

V. Analysis of Impacts

The economic impact of the Drug Facts Rule was discussed in the final rule (64 FR 13254 at 13276). That discussion included estimates of the increased costs for small package products that could not fit the new Drug Facts labeling to enlarge the package or to use other labeling techniques (e.g., risers) to fit the information. FDA estimated that 6.4 percent of all shelf-keeping units (SKUs) had labels that either would not fit or were indeterminate (too close to call) and, thus, might require a new packaging configuration to accommodate the new format (64 FR 13254 at 13283). Convenience size packages were included in the estimate, as well as other small package sizes. The Consumer Healthcare Products Association has stated that ''convenience-sizes'' represent less than 1 percent of the retail market (Ref. 3).

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, FDA must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

FDA has concluded that this proposed rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. This proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. As discussed in this section, FDA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product.

The purpose of this proposed rule is to define OTC ''convenience-size'' drug products and to provide Drug Facts labeling alternatives for these products that would enable manufacturers, repackers, or distributors to provide certain labeling information on the inside of the package, either in a package insert or by internal package printing. This alternative approach would apply only to packages that meet the proposed package size and dose limitations. The economic impact for relabeling OTC drug products was previously addressed in the final rule. This proposed rule provides an alternative labeling approach to accommodate the Drug Facts labeling requirements.

In the final rule (64 FR 13254 at 13283), FDA estimated 4.5 percent of all OTC drug SKUs may require increased package sizes to accommodate the new Drug Facts format. The one-time cost to industry was about $38.1 million and the annually recurring costs were estimated to be $11.5 million for the added package and label materials (64 FR 13254 at 13284). The cost analysis included a number of alternative package configurations, including adding an outer carton, a fifth panel (a back panel), enlarging the package, and adding a peel-back or two-ply label using existing or retooled packaging lines. Package inserts or double-sided printing were not considered in that analysis. In some circumstances these two alternatives could be less costly than the others included in the analysis. This proposed rule allows manufacturers additional flexibility to choose the least costly packaging alternative to meet their marketing requirements but would probably have little effect on the overall cost of relabeling. In the original analysis FDA did not identify which of the small package sizes that could not accommodate the Drug Facts format would be considered convenience sized packages. As such, we cannot breakout the estimated costs from the Drug Facts Rule (64 FR 13254 at 13276 to 13285) that applied to convenience-sized packaged products.

Because this proposed rule does not mandate changes to packaging, but increases manufacturers choice of package configurations FDA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that the proposed labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed labeling requirements are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VII. Environmental Impact

FDA has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized as proposed, would have a pre-emptive effect on State law. Section 4(a) of the Executive Order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 751 of the act (21 U.S.C. 379r) is an express pre-emption provision. Section 751(a) of the act provides that: ''* * * no State or political subdivision of a State may establish or continue in effect any requirement— * * * (1) that relates to the regulation of a drug that

is not subject to the requirements of section 503(b)(1) or 503(f)(1)(A); and (2) that is different from or in addition to, or that is otherwise not identical with, a requirement under this Act, the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 *et seq.*), or the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et seq.*). * * *''

Currently, this provision operates to pre-empt States from imposing requirements related to the regulation of nonprescription drug products. (See section 751(b), (c), (d), and (e) of the act for the scope of the express pre-emption provision, the exemption procedures, and the exceptions to the provision.) This proposed rule, if finalized as proposed, would amend the format and content requirements for the labeling for OTC convenience size drug packages. Although any final rule would have a pre-emptive effect, in that it would preclude States from issuing requirements related to the labeling of OTC convenience size drug products that are different from or in addition to, or not otherwise identical with a requirement in the final rule, this preemptive effect is consistent with what Congress set forth in section 751 of the act. Section 751(a) of the act displaces both State legislative requirements and State common law duties. FDA also notes that even where the express pre-emption provision is not applicable, implied preemption may arise (See *Geier* v. *American Honda Co.*, 529 US 861 (2000)).

FDA believes that the pre-emptive effect of the proposed rule, if finalized as proposed, would be consistent with Executive Order 13132. Section 4(e) of the Executive order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' FDA is providing an opportunity for State and local officials to comment on this rulemaking.

IX. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document and FDA's economic impact determination. Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

X. Proposed Effective Date

FDA is proposing that any final rule that may issue based on this proposal for OTC convenience-size drug products become effective 18 months after its date of publication in the **Federal Register**. FDA is proposing that the compliance date for OTC convenience-size drug products with annual sales less than $25,000 would be 24 months after the date of publication in the **Federal Register**. The compliance date for all other OTC convenience-size drug products would be 18 months after the date of publication in the **Federal Register**.

XI. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. CP1, Docket Number 2001P–0207.

2. Letter from S. Galson, FDA, to J. M. Nikrant, Lil' Drug Store Products, Inc., coded LET 1, Docket Number 2001P–0207.

3. Letter from R. W. Soller, CHPA, to C. Ganley, FDA, dated October 3, 2000, Docket Number 1998N–0337.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 201 be amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Section 201.66 is amended by redesignating paragraphs (b)(5) through (b)(12) as paragraphs (b)(7) through (b)(14), respectively, and by redesignating paragraph (d)(11) as paragraph (d)(12), and by adding new paragraphs (b)(5), (b)(6), and (d)(11) to read as follows:

§ 201.66 Format and content requirements for over-the-counter (OTC) drug product labeling.

* * * * *

(b) * * *

(5) Convenience-size package means a package containing no more than two doses, as defined in paragraph (b)(6) of this section, of an OTC drug product that, because of its limited available labeling space, both qualifies for the modified labeling set forth in paragraph (d)(10) of this section and would require more than 60 percent of its total surface area available to bear labeling to meet the labeling requirements set forth in paragraph (d)(10). This definition does not include OTC drug packages that contain ipecac syrup or activated charcoal.

(6) Dose means a maximum single-serving for an adult (or child for products marketed only for children) as specified in the product's directions for use. For products marketed with directions for use for both adults and children, dose means a maximum single serving for a child as specified in the product's direction for use.

* * * * *

(d) * * *

(11) *Convenience-size packages*. The labeling of products that meet the convenience-size package definition in paragraph (b)(5) of this section shall appear in accord with either paragraph (d)(10) or paragraph (d)(11)(i) of this section.

(i) The outside container or wrapper of an OTC convenience-size drug product labeled under this section shall comply in all respects with paragraph (d)(10) of this section, except as modified by paragraphs (d)(11)(i)(A) through (d)(11)(i)(G) and paragraph (d)(11)(ii) of this section.

(A) All information required by paragraph (c)(5)(vi) of this section, including the statement ''do not use more than directed,'' may appear on the inside of the OTC drug package in accord with paragraph (d)(11)(ii) of this section, except any information about potential drowsiness, avoiding alcohol, and using caution when driving a motor vehicle or operating machinery, which shall appear on the outside container or wrapper in accord with paragraph (d)(10) of this section.

(B) All information required by paragraph (c)(5)(vii) of this section may appear on the inside of the OTC drug package in accord with paragraph (d)(11)(ii) of this section, except any information about a potential allergic reaction, which shall appear on the outside container or wrapper in accord with paragraph (d)(10) of this section.

(C) All information required by paragraph (c)(5)(x) of this section, including the statement ''Keep out of reach of children'' and the accidental overdose/ingestion warnings set forth

under § 330.1(g) of this chapter, may appear on the inside of the OTC drug package in accord with paragraph (d)(11)(ii) of this section.

(D) All information required by paragraph (c)(6) of this section may appear on the inside of the OTC drug package in accord with paragraph (d)(11)(ii) of this section. If any such information is placed inside the package, the outside container or wrapper shall state the following in bold italic type no smaller than 7-point under the heading ''Directions'': ''See inside for directions. This product is not for children under [insert appropriate age] without asking a doctor.''

(E) All information required by paragraph (c)(7) of this section may appear on the inside of the OTC drug package in accord with paragraph (d)(11)(ii) of this section, except: the tamper evident statement required by § 211.132(c), which must appear on the outside container or wrapper, but need not necessarily appear in the Drug Facts box or similar enclosure; andall information required by paragraphs (c)(7)(i) and (c)(7)(ii) of this section, which shall appear on the outside container or wrapper in accord with paragraph (d)(10) of this section.

(F) All information required by or authorized under paragraph (c)(9) of this section may appear on the inside of the OTC drug package in accord with paragraph (d)(11)(ii) of this section.

(G) In the event that any information is placed inside an OTC drug package under the authority of paragraphs (d)(11)(i)(A) through (d)(11)(i)(G), the outside container or wrapper of that package shall state the following in bold italic type no smaller than 7-point: ''See information inside before using.'' This statement shall appear either immediately after and on the same line as the ''Drug Facts'' title or immediately beneath the ''Drug Facts'' title and above the horizontal hairline that would otherwise immediately follow this title.

(ii) Any and all labeling included inside any OTC drug package or wrapper to comply with any provision of paragraph (d)(11)(i) of this section shall appear in one and only one of the following ways:

(A) In a package insert that contains the complete Drug Facts labeling as defined in paragraph (b)(12) of this section printed in accordance with the specifications in paragraphs (d)(1) through (d)(9) of this section, regardless of whether some of this information also appears on the outside container or wrapper; or

(B) All Drug Facts labeling as defined in paragraph (b)(12) of this section that does not appear on the outside container or wrapper shall be printed on the inside of the outside container or wrapper in the order listed in paragraph (d)(11) of this section and shall appear in accordance with the specifications in paragraphs (d)(1) through (d)(9) or in paragraph (d)(10). The title ''Drug Facts (continued)'' shall appear at the top of each subsequent panel containing such information. When any Drug Facts labeling is printed on the inside of the outside container or wrapper, the container or wrapper shall have an easy way to be opened (e.g., a pull tab or something similar) so that the package or wrapper on which the information is printed is unlikely to be torn or destroyed, and the labeling information is readily exposed and can be easily read.

Dated: November 20, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–21019 Filed 12–11–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–152043–05]

RIN 1545–BF14

Reduction in Taxable Income for Housing Hurricane Katrina Displaced Individuals

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the reduction in taxable income under section 302 of the Katrina Emergency Tax Relief Act of 2005. The regulations affect taxpayers that provide housing in their principal residences to individuals displaced by Hurricane Katrina. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by March 12, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:RU (REG–152043–05), Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–152043–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *http://www.irs.gov/regs* or the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–152043–05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Marnette M. Myers, (202) 622–4920 (not a toll-free number); concerning submission of comments and/or to request a public hearing, Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

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

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date,

time and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Marnette M. Myers of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.9300–1 is added to read as follows:

[The text of proposed § 1.9300–1 is the same as the text of § 1.9300–1T published elsewhere in this issue of the **Federal Register**.]

Linda M. Kroening,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–21030 Filed 12–11–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 22

RIN 1018–AT94

Protection of Bald Eagles; Definition of ''Disturb''

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of the comment period; notice of availability: draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (we or us), reopen the comment period for our proposed rule, and announce the availability of a Draft Environmental Assessment (DEA) evaluating the possible effects of defining ''disturb'' under the Bald and Golden Eagle Protection Act. We prepared the DEA as part of the National Environmental Policy Act process. The analysis of our preferred alternative is based on a definition slightly modified from our February, 2006 proposed rulemaking (71 FR 8265, February 16, 2006).

DATES: Send your comments on the proposed rule and/or DEA by January 11, 2007.

ADDRESSES: You may obtain copies of the proposed rule and DEA by visiting our Web site at *http://www.fws.gov/migratorybirds/,* at the address listed below. You may submit comments and other information, identified by RIN 1018–AT94, by any one of the following methods:

- *Mail:* Robert Blohm, Acting Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MBSP–4107, Arlington, Virginia 22203. Attn: RIN 1018–AT94.
- *Hand Delivery/Courier:* Same address as above.
- E-mail: *BaldEagle_ProposedRule@fws.gov.* Include ''RIN 1018–AT94'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

For detailed instructions on submitting comments, see the ''Public Comments Invited'' heading at the end of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Eliza Savage, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at 703–358–2329, or via e-mail at: *Eliza_Savage@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 16, 2006, we published in the **Federal Register** a proposed rule (71 FR 8265) to define ''disturb'' under the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668–668d). The proposed rule would add a definition for ''disturb'' to regulations at 50 CFR 22.3. We proposed this action in anticipation of possible removal (delisting) of the bald eagle in the 48 contiguous States from the List of Endangered and Threatened Wildlife under the Endangered Species Act (16 U.S.C. 1531 *et seq.*). If the bald eagle is delisted, BGEPA will become the primary law protecting bald eagles. The purpose of the proposed rule is to define the term ''disturb'' in a manner consistent with the language and intent of the BGEPA and thereby provide a predictable standard to guide bald eagle management following delisting.

We opened a public comment period on the proposed rule until May 17, 2006. On May 16, 2006, we published a notice to extend the comment period until June 19, 2006 (71 FR 28294).

In the February 16, 2006, proposed rule, we stated that we would prepare an environmental assessment pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) if warranted. We have prepared a draft environmental assessment (DEA), which we now make available for public comment. In the DEA, we considered four alternatives for the definition of ''disturb,'' as applied to bald eagles and golden eagles.

Under Alternative 1, we would not define ''disturb.'' Disturbance would remain a prohibited act under the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d), without further regulatory interpretation. Under Alternative 2, the definition of ''disturb'' would be based on immediate effects to individual birds. We would define ''disturb'' as having a direct effect, as evinced by immediate behavioral response on the part of a bald eagle or a golden eagle, without consideration for secondary, biologically significant events. Alternative 3 is to define ''disturb'' to encompass effects to individual birds while requiring a biological impact. Under this alternative, we would define ''disturb'' as ''to agitate or bother a bald or golden eagle to the degree that causes (i) injury or death to an eagle (including chicks or eggs) due to interference with normal breeding, feeding, or sheltering behavior, or (ii) nest abandonment.'' This is the preferred alternative. It has been modified from our February, 2006 proposed rulemaking for purposes of clarification. Alternative 4 is to define disturb such that the disturbing action must be intentionally directed at eagles and cause injury or death.

Public Comments

When submitting comments, please include your name and return address, and identify your comments as pertaining to RIN 1018–AT94. Submit comments by only one method; do not send duplicate submissions. We prefer that comments be submitted electronically. To facilitate our compilation of the Administrative Record for this action, if you send written comments, you must submit them on 8½ inch by 11 inch paper. Addresses are listed in the **ADDRESSES** section near the beginning of this document.

Our practice is to make comments, including names and addresses of respondents, available for public review by appointment during normal 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. Comments from organizations and businesses and from individuals officially representing organizations or businesses will be available for public inspection in their entirety. If you wish to view the files, please call 703–358–1714 to make an appointment.

Dated: December 1, 2006.

David Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E6–21139 Filed 12–11–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 71, No. 238

Tuesday, December 12, 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.

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Wednesday, December 13, 2006, 2 p.m.–3:15 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. 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)).

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact Carol Booker at (202) 203–4545.

Dated: December 7, 2006.

Carol Booker,

Legal Counsel.

[FR Doc. 06–9652 Filed 12–8–06; 10:06 am]

BILLING CODE 8230–01–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Tuesday, December 12, 2006, 9:30 a.m.–4:45 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will met in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open to 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)).

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact Carol Booker at (202) 203–4545.

Dated: December 8, 2006.

Carol Booker,

Legal Counsel.

[FR Doc. 06–9658 Filed 12–8–06; 12:03 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

T–4–2006

Foreign–Trade Zone 222 - Montgomery, Alabama, Temporary/ Interim Manufacturing Authority, Arvin Meritor, Inc. (Automotive Parts), Notice of Approval

On October 20, 2006, the Executive Secretary of the Foreign–Trade Zones (FTZ) Board filed an application submitted by the Montgomery Area Chamber of Commerce, grantee of FTZ 222, requesting temporary/interim manufacturing (T/IM) authority within FTZ 222 at the Arvin Meritor, Inc. (Arvin Meritor) automotive parts manufacturing facility located in Montgomery, Alabama.

The application was processed in accordance with T/IM procedures, as authorized by FTZ Board Order 1347 (69 FR 52857, 8/30/04), including notice in the **Federal Register** inviting public comment (71 FR 63283, 10/30/06). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures. Pursuant to the authority delegated to the FTZ Board Executive Secretary in Board Order 1347, the application was approved, effective December 1, 2006, until December 1, 2008, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: December 1, 2006.

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–21126 Filed 12–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1496]

Grant Of Authority For Subzone Status, Merck & Co., Inc., (Vaccine Pharmaceuticals), Durham, North Carolina

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for '' . . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved,

and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Triangle J Council of Governments, grantee of FTZ 93, has made application to the Board for authority to establish special–purpose subzone status at the vaccine pharmaceutical manufacturing plant of Merck & Co., Inc., located in Durham, North Carolina (FTZ Docket 64–2005, filed 12/15/05);

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 76444, 12/27/05); and, WHEREAS, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now therefore, the Board hereby grants authority for subzone status for activity related to vaccine pharmaceutical manufacturing at the Merck & Co., Inc., facility located in Durham, North Carolina (Subzone 93H), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 1st day of December 2006.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board

Attest:

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–20946 Filed 12–8–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–823–808

Certain Cut–to-Length Carbon Steel Plate from Ukraine; Final Results of Administrative Review of the Suspension Agreement

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of the Administrative Review of the Suspension Agreement on Certain Cut–to-Length Carbon Steel Plate from Ukraine.

SUMMARY: On August 9, 2006, the Department of Commerce (the Department) published the preliminary results of an administrative review of the suspension agreement on certain cut–to-length carbon steel plate from Ukraine (the Agreement). *See Certain Cut–to-Length Carbon Steel Plate from Ukraine; Preliminary Results of Administrative Review of the Suspension Agreement*, 71 FR 45519 (August 9, 2006) (*Preliminary Results*). The period of review (POR) is November 1, 2004 through October 31, 2005. No interested parties submitted comments and we have made no changes to our preliminary results. Therefore, the final results do not differ from the preliminary results.

EFFECTIVE DATE: December 12, 2006.

FOR FURTHER INFORMATION CONTACT: Judith Rudman or Jay Carreiro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0192 or (202) 482–3674.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1997, the Department signed an agreement with the Government of Ukraine (GOU) that suspended the antidumping duty investigation on certain cut–to-length carbon steel plate (CTL plate) from Ukraine. *See Suspension of Antidumping Duty Investigation: Certain Cut–to-Length Carbon Steel Plate from Ukraine*, 62 FR 61766 (November 19, 1997). In accordance with section 734(g) of the Tariff Act of 1930 (the Tariff Act), on November 19, 1997, the Department also published its final determination of sales at less than fair value in this case. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754 (November 19, 1997).

On November 1, 2005, the Department published its notice of opportunity to request an administrative review. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 65883 (November 1, 2005). On November 30, 2005, Mittal Steel USA submitted a request for an administrative review. The Department initiated a review of the Agreement on December 22, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 76024 (December 22, 2005). On August 9, 2006, the Department published its preliminary results of review. *See Preliminary Results*, 71 FR 45519. We invited interested parties to comment on our preliminary results. No interested parties submitted comments and we have made no changes to our preliminary results.

Scope of Review

The products covered by the Agreement include hot–rolled iron and non–alloy steel universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non–alloy steel flat–rolled products not in coils, of rectangular shape, hot–rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in the Agreement are flat–rolled products of nonrectangular cross–section where such cross–section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling''), for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of the Agreement is dispositive. Specifically excluded from subject merchandise within the scope of this Agreement is grade X–70 steel plate.

Period of Review

The POR is November 1, 2004 through October 31, 2005.

Final Results of Review

Our review of the information submitted by the GOU indicates that each of the export licenses governed by the Agreement were at or above the quarterly FOB reference prices stipulated by the Agreement. Furthermore, data supplied by the GOU in its monthly reports, as well as our

independent review of import data compiled by U.S. Customs and Border Protection, indicate Ukraine did not exceed its annual export limits. Therefore, we continue to find that the GOU has been in compliance with the Agreement.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 30, 2006.

David M. Spooner,

Assistant Secretary for Import Adminstration.

[FR Doc. E6–21128 Filed 12–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–337–806

Individually Quick Frozen Red Raspberries from Chile: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on individually quick frozen red raspberries from Chile. This review covers sales of individually quick frozen red raspberries to the United States during the period July 1, 2005 through June 30, 2006. Based on the withdrawal of requests for review with respect to certain companies, we are rescinding, in part, the fourth administrative review.

EFFECTIVE DATE: December 12, 2006.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–3813.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2006, the Department of Commerce (''the Department'') published in the **Federal Register** the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 37890 (July 3, 2006), for the above–cited segment of this antidumping duty proceeding. We received a timely filed request for review of 60 companies from the Pacific Northwest Berry Association, Lynden, Washington, and each of its individual members, Curt Maberry Farm; Enfield Farms, Inc.; Maberry Packing; and Rader Farms, Inc. (collectively, ''the petitioners''). We also received timely filed requests for review from Arlavan S.A. (''Arlavan''); Sociedad Agroindustrial Valle Frio Ltda. (''Valle Frio''); Fruticola Olmue S.A. (''Olmue''); Santiago Comercio Exterior Sociedad Anonima (''SANCO''); Valles Andinos S.A. (''Valles Andinos''); Vital Berry Marketing S.A. (''VBM''); and Alimentos Naturales Vitafoods S.A. (''Vitafoods'').

On July 31, 2006, the Department received a request from SANCO to defer for one year, with respect to SANCO, the initiation of the July 1, 2005 through June 30, 2006 administrative review of the antidumping duty order on individually quick frozen red raspberries from Chile. The Department received no objections to this request from any party cited in 19 CFR 351.213(c)(1)(ii). On August 30, 2006, the Department published in the **Federal Register** the *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (Aug. 30, 2006) (''*Initiation Notice*''), initiating this review for all 60 companies. In the Initiation Notice, the Department inadvertently included SANCO, despite SANCO's pending, unopposed request for deferral. Therefore, on November 21, 2006, the Department corrected the Initiation Notice and granted SANCO's deferral request. *See Certain Individually Quick Frozen Red Raspberries from Chile: Correction to Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 70363 (Dec. 4, 2006).

On November 28, 2006, we received a submission from the petitioners withdrawing their requests for review for all of the companies for which they had requested an administrative review, except for the following companies: Arlavan, Valle Frio, Olmue, Valles Andinos, VBM, SANCO, and Vitafoods.

Partial Rescission of Antidumping Administrative Review

The petitioners filed their withdrawal request within the deadline established by the Department's regulations. Therefore, we are rescinding the above–cited administrative review with respect to the following companies in accordance with 19 CFR 351.213(d)(1):

Agricola Nova, Ltda.
Agricola San Antonio
Agrocomercial Las Tinajas Ltda.
Agrofruta Chilena Ltda.
Agrofruticola Pehuenche S.A.
Agroindustria Framberry Ltda.
Agroindustria Frisac Ltda.
Agroindustria Frutos del Maipo Ltda.
Agroindustria Merco Trading Ltda.
Agroindustria Niquen Ltda.
Agroindustria Sagrada Familia Ltda.
Agroindustria San Francisco Ltda.
Agroindustria y Frigorifico M y M Ltda.
Agroindustrial del Maule
Agross S.A.
Alimentos Prometeo Ltda.
Alimentos y Frutos S.A.
Andesur S.A.
Angloeuro Comercio Exterior S.A.
Armijo Carrasco, Claudio del Carmen
Bajo Cero S.A.
C y C Group S.A.
Certified Pure Ingredients (Chile) Inc. y Cia. Ltda.
Chile Andes Foods S.A.
Comercializadora Agricola Berries & Fruit Ltda.
Comercializadora de Alimentos del Sur Ltda.
Comercio y Servicios S.A.
Copefrut S.A.
Exportaciones Meyer S.A.
Exportadora Fragaria Ltda.
Exportadora Pentagro S.A.
Exportadora South Berries Ltda.
Francisco Nancuvilu Punsin
Frigorifico Ditzler Ltda.
Frutas de Guaico S.A.
Fruticola Viconto S.A.
Hassler Monckeberg S.A.
Hortifrut S.A.
Interagro Comercio y Ganado S.A.
Kugar Export Ltda. (Kulenkampff & Gardeweg Ltda.)
Maria Teresa Ubilla Alarcon
Multifrigo Valparaiso S.A.
Nevada Export S.A.
Prima Agrotrading Ltda.
Procesadora y Exportadora de Frutas y Vegetales Ltda.
Rio Teno S.A.
Sociedad Agricola Valle del Laja Ltda.
Sociedad Comercial C y C, S.A.
Sociedad Exportaciones Antiquina Ltda.
Sociedad San Ernesto Ltda.
Surfrut
Terra Natur S.A.

Terrazas Export S.A.

The following companies remain subject to this administrative review: Olmue, VBM, Valles Andinos, Vitafoods, Arlavan and Valle Frio. As discussed in the *Background* section, above, we have deferred for one year an administrative review for 2005–2006 with respect to SANCO. We intend to issue our preliminary results in this administrative review for Olmue, VBM, Valles Andinos, Vitafoods, Arlavan, and Valle Frio by April 2, 2007.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For those companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Cash Deposit Rates

For the companies for which this review is rescinded, the cash deposit rate will continue to be 6.33 percent, the ''all others'' rate established in the less–than-fair–value investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: IQF Red Raspberries from Chile*, 67 FR 40270 (June 12, 2002).

These cash deposit requirements shall remain in effect until publication of the final results of this administrative review.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 6, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–21129 Filed 12–11–06; 8:45 am]

BILLING CODE 3510–DS–S

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Cooperation Treaty.

Form Number(s): PCT RO/101, PCT/RO/134, PTO–1382, PTO–1390, PCT/IPEA/401, PTO/SB/61/PCT, PTO/SB/64/PCT, PCT/Model of power of attorney, PCT/Model of general power of attorney.

Agency Approval Number: 0651–0021.

Type of Request: Revision of a currently approved collection.

Burden: 347,891 hours annually.

Number of Respondents: 355,658 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 15 minutes (0.25 hours) to 8 hours to gather the necessary information; prepare the appropriate form, petition, or other request; and submit the information to the USPTO.

Needs and Uses: The general purpose of the Patent Cooperation Treaty (PCT) is to standardize the format and filing procedures so that applicants may file one international application in one location, in one language, and pay one initial set of fees to seek protection for an invention in more than 100 designated countries. This collection of information is necessary so that respondents can apply for an international patent and so that the USPTO can fulfill its duties to process, search, and examine international patent applications under the provisions of the PCT. The USPTO is submitting this collection in support of a final rulemaking entitled ''Changes to Facilitate Electronic Filing of Patent Correspondence'' (RIN 0651–AB92), which will provide applicants with a new process for showing that national stage correspondence submitted electronically was actually received by the Office. A new petition to support this process is being added to this collection.

Affected Public: Businesses or other for-profits, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- *E-mail: Susan.Brown@uspto.gov.* Include ''0651–0021 copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Brown.
- *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before January 11, 2007 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: December 5, 2006.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E6–21121 Filed 12–11–06; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

[Petition HP 07–1]

Petition for Labeling Amendment of Blasting Caps

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The United States Consumer Product Safety Commission

(Commission or CPSC) has received a petition (HP 07–1) requesting that the Commission amend its regulation under the Federal Hazardous Substances Act (FHSA) to allow the use of the term ''detonator'' to be used interchangeably with the term ''blasting cap.'' The Commission solicits written comments concerning the petition.[1]

DATES: The Office of the Secretary must receive comments on the petition by February 12, 2007.

ADDRESSES: Comments on the petition may be filed by e-mail to *cpsc-os@cpsc.gov.* Comments may also be filed by facsimile to (301) 504–0127, or delivered or mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7923. Comments should be captioned ''Petition HP 07–1, Petition Requesting Labeling Amendment of Blasting Caps.'' The petition is available on the CPSC Web site at *http://www.cpsc.gov.* A request for a hard copy of the petition may be directed to the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833, e-mail *rhammond@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The Institute of Makers of Explosives (IME) submitted correspondence requesting that the Commission amend its regulation at 16 CFR 1500.83(a)(35), to allow the use of the term ''detonator'' to be used interchangeably with the term ''blasting cap.'' IME requests the addition of the term ''detonator'' to the regulation as follows (added text is underlined):

Individual *detonators or* blasting caps are exempt from bearing the statement ''Keep out of the reach of children,'' or its practical equivalent, if:

(i) Each *detonator or* cap bears conspicuously in the largest type size practicable the statement ''DANGEROUS—BLASTING CAPS—EXPLOSIVE'' *or ''DANGEROUS—DETONATOR—EXPLOSIVE'';*

IME states that the terms ''detonator'' and ''blasting cap'' are generally synonymous in the explosive community. IME asserts that the term ''detonator'' may be interpreted as being more inclusive and is more commonly used than the term ''blasting cap.'' In order to minimize the possibility that an individual may not take recommended precautions when handling initiating devices, IME states that it has encouraged the use of the term ''detonator'' instead of the term ''blasting cap'' whenever possible. According to IME, there is no practical benefit to requiring the use of both the term ''detonator'' and ''blasting cap'' on printed warnings given the limited space available on small detonators. IME also does not believe there is any practical benefit to replacing the term ''blasting cap'' with ''detonator'' at this time.

Interested parties may obtain a copy of the petition on the CPSC Web site at *http://www.cpsc.gov* or by writing or calling the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Dated: December 6, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–21023 Filed 12–11–06; 8:45 am]

BILLING CODE 6355–01–P

[1] Commissioner Thomas H. Moore filed a statement which is available from the Office of the Secretary or on the Commission's Web site at *http://www.cpsc.gov.*

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0212]

Proposed Collection; Comment Request

AGENCY: Defense Security Service, Office of the Secretary, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Security Service (DSS) announces the proposed extension of a public information collection and seeks public comments on the provision thereof. Comments are invited on: (a) Whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information to be collected; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 12, 2007.

ADDRESSES: You may submit comments identified by document number and title, by any of the following methods:

- Federal Rule Making Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to Defense Security Service, ATTN: Mr. Stephen Lewis, Deputy Director, Policy, Industrial Security Program Office, 1340 Braddock Place, Alexandria, VA 22314–1650, or call, (703) 325–6034.

Title, and OMB Number: ''Defense Security Service Industrial Security Review Data'' and ''Defense Security Service Industrial Security Facility Clearance Survey Data,'' OMB No. 0704–0427.

Needs and Uses: The conduct of an Industrial Security Review and/or Industrial Security Facility Security Survey assists in determining whether a contractor is eligible to establish its facility security clearance and/or retain its participation in the National Industrial Security Program (NISP). It is also the basis for verifying whether contractors are appropriately implementing NISP security requirements. These requirements are necessary in order to preserve and maintain the security of the United States through establishing standards to prevent the improper disclosure of classified information.

In accordance with Department of Defense (DoD), 5220.22–R, ''Industrial Security Regulation,'' DSS is required to maintain a record of the results of surveys and security reviews. Documentation for each survey and/or security review will be compiled addressing areas applicable to the contractor's security program. Portions of the data collected will be stored in databases. All data collected will be handled and marked, ''For Official Use Only.''

Affected Public: Businesses, Universities, Partnerships or other profit and non-profit organizations under Department of Defense Security Cognizance.

Respondent burden:

Industrial security review data:

Total annual burden hours: 39,999 hours.

Total number of respondents: 12,111.

Possessors of classified: 4,781.

Non-Possessors of classified: 7,330.

Responses per respondent: 1.

Average burden hours per respondent:

Possessors of classified: 5.3 hours.

Non-Possessors of classified: 2 hours.

Frequency: Periodic (e.g., Possessors—Annually, Non-Possessors—18 months, Compliance Reviews, or when directed).

Industrial security facility clearance survey data:

Total annual burden hours: 3,522 hours.

Number of respondents: 1,761.

Responses per respondent: 1.

Average burden hours per respondent: 2 hours.

Frequency: On occasion (e.g., initial eligibility determination and when a significant changed condition, such as a change in ownership).

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Executive Order (EO) 12829, ''National Industrial Security Program (NISP),'' dated January 6, 1993, as amended by EO 12885 dated December 14, 1993, established the NISP to safeguard Federal Government classified information released to contractors, licensees and grantees of the U.S. Government. Section 202(a) of EO 12829 stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees and grantees who require or will require access, to or who store or will store classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. The specific requirements necessary to protect classified information released to private industry are set forth in DoD 5220.22M, ''National Industrial Security Program Operating Manual (NISPOM),'' dated February 28, 2006. The Executive Agent has the authority to issue, after consultation with affected agencies, standard forms or other standardization that will promote the implementation of the NISP. Contractors operating under DoD security cognizance are subject to an initial facility clearance survey and periodic government security reviews to determine their eligibility to participate in the NISP and ensure that safeguards employed are adequate for the protection of classified information.

DoD Directive 5105.42, ''Defense Security Service,'' dated May 13, 1999, delineates the mission, functions and responsibilities of DSS. DSS is an Agency of the Department of Defense under authority, direction and control of the Under Secretary of Defense for Intelligence. DSS functions and responsibilities include the administration and implementation of the Defense portion of the NISP pursuant to Executive Order 12829.

DSS is the office of record for the maintenance of information pertaining to contractor facility clearance records and industrial security information regarding cleared contractors under its cognizance. To the extent possible, information required as part of the survey or security review is obtained as a result of observation by the representative of the CSA or its designated Cognizant Security Office. Some of the information may be obtained based on conferences with Key Management Personnel and/or other employees of the company. The information is used to respond to all inquires regarding the facility clearance status and classified information storage capability of cleared contractors. It is also used to assess and/or advise Government Contracting Activities regarding any particular contractor's continued ability to protect classified information.

Dated: December 5, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison officer, Department of Defense.

[FR Doc. 06–9637 Filed 12–11–06; 8:45am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Ballistic Impact Detection System

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.4, 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in PCT/US2005/021195 entitled ''Ballistic Impact Detection System,'' filed June 16, 2005. The United States Government, as represented by the Secretary of the Army, has U.S. and foreign rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–ZA–J, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. For patient issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A wearable ballistic impact protection system detects impacts to a body. The system includes multiple sensors for detecting vibration. The sensed vibrations are converted to electrical signals which are filtered. Electronic components are provided to determine whether the filtered signals have frequency and amplitude characteristics of impact that cause injury to a body. Preferably, the sensors are Piezo-electric film sensing elements. Information regarding the extent of the impact and injuries to the body may be transmitted to a remote location so that medics or other personnel may be informed to the extent of injuries to the body so that they may provide medical assistance.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–9635 Filed 12–11–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Mississippi River-Gulf Outlet, Louisiana, Navigation Project—Bank Stabilization

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the U.S. Army Corps of Engineers, New Orleans District (Corps) intends to prepare a Draft Environmental Impact Statement (DEIS) for the Mississippi River—Gulf Outlet, Louisiana, Navigation Project—Bank Stabilization. In 2006, Congress authorized the Corps to provide foreshore bank protection in the form of revetment and/or rock to protect endangered wetlands and

provide erosion protection for hurricane protection projects along the Mississippi River-Gulf Outlet (MRGO) channel. The expenditure of funds will be limited to those activities necessary for the protection of existing wetlands, navigation, and flood and storm damage reduction projects along the MRGO channel. Funds shall not be expended on any project that would otherwise preclude or foreclose any final disposition of the navigation channel. The DEIS will analyze potential direct, indirect, and cumulative impacts of implementing bank stabilization features along the MRGO and associated areas of Lake Borgne. The study area, located in the vicinity of St. Bernard Parish, LA, encompasses the entire navigation channel from Breton Sound to the Port of New Orleans, St. Bernard and Orleans Parishes, LA.

DATES: Submit comments on or before January 4, 2007.

ADDRESSES: Submit comments to Dr. William P. Klein, Jr., U.S. Army Corps of Engineers, New Orleans District, CEMVN–PM–RS, PO Box 60267, New Orleans, LA 70160–0267.

FOR FURTHER INFORMATION CONTACT: Dr. William P. Klein, Jr., Telephone: (504) 862–2540.

SUPPLEMENTARY INFORMATION:

1. Authority:

House Report 109–359 of the Fiscal Year 2006 Supplemental Appropriations Act directed the Corps to restore navigation channels and harbors to prestorm conditions and to repair flood damage reduction and other projects in states affected by Hurricanes Katrina, Rita, Ophelia, and Wilma. Funds totaling $75,000,000 are provided for authorized operation and maintenance activities to enhance estuarine habitats through monitoring and control of marine and river flow and reef building initiatives and providing foreshore bank protection in the form of revetment and rock placement to protect endangered wetlands and provide erosion protection for hurricane protection projects along the MRGO Channel. The expenditure of funds shall be limited to those activities necessary for the protection of existing wetlands, navigation, and flood and storm damage reduction projects along the MRGO Channel. Funds shall not be expended on any project that would otherwise preclude for foreclose any final disposition of the navigation channel; funds are not available to conduct dredging of the MRGO Channel.

2. Proposed Action

The proposed action would provide foreshore bank protection in the form of revetment and/or rock to protect endangered wetlands and provide erosion protection for flood and storm damage reduction projects along the MRGO Channel.

3. Need for Proposed Action

Construction and maintenance of the MRGO caused widespread wetland loss and damage to estuarine habitats from the outer barrier islands in the lower Chandeleur chain to the cypress forests and tidal fresh mashes in the western reaches of the Lake Borgne basin. During construction of the MRGO, dredging and filling destroyed more than 19,000 acres of wetlands and breached an important hydrologic boundary when the channel cut through Bayou La Loutre. Continued operation of the MRGO results in high rates of shoreline erosion from ship wakes, which destroys wetlands and threatens the integrity of the Lake Borgne shoreline, adjacent communities, infrastructure, and cultural resources in the area. In addition, severe erosion of the MRGO channel continues to facilitate the transition of the upper Pontchartrain Basin estuary toward a more saline system. Land loss in the project area is due to both natural and man-made factors. Since 1932, over 51,000 acres have been lost from the project area. From 1964 to 1996, the shoreline erosion rate along the north bank varied from 8.7 feet per year (ft/yr) to more than 38 ft/yr, depending on the particular reach. The average erosion rate on the south bank is about 12.8 ft/yr. Erosion along the north bank of the MRGO results in the direct loss of approximately 100 acres of shoreline brackish marsh every year as well as causing additional losses of interior wetlands and shallow ponds as a result of high tidal ranges and rapid water exchange through the modified watercourse system.

4. Study Alternatives

Based upon preliminary analysis, alternatives recommended for consideration and more detailed analysis include: the No Action alternative; construction of foreshore dikes for bank stabilization; and various configurations of rock, earth, shell, aggregate, sheet pile, or some combination. Flotation access channels may be required to provide access to construction sites in the shallow open water zone adjacent to exposed banklines.

The decision whether and where to install the bank stabilization features will be based on evaluation of the potential direct, indirect, and cumulative impacts of the proposed action. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposal must be balanced against any reasonably foreseeable detriments.

5. Scoping Process

The Council on Environmental quality (CEQ) regulations implementing the NEPA process directs federal agencies that have made a decision to prepare an environmental impact statement to engage in a public scoping process. The scoping process is designed to provide an early and open means of determining the scope of issues (problems, needs, and opportunities) to be identified and addressed in the DEIS. Scoping is the process used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient DEIS preparation process; (c) define the issues and alternatives that will be examined in detail in the DEIS; and (d) save time in the overall process by helping to ensure that the draft statements adequately address relevant issues. Scoping is a process, not an event or a meeting. Scoping continues throughout the DEIS preparation process and may involve meetings, telephone conversations, and/or written comments (Council on Environmental Quality, Memorandum for General Counsel, April 30, 1981).

6. Request for Scoping Comments

A separate public notice will be mailed to affected and interested parties requesting comments regarding the scope of issues to be addressed and for identifying the significant issues related to the proposed action. See **DATES** for the scoping comment period. Affected and interested parties may submit written comments to Dr. Klein (see **ADDRESSES**) or to the following e-mail address: *mrgobks@mvn02.usace.army.mil*. Comments received as a result of the scoping process will be compiled into a scoping report and will be available to all scoping participants and interested parties. Scoping comments will be considered in the plan formulation process.

7. Public Involvement

Scoping is a critical component of the overall public involvement program. A public involvement program will be initiated and maintained to solicit input

from affected Federal, state, and local agencies, Indian tribes, and other interested parties.

8. Interagency Coordination

Coordination will be maintained with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding threatened and endangered species under their respective jurisdictional responsibilities. Coordination will be maintained with the Advisory Counsel on Historic Preservation and the Louisiana State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be contacted concerning potential impacts to Natural and Scenic Streams.

9. Availability of Draft Environmental Impact Statement

It is anticipated that the DEIS will be available for public review mid-2007. Interested parties will have an opportunity to comment on the DEIS during the 45-day comment period following publication of the Notice of Availability in the **Federal Register**.

Dated: December 4, 2006.

Richard P. Wagenaar,

Colonel, U.S. Army, District Commander.

[FR Doc. 06–9636 Filed 12–11–06; 8:45 am]

BILLING CODE 3710–84–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 12, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 6, 2006.

Dianne M. Novick,

Acting Leader, Information Policy and Standards Team, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Strategies for Native American Parent Involvement.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 40.

Burden Hours: 60.

Abstract: The Strategies for Native American Parent Involvement study entails four focus groups with Native American parents to explore: (1) The ways in which Native American parents and families get involved in their children's education; (2) the barriers to their involvement; and (3) school strategies that have helped these families get involved in their children's education. Participating parents will be chosen from Center Region states with high concentrations of Native American students. Results of the study will be provided to school, district, and SEA administrators so they can make use of strategies to increase parent involvement of Native American communities.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3238. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–21024 Filed 12–11–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Holding Company and Transaction Exemptions and Waivers

December 4, 2006.

ALLETE, Inc	Docket No. PH06–49–000.
AOG Corporation	Docket No. PH06–50–000.
American States Water Company	Docket No. PH06–51–000.
Consolidated Edison, Inc.	Docket No. PH06–52–000.
CH Energy Group	Docket No. PH06–53–000.
Energy East Corporation	Docket No. PH06–54–000.
RGS Energy Group, Inc.	Docket No. PH06–55–000.
Energen Corporation	Docket No. PH06–56–000.

UGI Corporation	Docket No. PH06–57–000.
Puget Energy, Inc.	Docket No. PH06–58–000.
HH–SU Investments L.L.C.	Docket No. PH06–59–000.
Cap Rock Energy Corporation	Docket No. PH06–60–000.
Peoples Energy Corporation	Docket No. PH06–61–000.
Peoples Energy Corporation	Docket No. PH06–62–000.
Duquesne Light Holdings, Inc	Docket No. PH06–63–000.
Milliken & Company	Docket No. PH06–64–000.
Intermountain Industries, Inc.	Docket No. PH06–65–000.
TXU Corp	Docket No. PH06–66–000.
Cleco Corporation	Docket No. PH06–67–000.
KeySpan Energy Corporation	Docket No. PH06–68–000.
KeySpan New England, LLC	Docket No. PH06–69–000.
WPS Resources Corporation	Docket No. PH06–70–000.

Take notice that in July 2006 the holding company and transaction exemptions and waivers requested in the above-captioned proceedings are deemed to have been granted by operation of law pursuant to 18 CFR 366.4.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21054 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–445–017]

Alliance Pipeline L.P.; Notice of Negotiated Rates

December 4, 2006.

Take notice that on November 30, 2006, Alliance Pipeline L.P. (Alliance) tendered for filing the following tariff sheets, as part of its FERC Gas Tariff, Original Volume No. 1, proposed to become effective November 1, 2006:

Twelfth Revised Sheet No. 11.
Sixth Revised Sheet No. 12.
Sixth Revised Sheet No. 13.
Sixth Revised Sheet No. 14.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21055 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–99–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 2006.

Take notice that on December 1, 2006, ANR Pipeline Company (ANR) tendered for filing for as part of its FERC Gas Tariff, Original Volume No. 2, Seventeenth Revised Sheet No. 570, with a proposed effective date of January 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21062 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–151]

ANR Pipeline Company; Notice of Negotiated Rate Filing Amendment

December 4, 2006.

Take notice that on November 30, 2006, ANR Pipeline Company (ANR) tendered for filing and approval amendments to two existing negotiated rate service arrangements between ANR and Madison Gas and Electric Company (''MGE''). One amendment provides MGE with the right to extend its Right of First Refusal at its existing negotiated rate. The other amendment extends MGE's deadline to request additional capacity from ANR and provides that MGE is not required to rely solely on ANR for additional capacity. ANR requests that the Commission accept and approve the subject filing to be effective December 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21065 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–1543–000]

Brush Cogeneration Partners; Notice of Issuance of Order

December 4, 2006.

Brush Cogeneration Partners (Brush) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Brush also requested waivers of various Commission regulations. In particular, Brush requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Brush.

On November 30, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Brush should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is January 2, 2007.

Absent a request to be heard in opposition by the deadline above, Brush is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Brush, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Brush's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21048 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–82–000]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2006.

Take notice that on November 30, 2006, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Twentieth Revised Sheet No. 5, to become effective January 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention

or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21075 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–79–000]

Colorado Interstate Gas Company; Notice of Propsoed Changes in FERC Gas Tariff

December 4, 2006.

Take notice that on November 29, 2006 Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective December 29, 2006:

Third Revised Sheet No. 226
Fifteenth Revised Sheet No. 272
Original Sheet No. 380M
Original Sheet No. 380N

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21058 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–95–000]

Colorado Interstate Gas Company; Notice of Fuel Reimbursement

December 5, 2006.

Take notice that on December 1, 2006, Colorado Interstate Gas Company (CIG) is submitting this filing pursuant to Subpart C of Part 154 of the Commission's Regulations and section 42.2 of the general terms and conditions of its FERC Gas Tariff, First Revised Volume No. 1 in order to demonstrate that the quarterly Lost and Unaccounted-For and Other Fuel Gas percentage remains unchanged for the quarter beginning January 1, 2007.

CIG states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21088 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–595–002]

Discovery Gas Transmission LLC; Notice of Tariff Filing

December 6, 2006.

Take notice that on December 1, 2006, Discovery Gas Transmission LLC

(Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 22, to become effective December 1, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21096 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–97–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 4, 2006.

Take notice that on December 1, 2006, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the following tariff sheets, to become effective January 1, 2007:

Third Revised Sheet No. 10.
Third Revised Sheet No. 11.
Third Revised Sheet No. 12.
First Revised Sheet No. 14.
First Revised Sheet No. 19.
First Revised Sheet No. 33.
First Revised Sheet No. 39.
First Revised Sheet No. 49.
First Revised Sheet No. 51.
First Revised Sheet No. 54.
First Revised Sheet No. 55.
First Revised Sheet No. 58.
First Revised Sheet No. 59.
First Revised Sheet No. 62.
First Revised Sheet No. 64.
First Revised Sheet No. 67.
First Revised Sheet No. 68.
First Revised Sheet No. 69.
First Revised Sheet No. 71.
First Revised Sheet No. 72.
First Revised Sheet No. 73.
First Revised Sheet No. 75.
First Revised Sheet No. 81.
First Revised Sheet No. 82.
First Revised Sheet No. 83.
Third Revised Sheet No. 84.
Fourth Revised Sheet No. 86.
First Revised Sheet No. 86A.
First Revised Sheet No. 101.
First Revised Sheet No. 103.
Second Revised Sheet No. 104.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21061 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–028]

East Tennessee Natural Gas, LLC; Notice of Negotiated Rate

December 4, 2006.

Take notice that on November 30, 2006, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 26 and Sheet Nos. 27–100, with an effective date of December 1, 2006.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the

''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21064 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–98–000]

El Paso Natural Gas Company; Notice of Tariff Filing

December 5, 2006.

Take notice that on December 1, 2006, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Third Revised Sheet No. 37, to become effective January 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21068 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–88–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2006.

Take notice that on November 30, 2006, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Fourteenth Revised Sheet No. 29, to become effective January 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21081 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P'

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–91–000]

Enbridge Pipelines (KPC); Notice of Revenue Credit Report

December 5, 2006.

Take notice that on November 30, 2006, Enbridge Pipelines (KPC) (KPC) tendered for filing its Annual Interruptible Revenue Crediting Report for the twelve (12) month period ending September 30, 2006.

KPC states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21084 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–097]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

December 4, 2006.

Take notice that on November 30, 2006, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Fortieth Revised Sheet No. 15, to become effective December 1, 2006:

GTN states that this sheet is being filed to update GTN's reporting of negotiated rate transactions that it has entered into.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21066 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–84–000]

Gas Transmission Northwest Corporation; Notice of Tariff Filing

December 5, 2006.

Take notice that on November 30, 2006, Gas Transmission Northwest Corporation (GTN) tendered for filing workpapers supporting the restatement of its fuel and line loss surcharge in compliance with Paragraph 37 of the general terms and conditions of its FERC Gas Tariff, Third Revised Volume No. 1–A.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21077 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–85–000]

Gas Transmission Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2006.

Take notice that on November 30, 2006, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheets, to become effective January 1, 2007:

Substitute Ninth Revised Sheet No. 4.
First Revised Sheet No. 7.
Fifth Revised Sheet No. 8.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21078 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Holding Company and Transaction Exemptions and Waivers

December 4, 2006.

IP Gyrfalcon Company	Docket No. PH06–103–000.
Consolidated Midwest	Docket No. PH06–104–000.
Edison International	Docket No. PH06–106–000.
PPL Corporation	Docket No. PH06–107–000.
Sempra Energy	Docket No. PH06–108–000.

Take notice that in October and November 2006 the holding company and transaction exemptions and waivers requested in the above-captioned proceedings are deemed to have been granted by operation of law pursuant to 18 CFR 366.4.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21053 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–026]

Iroquois Gas Transmission System, L.P.; Notice of Negotiated Rate

December 6, 2006.

Take notice that on December 1, 2006, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following revised sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on December 1, 2006:

Original Sheet No. 6K
Original Sheet No. 6L

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21092 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–155–000]

LBPC Power, Inc.; Notice of Issuance of Order

December 5, 2006.

LBPC Power, Inc. (LBPC) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. LBPC also requested waivers of various Commission regulations. In particular, LBPC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by LBPC.

On December 4, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by LBPC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is January 3, 2007.

Absent a request to be heard in opposition by the deadline above, LBPC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of LBPC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of LBPC's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21069 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–86–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 5, 2006.

Take notice that on November 30, 2006, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Ninety Sixth Revised Sheet No. 9, to become effective December 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21079 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–87–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 5, 2006.

Take notice that on November 30, 2006, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Tenth Revised Sheet No. 43, with a proposed effective date of January 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21080 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings

December 4, 2006.

The North American Electric Reliability Council	
The North American Electric Reliability Corporation	Docket No. RR06–1–004.
Delegation Agreement Between the North American Electric Reliability Corporation and Texas Regional Entity, a division of ERCOT.	Docket No. RR07–1–000.
Delegation Agreement Between the North American Electric Reliability Corporation and Midwest Reliability Organization.	Docket No. RR07–2–000.
Delegation Agreement Between the North American Electric Reliability Corporation and Northeast Power Coordinating Council: Cross Border Regional Entity, Inc..	Docket No. RR07–3–000.
Delegation Agreement Between the North American Electric Reliability Corporation and ReliabilityFirst Corporation.	Docket No. RR07–4–000.
Delegation Agreement Between the North American Electric Reliability Corporation and SERC Reliability Corporation.	Docket No. RR07–5–000.
Delegation Agreement Between the North American Electric Reliability Corporation and Southwest Power Pool, Inc.	Docket No. RR07–6–000.
Delegation Agreement Between the North American Electric Reliability Corporation and Western Electricity Coordinating Council.	Docket No. RR07–7–000.
Delegation Agreement Between the North American Electric Reliability Corporation and Florida Reliability Coordinating Council.	Docket No. RR07–8–000.

On November 29, 2006, the North American Electric Reliability Council and the North American Electric Reliability Corporation submitted for Commission approval a uniform Compliance Monitoring and Enforcement Program and the revised *pro forma* delegation agreement. This filing is assigned to Docket No. RR06–1–004.

On November 29, 2006, the North American Electric Reliability Corporation (NERC) submitted for Commission approval eight delegation agreements between NERC and each of the eight proposed Regional Entities. Each of the delegation agreements has been assigned a separate docket number, as referenced above.

According to NERC, the delegation agreement between NERC and Florida Reliability Coordinating Council has been submitted in its current state for informational purposes. NERC intends to supplement its filing with a complete delegation agreement for approval by the Commission at a later point.

Interested parties may file comments on these filings in all of these dockets, on or before January 10, 2007.

The Commission encourages electronic submission of comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21047 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–377–012]

Northern Border Pipeline Company; Notice of Negotiated Rate

December 4, 2006.

Take notice that on November 29, 2006, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Sixteenth Revised Sheet No. 99, to become effective December 1, 2006:

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21056 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–062]

Northern Natural Gas Company; Notice of Negotiated Rate

December 4, 2006.

Take notice that on November 30, 2006 Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on December 1, 2006:

44 Revised Sheet No. 66 37
Revised Sheet No. 66A 7
Revised Sheet No. 66B

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21063 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–61–000]

Northern Natural Gas Company; Notice of Petition for Limited Waiver of Tariff Provisions

December 5, 2006.

Take notice that on November 9, 2006, Northern Natural Gas Company (Northern) filed a Petition for Limited Waiver of Tariff Provisions to resolve three recent circumstances. Specifically, Northern seeks to waive: (1) Section 32(L)(iii) of its general terms and conditions (GT&C) so it can resolve a prior-period trading error with WPS Energy Services; (2) any provisions of its GT&C required to resolve a billing error with the city of Duluth; and, (3) section 32(D) of its GT&C so it can cash out the imbalance of a shipper that was operating under a force majeure at the Tier 1 level.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21074 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–92–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2006.

Take notice that on November 30, 2006, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, 45 Revised Sheet No. 66, with an effective date of January 1, 2007.

Northern states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance

with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21085 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–80–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 4, 2006.

Take notice that on November 29, 2006, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 86, to be effective December 30, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21059 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–81–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreement

December 4, 2006.

Take notice that on November 29, 2006, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Thirteenth Revised Sheet No. 373 to become effective December 30, 2006. Northwest also tendered for filing a restated Rate Schedule TF–2 non-conforming service agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21060 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2741–000]

Plains End, LLC; Notice of Issuance of Order

December 6, 2006.

Plains End, LLC (Plains End) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and certain ancillary services at market-based rates. Plains End also requested waivers of various

Commission regulations. In particular, Plains End requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Plains End.

On September 24, 2001, pursuant to delegated authority, the Director, Division of Tariffs and Rates—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Plains End should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is December 14, 2006.

Absent a request to be heard in opposition by the deadline above, Plains End is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person, provided that such issuance or assumption is for some lawful object within the corporate purposes of Plains End, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Plains End's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21093 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–94–000]

Questar Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2006.

Take notice that on December 1, 2006, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fortieth Revised Sheet No. 5, to be effective January 1, 2007.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21087 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–200–016]

Rockies Express Pipeline LLC; Notice of Amended Negoitated Rate

December 4, 2006.

Take notice that on November 30, 2006, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission's letter order issued August 9, 2005, in Docket No. CP04–413–000, Rockies Express Pipeline LLC (REX) tendered for filing and acceptance a certain tariff sheet of its FERC Gas Tariff to be effective December 1, 2006.

REX stated that a copy of this filing has been served upon all parties to this proceeding, REX's customers, the Colorado Public Utilities Commission and the Wyoming Public Service Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21057 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–90–000]

Southern Natural Gas Company; Notice of Storage Cost Reconciliation Mechanism Report

December 5, 2006.

Take notice that on November 30, 2006, Southern Natural Gas Company (Southern) tendered for filing its annual report pursuant to Section 14.2 of the General Terms and Conditions of its tariff.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21083 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–83–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Filing of Cash-Out Report

December 5, 2006.

Take notice that, on November 30, 2006, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing, pursuant to section 9.7(d) of the general terms and conditions of its FERC Gas Tariff, its report of net cash-out activity.

Southern Star states that copies of the filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the dates as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21076 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–96–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2006.

Take notice that on December 1, 2006, Southern Star Central Gas Pipeline, Inc. tendered for filing as part of its FERC Gas Tariff, Volume No. 1, Sixth Revised Sheet No. 12, to become effective January 1, 2007.

Southern Star states that copies of the tariff sheet are being provided to Southern Star's jurisdictional customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21089 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–89–000]

Tennessee Gas Pipeline Company; Notice of Cashout Report

December 5, 2006.

Take notice that on November 30, 2006, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, its cashout report for the September 2005 through August 2006 period (2006 Cashout Report).

Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21082 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–161]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

December 6, 2006.

Take notice that on December 1, 2006, Tennessee Gas Pipeline Company, (Tennessee) tendered for filing a Negotiated Rate Tariff Filing with Tennessee Valley Authority.

Tennessee's filing requests that the Commission approve the negotiated rate arrangement to be effective on January 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21098 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–20–001]

Texas Eastern Transmission, LP; Notice of Tariff Filing

December 6, 2006.

Take notice that on December 1, 2006, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised

Volume No. 1, Substitute Fourth Revised Sheet No. 127 to become effective December 1, 2006.

Texas Eastern states that copies of its filing have been mailed or, if requested, emailed to all affected customers of Texas Eastern and interested state commissions, and to all parties on the Commission's official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21097 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–93–000]

Texas Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

December 5, 2006.

Take notice that on November 30, 2006, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 36A, to become effective January 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21086 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–18–000]

New York Independent System Operator, Inc., Complainants v. SCS/Astoria Energy LLC, Respondent; Notice of Complaint

December 4, 2006.

Take notice that on December 1, 2006, the New York Independent System Operator, Inc. (NYISO) tendered for filing a complaint against SCS/Astoria Energy LLC (SCS Astoria). NYISO alleges that SCS Astoria failed to adhere to the tariff standards for Installed Capacity (ICAP) Supplier qualification. NYISO asks the Commission to require SCS Astoria to conform to the NYISO's services tariff requirements to qualify as an ICAP Supplier, and requests the Commission to use its remedial authority to place affected market participants in the position they would have been in if SCS Astoria had adhered to the tariff standards for ICAP certification.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail

FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 2, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21067 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–1–000]

Tesoro Refining and Marketing Company, Complainants v. SFPP, L.P., Respondent; Notice of Complaint

December 4, 2006.

Take notice that on December 1, 2006, Tesoro Refining and Marketing Company (Tesoro) filed a formal complaint against SFPP, L.P. pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission; the Procedural Rules Applicable to Oil Pipeline Proceedings of the Interstate Commerce Act; and section 1803 of the Energy Policy Act of 1992.

Complainant alleges that SFPP's North Line rates are unjust and unreasonable. Complainant requests that the Commission determine that the rates established by SFPP for the shipment of refined petroleum products are so substantially in excess of SFPP's actual costs as to be unjust and unreasonable; prescribe new rates that are just and reasonable for the shipment of refined petroleum products on SFPP's North line; determine that SFPP overcharged Tesoro for shipments of refined petroleum products on SFPP's North line from at least December 1, 2004 to the present, and is continuing to overcharge Tesoro for such shipments; order SFPP to pay refunds, reparations and damages, plus interest to Tesoro for shipments made by Tesoro on the North Line from December 1, 2004; award Tesoro it costs and attorneys fees in prosecurting this Complaint; and grant Tesoro such other, different or additional relief as the Commission may determine to be appropriate.

Tesoro certifies that copies of the Complaint were served on the contacts for SFPP as listed on the Commission's list of Corporate Officials and on SFPPs counsel.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 2, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21051 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 4, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–13–000.

Applicants: Endeavor Power Partners, LLC.

Description: Endeavor Power Partners, LLC submits a notice of self-certification of exempt wholesale generator status.

Filed Date: 11/29/2006.

Accession Number: 20061201–0054.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: EG07–17–000.

Applicants: MMC Mid-Sun, LLC.

Description: MMC Mid-Sun, LLC submits a notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/30/2006.

Accession Number: 20061130–5058.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–3151–007; ER97–837–006.

Applicants: PSEG Energy Resources & Trade LLC; Public Service Electric and Gas Company.

Description: PSEG Energy Resources & Trade, LLC and Public Service Electric & Gas Co. submit a joint triennial market power report.

Filed Date: 11/30/2006.

Accession Number: 20061204–0144.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Docket Numbers: ER03–9–008; ER98–2157–009.

Applicants: Westar Energy, Inc.; Kansas Gas and Electric Company.

Description: Westar Energy Inc, *et al.*, submits a notice of non-material change in status related to its purchase of the Spring Creek Power Plant located in Logan County, Oklahoma.

Filed Date: 11/30/2006.

Accession Number: 20061204–0134.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Docket Numbers: ER05–719–004.

Applicants: Entergy Services, Inc.

Description: Entergy Services Inc, on behalf of Entergy Arkansas Inc submits a refund report in compliance with FERC's 11/2/06 Order.

Filed Date: 11/29/2006.

Accession Number: 20061201–0077.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: ER06–451–012; ER06–1047–005.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a compliance filing pursuant to the Commission's 10/26/06 order, to modify energy imbalance market and market monitoring procedures.

Filed Date: 11/27/2006.

Accession Number: 20061201–0078.

Comment Date: 5 p.m. Eastern Time on Monday, December 18, 2006.

Docket Numbers: ER06–1343–001.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits corrections to its Wholesale Market Participation

Agreement pursuant to the Commission's request.

Filed Date: 11/30/2006.

Accession Number: 20061204–0135.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Docket Numbers: ER06–1420–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. and the Signatory Parties submit proposed revisions to Section 1 of Midwest Contingency Reserve Sharing Group Agreement.

Filed Date: 11/30/2006

Accession Number: 20061204–0138.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Docket Numbers: ER06–1422–001.

Applicants: Louisville Gas & Electric Company; Kentucky Utilities Company.

Description: Louisville Gas and Electric Co and Kentucky Utilities Co submit a compliance filing re the Automatic Reserve Energy Sales Tariff pursuant to the 11/14/06 Letter Order.

Filed Date: 11/29/2006.

Accession Number: 20061201–0080.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: ER06–1471–001.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits sub. Original Sheets 134A–134B, Schedule 4A, to FERC Electric Tariff, Second Revised Volume 5 pursuant to FERC's 10/30/06 Order.

Filed Date: 11/29/2006.

Accession Number: 20061201–0081.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: ER06–1488–002.

Applicants: Oklahoma Gas and Electric Company.

Description: Oklahoma Gas and Electric Co submits revised pages to its Open Access Transmission Tariff, FERC Electric Tariff, Third Revised Volume 2, pursuant to the Commission's 10/30/06 Order.

Filed Date: 11/29/2006.

Accession Number: 20061204–0136.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: ER07–59–001.

Applicants: Fortis Energy Marketing & Trading GP.

Description: Fortis Energy Marketing & Trading GP submits Substitute Original Sheet Nos. 1–3 of its FERC Gas Tariff Original Volume 1 filed 10/23/06.

Filed Date: 11/28/2006.

Accession Number: 20061130–0191.

Comment Date: 5 p.m. Eastern Time on Friday, December 8, 2006.

Docket Numbers: ER07–109–001.

Applicants: BTEC Southaven LLC.

Description: BTEC Southaven LLC submits a clean and black-lined version of Substitute Original Sheet 1, FERC Electric Tariff, Original Volume 1.

Filed Date: 11/29/2006.

Accession Number: 20061201–0079.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: ER07–110–001.

Applicants: BTEC New Albany LLC.

Description: BTEC New Albany LLC submits a clean and black-lined version of the revised Substitute Original Sheet 1 *et al.* to its FERC Electric Tariff, Original Volume 1.

Filed Date: 11/29/2006.

Accession Number: 20061201–0082.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: ER07–250–000.

Applicants: Westar Energy, Inc.; Kansas Gas and Electric Company.

Description: Westar Energy, Inc. submits a Second Revised Sheet 1 *et al.* of Rate Schedule FERC 152 with the Missouri Public Service Company.

Filed Date: 11/28/2006.

Accession Number: 20061130–0198.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 19, 2006.

Docket Numbers: ER07–251–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits the Anaheim-Puente Development Wholesale Distribution Load Interconnection Facilities Agreement etc. with the City of Industry.

Filed Date: 11/28/2006.

Accession Number: 20061130–0199.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 19, 2006.

Docket Numbers: ER07–252–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits a Letter Agreement with the Los Angeles County Sanitation District 2 of Los Angeles County, CA.

Filed Date: 11/28/2006.

Accession Number: 20061130–0200.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 19, 2006.

Docket Numbers: ER07–253–000.

Applicants: E.ON U.S., LLC.

Description: E.ON U.S., LLC on behalf of Louisville Gas & Electric Co *et al.* submits an executed umbrella Firm Point-to-Point transmission service agreement etc. with East Kentucky Power Coop *et al.*

Filed Date: 11/29/2006.

Accession Number: 20061201–0072.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: ER07–254–000.

Applicants: Casselman Windpower LLC.

Description: Casselman Windpower LLC submits its initial rate schedule, a request for granting of authorizations and blanket authority and for waivers of certain requirements.

Filed Date: 11/29/2006.

Accession Number: 20061201–0073.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: ER07–255–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits two rate sheets to the Nandina Avenue Wholesale Distribution Load Interconnection Facilities Agreement with the City of Moreno Valley.

Filed Date: 11/29/2006.

Accession Number: 20061201–0071.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: ER07–256–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC submits an executed Interconnection Service Agreement with Catoctin Power LLC, and The Potomac Edison Company.

Filed Date: 11/29/2006.

Accession Number: 20061201–0070.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: ER07–257–000.

Applicants: Connecticut Light and Power Company; Northeast Utilities Service Company.

Description: Northeast Utilities Service Co on behalf of the Connecticut Light and Power Co submits two agreements relating to the construction and use of the Long Island Sound Replacement Cable.

Filed Date: 11/29/2006.

Accession Number: 20061201–0102.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: ER07–258–000.

Applicants: New England Power Pool Participants Committee.

Description: New England Power Pool Participants Committee submits a counterpart signature pages of the New England Power Pool Agreement dated as of 9/1/71 as amended & executed by SAC Energy Investments, LP *et al.*

Filed Date: 11/30/2006.

Accession Number: 20061201–0083.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Docket Numbers: ER07–259–000.

Applicants: Cleco Power LLC.

Description: Cleco Power LLC submits an unexecuted Joint Interface Facility Operating and Maintenance Agreement with Entergy Services, Inc.

Filed Date: 11/30/2006.

Accession Number: 20061201–0084.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Docket Numbers: ER07–260–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits its Second Revised Rate Schedule 248 canceling their First Revised Rate Schedule 248 with Southern California Edison.

Filed Date: 11/30/2006.

Accession Number: 20061201–0085.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Docket Numbers: ER07–262–000.

Applicants: Central Vermont Public Service Corporation.

Description: Central Vermont Public Service Corp, on behalf of The Village of Morrisville Water and Light Department submits an executed Network Integration Transmission Service Agreement.

Filed Date: 11/30/2006.

Accession Number: 20061204–0137.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Docket Numbers: ER07–264–000.

Applicants: MMC Mid-Sun, LLC.

Description: MMC Mid-Sun, LLC submits its application for acceptance of Initial Market-Based Rate Tariff, FERC Electric Tariff, Original Volume 1.

Filed Date: 11/30/2006.

Accession Number: 20061204–0132.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Docket Numbers: ER07–265–000.

Applicants: Sempra Energy Solutions LLC.

Description: Sempra Energy Solutions, LLC submits a notice of succession that reflects the adoption by Sempra Energy Solution's First Revised Rate Schedule 1.

Filed Date: 11/30/2006.

Accession Number: 20061204–0133.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Docket Numbers: ER07–266–000; ER06–1485–002.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Services Inc. submits a revised version of Schedule 4A-Reserve Sharing Energy Charges to Xcel Energy Operating Open Access Transmission Tariff, FERC Electric Tariff, First Revised Volume 1 pursuant to the Commission's 10/30/06 Order.

Filed Date: 11/29/2006.

Accession Number: 20061130–0189.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 20, 2006.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH07–7–000.

Applicants: Constellation Energy Group Inc.

Description: Constellation Energy Group, Inc. submits a Notice of Waiver pursuant to Section 366.4(c)(1) of PUHCA 2005.

Filed Date: 11/30/2006.

Accession Number: 20061130–5059.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERCOnline service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21091 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings #1

December 6, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–30–000.

Applicants: KGen Southaven LLC.

Description: Joint application of KGen Enterprise LLC, KGen Hinds LLC et al for authorization under section 203 of the Federal Power Act and Request for Waivers.

Filed Date: 11/30/2006.

Accession Number: 20061205–0137.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Docket Numbers: EC07–31–000.

Applicants: Puget Sound Energy, Inc.

Description: Goldendale Energy Center, LLC & Puget Sound Energy Inc submit a Joint Application for Authorization for Transfer of Jurisdictional Facilities, Acquisition of an Existing Generation Facility and Acquisition by a holding company.

Filed Date: 12/01/2006.

Accession Number: 20061205–0042.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–18–000.

Applicants: NE Hydro Generating Company.

Description: NE Hydro Generating Co submits its Application for Determination of Exempt Wholesale Generator Status.

Filed Date: 12/01/2006.

Accession Number: 20061205–0002.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–783–006; ER06–1135–001; ER02–852–006; ER02–855–006; ER01–2262–008; ER03–438–006; ER05–723–005.

Applicants: EPCOR Merchant and Capital (US) Inc.; EPCOR Energy Marketing (US) Inc.; EPCOR Power Development, Inc; EPDC Inc; Frederickson Power L.P.; Manchief

Power Company LLC; EPCOR Power (Castleton) LLC.

Description: EPCOR Public Utilities submit a notice of change in status report pursuant to Order 652.

Filed Date: 12/01/2006.

Accession Number: 20061205–0027.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER04–691–079.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest ISO submits its proposed revisions to its ISO Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff Third Revised Volume No. 1.

Filed Date: 11/27/2006.

Accession Number: 20061130–0190.

Comment Date: 5 p.m. Eastern Time on Monday, December 18, 2006.

Docket Numbers: ER05–717–005; ER05–721–005; ER04–374–004; ER99–2341–007; ER06–230–002; ER06–1334–002.

Applicants: Spring Canyon Energy LLC; Judith Gap Energy LLC; Invenergy TN LLC; Hardee Power Partners Limited; Wolverine Creek Energy LLC; Spindle Hill Energy LLC.

Description: Spring Canyon Energy LLC, Judith Gap Energy LLC et al submit a notice re certain changes in the characteristics relied upon to grant market-based rate authority to the Companies.

Filed Date: 12/01/2006.

Accession Number: 20061205–0025.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER06–1444–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest ISO submits an unexecuted Amended and Restated Generator Interconnection Agreement with Consumers. Energy Co.

Filed Date: 11/29/2006.

Accession Number: 20061204–0109.

Comment Date: 5 p.m Eastern Time on Wednesday, December 20, 2006.

Docket Numbers: ER07–261–000.

Applicants: Tenaska-Oxy Power Services, L.P.

Description: Tenaska-Oxy Power Services, LP submits a notice of cancellation.

Filed Date: 11/30/2006.

Accession Number: 20061205–0005.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Docket Numbers: ER07–263–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits cancellation of their FERC Electric Rate Schedule 543 with Bonneville Power Administration.

Filed Date: 11/30/2006.

Accession Number: 20061204–0058.

Comment Date: 5 p.m. Eastern Time on Thursday, December 21, 2006.

Docket Numbers: ER07–267–000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Co's submits an amendment to a contract with the City of Barbourville, Kentucky, Rate Schedule 304.

Filed Date: 12/01/2006.

Accession Number: 20061205–0006.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–268–000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Company submits an amendment to a contract (Rate Schedule 306) with the City of Madisonville, Kentucky.

Filed Date: 12/01/2006.

Accession Number: 20061205–0008.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–269–000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Co submits an amendment to a contract with the City of Bardwell, Kentucky designated as Rate Schedule 307.

Filed Date: 12/01/2006.

Accession Number: 20061205–0007.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–270–000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Company submits an amendment to the contract with the City of Paris, Kentucky Rate Schedule 301.

Filed Date: 12/01/2006.

Accession Number: 20061205–0009.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–271–000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Co submits an amendment to a contract with the City of Providence, Kentucky, Rate Schedule 305.

Filed Date: 12/01/2006.

Accession Number: 20061205–0010.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–272–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed service agreement for Network Integration Transmission Service with Kansas Power Pool.

Filed Date: 12/01/2006.

Accession Number: 20061205–0011.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–273–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc submits an executed service agreement for Firm Point-to-Point Transmission Service with Kansas Power Pool.

Filed Date: 12/01/2006.

Accession Number: 20061205–0012.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–274–000.

Applicants: Juice Energy, Inc.

Description: Juice Energy Inc submits a Notice of Succession to reflect a name change on its market based rate tariff from HLM Energy Inc.

Filed Date: 12/01/2006.

Accession Number: 20061205–0013.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–275–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits Notice of Cancellation of Interconnection and Operating Service Agreement 210 under APS' OATT pursuant to Order 614.

Filed Date: 12/01/2006.

Accession Number: 20061205–0015.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–276–000.

Applicants: New York Commercial Energy Buyers, LLC.

Description: New York Commercial Energy Buyers, LLC submits a Notice of Cancellation of their FERC Electric Tariff, Original Volume No. 1.

Filed Date: 12/01/2006.

Accession Number: 20061205–0016.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–277–000.

Applicants: Invenergy Cannon Falls LLC.

Description: Invenergy Cannon Falls, LLC submits application for authorization to make market-based wholesale sales of energy, capacity, and ancillary services and Invenergy FERC Electric Tariff No. 1.

Filed Date: 12/01/2006.

Accession Number: 20061205–0017.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–278–000.

Applicants: American Electric Power Service Corp.

Description: American Electric Power Service Corp as agent for Indiana Michigan Power Co submits a fourth

revision to the Interconnection and Local Delivery Service Agreement 1262 with Wabash Valley Power Association.

Filed Date: 12/01/2006.

Accession Number: 20061205–0023.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–279–000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Company submits amendment to their contract with City of Falmouth, Kentucky Rate Schedule 310.

Filed Date: 12/01/2006.

Accession Number: 20061205–0018.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–280–000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Co submits amendments to their contract with City of Corbin, Kentucky Rate Schedule 309.

Filed Date: 12/01/2006.

Accession Number: 20061205–0019.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–282–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed service agreement for firm point-to-point transmission service with Kansas Power Pool.

Filed Date: 12/01/2006.

Accession Number: 20061205–0003.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–283–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed service agreement for Network Integration Transmission Service with Kansas Power Pool.

Filed Date: 12/01/2006.

Accession Number: 20061205–0021.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–285–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator Inc submits revisions to its Market Administration and Control Area Service Tariff.

Filed Date: 12/01/2006.

Accession Number: 20061205–0020.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–287–000.

Applicants: Klondike Wind Power III LLC.

Description: MidAmerican Energy Company submits an amended Network Integration Transmission Service Agreement and an amended Interconnection and Network Operating Agreement w/Indianola Municipal Utilities.

Filed Date: 12/01/2006.

Accession Number: 20061205–0022.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER97–2846–011; ER99–2311–008; ER01–2928–010; ER01–1418–007; ER99–2324–004; ER01–1310–008; ER03–398–008.

Applicants: Florida Power Corporation; Carolina Power & Light Company; Progress Ventures, Inc.; Efffingham County Power, LLC; MPC Generating, LLC; Walton County Power, LLC; Washington County Power, LLC.

Description: Progress Energy, Inc on behalf of Florida Power Corp submits notice of change in status re the terminating agreement with Shady Hills Power Co, LLC etc pursuant to Order 652.

Filed Date: 12/01/2006.

Accession Number: 20061205–0026.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Magalie R. Salas,

Secretary.

[FR Doc. E6–21100 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–34–000]

Ozark Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed East End Expansion Project, and Request for Comments on Environmental Issues

December 4, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will identify and address the environmental impacts that could result from the construction and operation of the East End Expansion Project proposed by Ozark Gas Transmission, LLC (OGT).

In order to assist staff with the identification of environmental issues and to comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), a scoping period has been opened to receive comments on the proposed project. Please note that the scoping period for this project will close on January 31, 2007.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of sending written comments, we invite you to attend the public scoping meetings that will be scheduled in mid January across the project region. A second notice will

be issued in December to provide the meeting date, time, and locations.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern. Details on how to submit comments are provided in the Public Participation section of this notice.

If you are a landowner receiving this notice, you may be contacted by an OGT representative about the acquisition of an easement to construct, operate, and maintain the proposed project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Proposed Project

OGT proposes to construct, own, operate, and maintain a natural gas pipeline to provide incremental multiyear shipper requirements due to expected regional supply and market growth. OGT indicates that the proposed facilities form the basis of an incremental project that is designed to optimize the placement of facilities to meeting short term volume growth requirements while taking into consideration a long term design to meet future anticipated transporter volume growth to 2026. The proposed pipeline would originate at the proposed Wonderview Compressor Station near Wonderview in Conway County, Arkansas along OGT existing pipeline right-of-way to Searcy, Arkansas and extend to a terminus at the interconnection with an existing interstate pipeline located near Banner in Calhoun County, Mississippi.

The general location of the proposed pipeline is shown in the figure included as Appendix 1.[1]

The East End Expansion Project facilities under FERC jurisdiction would include:

- Approximately 225 miles of 36-inch-diameter pipeline extension (East End Expansion) and looping beginning in Conway County, Arkansas and ending in Calhoun County, Mississippi;
- Approximately 8 miles of 24-inch-diameter pipeline extension (Noark Extension) from the existing Noark to the proposed Wonderview Compressor Station all within Conway County, Arkansas;
- Three compressor stations—Wonderview, Searcy, and Helena Compressor Stations in Conway, White, and Phillips County, Arkansas, respectively each with two 10,000-horsepower (hp) electric drive compressors;
- Five new gas meter stations at interconnects with existing interstate pipelines, including:

—Texas Gas Meter Station in Coahoma County, Mississippi;
—ANR Meter Station in Panola County, Mississippi;
—Trunkline Meter Station in Panola County, Mississippi;
—Tennessee Gas Meter Station in Panola County, Mississippi;
—Columbia Gulf Meter Station in Calhoun County, Mississippi;

- Interconnections between the OGT existing 16-inch-diameter pipeline (Noark) and the OGT existing 20-inch-diameter pipeline; and
- Four pig launching and receiving facilities (one on the 24-inch-diameter line and three on the 36-inch diameter line), 24-inch side valve on the 36-inch diameter line, and 14 mainline valves.

The project would be designed and constructed to receive and transport about 1.0 billion cubic feet of natural gas per day. OGT proposes to have the project constructed and operational by December 2008.

Land Requirements for Construction

As proposed, the typical construction right-of-way for the project pipeline would be 115-feet-wide for the 36-inch-diameter pipeline and 115-feet-wide for the 24-inch-diameter pipeline. Following construction, OGT would retain a 75-foot-wide permanent right-of-way for operation of the project. Additional, temporary extra workspaces beyond the typical construction right-of-way limits would be required at certain feature crossings (e.g., roads, railroads, wetlands, or waterbodies), in areas with steep side slopes, or in association with special construction techniques.

Based on preliminary information, construction of the proposed project facilities would affect a total of about 3,414 acres of land. Following construction, about 2,118 acres would be maintained as permanent right-of-way, and about 126 acres of land would be maintained as new aboveground facility sites. The remaining 1,170 acres of temporary workspace (including all temporary construction rights-of-way, extra workspaces, and pipe storage and contractor yards) would be restored and allowed to revert to its former use.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action when it considers whether or not an interstate natural gas pipeline should be approved. The FERC will use the EIS to consider the environmental impact that could result if the OGT project is authorized under section 7 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals to be considered by the Commission. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. With this Notice of Intent, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources;
- Wetlands and vegetation;
- Fish and wildlife;
- Threatened and endangered species;
- Land use, recreation, and visual resources;
- Air quality and noise;
- Cultural resources;
- Socioeconomics;
- Reliability and safety; and
- Cumulative impacts.

In the EIS, we will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to federal,

[1] The appendices referenced in this notice are not being printed in the **Federal Register**.

state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; commentors; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. We will consider all comments on the final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this notice.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under the Commission's Pre-filing Process. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

With this notice, we are asking federal, state, and local governmental agencies with jurisdiction and/or special expertise with respect to environmental issues, especially those identified in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments provided in Appendix 2.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified several issues that we think deserve attention based on a preliminary review of the project site and the facility information provided by OGT. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential effects on prime farmland and erodable soils.
- Potential impacts to perennial and intermittent waterbodies, including waterbodies with federal and/or state designations/protections.
- Evaluation of temporary and permanent impacts on wetlands and development of appropriate mitigation.
- Potential impacts to fish and wildlife habitat, including potential impacts to federally and state-listed threatened and endangered species.
- Potential visual effects of the aboveground facilities on surrounding areas.
- Potential impacts and potential benefits of construction workforce on local housing, infrastructure, public services, and economy.
- Potential impacts to local air and noise quality associated with construction and operation.
- Public safety and potential hazards associated with the transport of natural gas.
- Alternative alignments for the pipeline route and alternative sites for the compressor stations.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposed project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of Gas Branch 2, DG2E.
- Reference Docket No. PF06–34–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before January 31, 2007.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. The Commission strongly encourages electronic filing of any comments in response to this Notice of Intent. For information on electronically filing comments, please see the instructions on the Commission's Web site at *http://www.ferc.gov*.

The public scoping meetings (dates, times, and locations) will be provided at a later date in a separate notice. Scoping meetings are designed to provide another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of each meeting will be generated so that your comments will be accurately recorded.

Once OGT formally files its application with the Commission, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you received this notice, you are on the environmental mailing list for this project. If you do not want to send comments at this time, but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be removed from the Commission's environmental mailing list.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site *http://www.ferc.gov*. The ''eLibrary link'' on the FERC Web site provides access to documents submitted to and issued by the Commission, such as comments, orders, notices and rulemakings. Once on the FERC Web site, click on the ''eLibrary link,'' select ''General Search'' and in the ''Docket Number'' field enter the project docket number excluding the last three digits (PF06–34). When researching information be sure to select an appropriate date range. In addition, the FERC now offers a free e-mail

service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

For assistance with the FERC Web site or with eSubscription, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659.

Finally, OGT has established an Internet Web site for this project at *http://www.eastendexpansion@ozarkgastransmission.com*. The Web site includes a description of the project, a map of the proposed pipeline route, and answers to frequently asked questions. You can also request additional information or provide comments directly to OGT thorough their Operations Communication Center at 1–888–593–8207.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21052 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2085]

Southern California Edison Company; Notice of Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

December 5, 2006.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New—Major License.

b. *Project No.:* 2085–014.

c. *Date Filed:* November 29, 2005.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Mammoth Pool Hydroelectric Power Project.

f. *Location:* On the San Joaquin River, near North Fork, California. The project affects 2,036 cres of Federal land administered by the Sierra National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Russ W. Krieger, Vice President Power Production, Southern California Edison Company, 300 N. Lone Hill Ave., San Dimas, CA 91773. Phone: 909–394–8667.

i. *FERC Contact:* Jim Fargo at (202) 502–6095, or e-mail: *james.fargo@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the ''e-Filing'' link.

k. This application has been accepted for filing.

l. Description of project: the Project is located in the central Sierra Nevada, within the San Joaquin River watershed, about 50 miles northeast of the City of Fresno. The Project is operated as a reservoir-storage type plant with an installed operating capacity of 190.0 MW and a dependable operating capacity of 187.0 MW. Water for the Project is taken from the San Joaquin River, Ross Creek, and Rock Creek and conveyed to the Mammoth Pool Powerhouse through the Mammoth Pool Tunnel.

The Project facilities include: the Mammoth Pool Dam forming Mammoth Pool Reservoir, with a capacity of about 119,940 acre-feet at an elevation of about 3,330 feet above mean sea level; one power tunnel about 7.5 miles long, to convey water from Mammoth Pool Reservoir to Mammoth Pool Powerhouse; two small diversions on Rock Creek and Ross Creek; and one 230 kV transmission line about 6.7 miles long that connects the Mammoth Pool Powerhouse to the non-project Big Creek No. 3 Switchyard. Type of Application: New—Major Modified License

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings

in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Procedural schedule: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Milestone	Tentative date
Notice of the availability of the draft EIS	June 2007.
Notice of the availability of the final EIS	November 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21070 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

December 5, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2242–078.

c. *Date Filed:* November 24, 2006.

d. *Applicant:* Eugene Water and Electric Board.

e. *Name of Project:* Carmen-Smith Hydroelectric Project.

f. *Location:* On the McKenzie River in Lane and Linn Counties, near McKenzie Bridge, Oregon. The project occupies approximately 560 acres of the Willamette National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Randy L. Berggren, General Manager, Eugene Electric and Water Board, 500 East 4th Avenue, P.O. Box 10148, Eugene, OR 97440, (541) 484–2411.

i. *FERC Contact:* Bob Easton, (202) 502–6045 or *robert.easton@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 23, 2007.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

m. This application is not ready for environmental analysis at this time.

n. The Carmen-Smith Hydroelectric Project consists of two developments, the Carmen development and the Trail Bridge development. The Carmen development includes: (1) A 25-foot-high, 2,100-foot-long, and 10-foot-wide earthen Carmen diversion dam with a concrete weir spillway, (2) a 11,380-foot-long by 9.5-foot-diameter concrete Carmen diversion tunnel located on the right abutment of the spillway, (3) a 235-foot-high, 1,100-foot-long, and 15-foot-wide earthen Smith diversion dam with a gated Ogee spillway, (4) a 7,275-foot-long by 13.5 foot-diameter concrete-lined Smith power tunnel, (5) a 1,160-foot-long by 13-foot-diameter steel underground Carmen penstock, (6) a 86-foot-long by 79-foot-wide Carmen powerhouse, (7) two Francis turbines each with a generating capacity of 52.25 megawatts (MW) for a total capacity of 104.50 MW, (8) a 19-mile, 115-kilovolt (kV) transmission line that connects the Carmen powerhouse to the Bonneville Power Administration's Cougar-Eugene transmission line, and (9) appurtenant facilities.

The Trail Bridge development includes: (1) A 100-foot-high, 700-foot-long, and 24-foot-wide earthen Trail Bridge dam section with a gated Ogee spillway, (2) a 1,000-foot-long and 20-foot-wide emergency spillway section, (3) a 300-foot-long by 12-foot-diameter concrete penstock at the intake that narrows to a diameter of 7 feet, (4) a 66-foot-long by 61-foot-wide Trail Bridge powerhouse, (5) one Kaplan turbine with a generating capacity of 9.975 MW, and (6) a one-mile, 11.5-kV distribution line that connects the Trail Bridge powerhouse to the Carmen powerhouse.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Oregon State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at § 800.4.

q. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)	January 2007.
Issue Acceptance Letter	April 2007.
Issue Scoping Document 1 for comments	May 2007.
Hold Scoping Meetings	June 2007.
Request Additional Information (if necessary)	August 2007.
Issue Scoping Document 2	August 2007.
Notice of application is ready for environmental analysis	August 2007.
Notice of the availability of the draft EA	February 2008.
Initiate 10(j) process (if necessary)	April 2008.
Notice of the availability of the final EA	August 2008.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21071 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 925–010]

City of Ottumwa, Iowa; Notice Soliciting Scoping Comments

December 5, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* P–925–010.

c. *Date filed:* April 26, 2006.

d. *Applicant:* City of Ottumwa, Iowa.

e. *Name of Project:* Ottumwa Hydroelectric Project.

f. *Location:* On the Des Moines River in the City of Ottumwa, Wapello County, Iowa. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Richard Wilcox, Ottumwa Water and Hydro, 230 Turner Drive, Ottumwa, Iowa 52501, (641) 684–4606.

i. *FERC Contact:* Tim Konnert, (202) 502–6359 or *timothy.konnert@ferc.gov.*

j. *Deadline for filing scoping comments:* January 4, 2007.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application is not ready for environmental analysis at this time.

l. *The existing Ottumwa Project consists of:* (1) An 18-foot-high dam with a 641-foot-long spillway section equipped with eight Taintor gates and one bascule gate; (2) a powerhouse integral to the dam containing three generating units, unit 1 and unit 3 each rated at 1,000 kW and unit 2 rated at 1,250 kW; (3) a 125-acre reservoir with a normal water surface elevation of 638.5 feet msl; and (4) appurtenant facilities. The applicant estimates that the average annual generation would be 10,261,920 kilowatt hours using the three generating units with a combined capacity of 3,250 kW.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov.esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Scoping Process—The Commission staff intends to prepare a single Environmental Assessment (EA) for the Ottumwa Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff do not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document (SD) issued on December 1, 2006.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's service list. Copies of the SD may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21072 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Compliance Filing and Soliciting Comments, Motions to Intervene, and Protests

December 5, 2006.

Take notice that the following recreation usage report has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation Usage Report.

b. *Project No:* 9690–082.

c. *Date Filed:* March 31, 2005.

d. *Applicant:* Mirant, NY–Gen. LLC.

e. *Name of Project:* Rio Project.

f. *Location:* The project is located on the Mongaup River in Orange County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Kevin McCleod, Mirant NY–Gen LLC,140 Samsondale Avenue, West Haverstraw, NY 10993 (914) 391–7715.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for filing comments and or motions:* January 5, 2007.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–9690–082) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov*. under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Filing:* Mirant filed its Recreation Usage Report for 2004 required by article 408, as amended. This report provides an evaluation of the recreation facilities downstream of the Rio Dam and the effectiveness of the whitewater releases in meeting the needs of the public. The information will be used to determine if changes are needed to the whitewater releases at the project.

l. *Location of the Filing:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''E-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21073 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

December 6, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2413–083.

c. *Date Filed:* November 1, 2006.

d. *Applicant:* Georgia Power Company (GPC).

e. *Name of Project:* Wallace Dam Project.

f. *Location:* The proposed development is located on Lake Oconee in Greene County, Georgia. This project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Lee B. Glenn, Georgia Power Company, 125 Wallace Dam Road NE, Eatonton, GA 31024, (706) 485–8704.

i. *FERC Contact:* Gina Krump, *gina.krump@ferc.gov,* 202–502–6704.

j. *Deadline for filing comments and or motions:* January 8, 2007.

All documents (original and eight copies) should be filed with Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. Please reference ''Wallace Dam Project, FERC Project No. 2413–083'' on any comments or motions filed.

k. *Description of Request:* GPC is seeking Commission approval to permit the construction of a 30-slip marina (26 boat slips and four refueling slips), a boat lift launch, and a boat ramp on approximately 1.2 acres of project land. Each slip will be five feet wide by 24 feet long along approximately 540 feet of shoreline. A seawall and rip-rap to stabilize the shoreline of the marina is also being proposed. The marina is being proposed in conjunction with a residential development and will be designed for use by the community residents.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to

intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21094 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission and Commission Staff Attendance at Organization of Midwest ISO States Annual Meeting

December 4, 2006.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following Organization of Midwest ISO States Annual Meeting: December 14, 2006 (11 a.m.–4 p.m.), Midwest ISO Headquarters, 701 City Center Drive, Carmel, IN 46032.

The discussions may address matters at issue in the following proceedings:

Docket No. ER02–2595, et al., Midwest Independent Transmission System Operator, Inc.

Docket No. ER04–375, Midwest Independent Transmission System Operator, Inc., et al.

Docket No. ER04–458, et al., Midwest Independent Transmission System Operator, Inc.

Docket Nos. ER04–691, EL04–104 and ER04–106, et al., Midwest Independent Transmission System Operator, Inc., et al.

Docket No. ER05–6, et al., Midwest Independent Transmission System Operator, Inc., et al.

Docket No. ER05–752, Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.

Docket No. ER05–1083, et al., Midwest Independent Transmission System Operator, Inc., et al.

Docket No. ER05–1085, et al., Midwest Independent Transmission System Operator, Inc.

Docket No. ER05–1138, Midwest Independent Transmission System Operator, Inc.

Docket No. ER05–1201, Midwest Independent Transmission System Operator, Inc.

Docket No. ER05–1230, Midwest Independent Transmission System Operator, Inc.

Docket No. EL05–103, *Northern Indiana Power Service Co.* v. *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*

Docket No. EL05–128, *Quest Energy, L.L.C.* v. *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–18, Midwest Independent Transmission System Operator, Inc.

Docket No. ER06–27, Midwest Independent Transmission System Operator, Inc., et al.

Docket Nos. EC06–4 and ER06–20, LGE Energy LLC, et al.

Docket No. ER06–360, et al., Midwest Independent Transmission System Operator, Inc., et al.

Docket No. ER06–356, Midwest Independent Transmission System Operator, Inc.

Docket No. ER06–532, Midwest Independent Transmission System Operator, Inc.

Docket No. EL06–31, Midwest Independent Transmission System Operator, Inc., et al.

Docket No. EL06–49, Midwest Independent Transmission System Operator, Inc., et al.

Docket No. ER06–56, Midwest Independent Transmission System Operator, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Markets and reliability, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*, or Christopher Miller, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21050 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Southwest Power Pool Board of Directors/Members Committee Meetings and Southwest Power Pool Regional State Committee Meeting

December 4, 2006.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool (SPP) Board of Directors/Members Committee and SPP Regional State Committee noted below. Their attendance is part of the Commission's ongoing outreach efforts.

Board of Directors/Members Committee

December 12, 2006 (8 a.m.–3 p.m.) , DFW Airport Hyatt Regency, International Parkway, Dallas, Texas 75261, 972–453–1234.

SPP Regional State Committee

January 29, 2007 (1 p.m.–5 p.m.), Hilton Palacia Del Rio, The Pavilion, 200 South Alamo Street, San Antonio, Texas 78205, 210–222–1400.

Board of Directors/Members Committee

January 30, 2007 (8 a.m.–3 p.m.), Hilton Palacia Del Rio, The Pavilion, 200 South Alamo Street, San Antonio, Texas 78205, 210–222–1400.

The discussions may address matters at issue in the following proceedings:

Docket No. ER05–799, Southwest Power Pool, Inc.

Docket No. ER05–526, Southwest Power Pool, Inc.

Docket No. ER05–106, Entergy Services, Inc.

Docket No. ER05–1416, Southwest Power Pool, Inc.

Docket No. EL06–83, Southwest Power Pool, Inc.

Docket No. ER06–432, Southwest Power Pool, Inc.

Docket No. ER06–448, Southwest Power Pool, Inc.

Docket No. ER06–451, Southwest Power Pool, Inc.

Docket No. ER06–1047, Southwest Power Pool, Inc.

Docket No. ER06–729, Southwest Power Pool, Inc.

Docket No. ER06–767, Southwest Power Pool, Inc.
Docket No. ER06–1467, Southwest Power Pool, Inc.
Docket No. EC06–46, Southwest Power Pool, Inc.
Docket Nos. EL06–61 and EL06–71, Associated Electric Cooperative, Inc. v Southwest Power Pool
Docket No. ER06–1362, Southwest Power Pool, Inc.
Docket No. ER06–1232, Southwest Power Pool, Inc.
Docket No. ER07–14, Southwest Power Pool, Inc.
Docket No. ER07–200, Southwest Power Pool, Inc.
Docket No. ER07–211, Southwest Power Pool, Inc.

These meetings are open to the public.

For more information, contact John Rogers, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission at (202) 502–8564 or *john.rogers@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–21049 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP06–589–000, RP06–589–001, RP05–617–000]

Texas Gas Transmission, LLC; Notice of Technical Conference

December 6, 2006.

Take notice that the Commission will convene a technical conference on Tuesday, January 9, 2007, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

The technical conference will discuss the issues raised by Texas Gas Transmission, LLC's September 11, 2006 annual filing, as amended September 12, 2006, to adjust its Effective Fuel Retention Percentages pursuant to section 16 of the General Terms and Conditions of its tariff. The order establishing a technical conference was issued on October 31, 2006.[1]

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Joseph Dooley at (202) 502–8385 or e-mail *joseph.dooley@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21095 Filed 12–11–06; 8:45 am]

BILLING CODE 6717–01–P

[1] *Texas Gas Transmission*, LLC, 117 FERC ¶ 61,138 (2006).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0431; FRL–8254–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Lime Manufacturing (Renewal) EPA ICR Number 2072.03, OMB Control Number 2060–0544

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 11, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0431, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 21, 2006 (71 FR 35652), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number EPA–HQ–OECA–2006–0431, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW.,Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket Center is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.epa.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select docket search then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Lime Manufacturing (Renewal).

Numbers: EPA ICR Number 2072.03; OMB Control Number 2060–0544.

ICR Status: This ICR is scheduled to expire on January 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of

information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: These standards apply to owners or operators of each existing and new lime manufacturing plant (LMP) that emits or has the potential to emit any single hazardous air pollutant (HAP) at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year from all emission sources at the plant site. This subpart applies to each existing and new lime kilns and their associated coolers, and processed stone handling operations systems located at a LMP that is a major source. Owners or operators of such facilities must provide EPA, or the delegated state regulatory authority, with initial notifications, performance tests, and periodic reports. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction (SSM) in the operation of an affected facility, or any period during which the monitoring system is inoperative. The responses to this information collection are mandatory under Clean Air Act section 112 and 40 CFR part 63, subpart AAAAA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average approximately 99 hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Lime Manufacturing.

Estimated Number of Respondents: 44.

Frequency of Response: Initially, and semiannually.

Estimated Total Annual Hour Burden: 10,212.

Estimated Total Costs: $1,040,590, which includes $3,330 annualized Capital Start Up Costs, $170,624 annualized Operations & Maintenance (O & M) costs, and $866,636 annualized labor costs.

Changes in the Estimates: There is an increase of 2,446 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The increase in burden is due to the fact that initial compliance has been achieved and the initial costs to comply are different from the costs to comply continuously with the standard.

This increase is not due to any program change. Within the past three years, the respondents completed those activities required to achieve initial compliance. Such activities are more burdensome than the burden associated with the rule requirements for continuing compliance as addressed by this ICR.

Dated: December 4, 2006.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. E6–21103 Filed 12–11–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0450; FRL–8254–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Secondary Lead Smelter Industry (Renewal), EPA ICR Number 1686.06, OMB Control Number 2060–0296

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 11, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0450, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T , 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 21, 2006 (71 FR 35652), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2006–0450, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and

to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for the Secondary Lead Smelter Industry (Renewal).

ICR Numbers: EPA ICR Number 1686.06, OMB Control Number 2060–0296.

ICR Status: This ICR is scheduled to expire on December 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Secondary Lead Smelter Industry (40 CFR part 63, subpart X) were proposed on June 9, 1994 (59 FR 29750) and promulgated on June 23, 1995 (60 FR 32587). In response to industry petitions to reconsider, the final rule was amended on June 13, 1997 (62 FR 32209). Entities potentially affected by this rule are owners or operators of secondary lead smelters that operate furnaces to reduce scrap lead metal and lead compounds to elemental lead. The rule applies to secondary lead smelters that use blast, reverberatory, rotary, or electric smelting furnaces to recover lead metal from scrap lead, primarily from used lead-acid automotive-type batteries. These sources are emitters of several chemicals identified as hazardous air pollutants, including but not limited to lead compounds, arsenic compounds, and 1,3-butadiene. The rule provides protection to the public by requiring all secondary lead smelters to meet emission standards reflecting the application of the maximum achievable control technology (MACT). This information is being collected to assure compliance with 40 CFR part 63, subpart X.

Owners or operators of the affected facilities described must make one-time-only notifications including: Notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the initial performance test, including information necessary to determine the conditions of the performance test; and performance test measurements and results. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. Owners or operators must maintain records of initial and subsequent compliance tests for lead compounds, and identify the date, time, cause, and corrective actions taken for all bag leak detection alarms. Records of continuous monitoring devices, including parametric monitoring, must be maintained and reported semiannually. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the records for at least five years following the date of such measurements and records. At a minimum, records of the previous two years must be maintained on site.

Industry and EPA records indicate that 23 sources are subject to the standard, and no additional sources are expected to become subject to the standard over the next three years. However, we have assumed that one furnace will be rebuilt per year and that each facility will make a major adjustment once per year which will require revising its operational plan.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 229 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of secondary lead smelters.

Estimated Number of Respondents: 23.

Frequency of Response: Initially, on occasion, and semiannually.

Estimated Total Annual Hour Burden: 16,034 hours.

Estimated Total Costs: $1,125,913, which includes: $0 annualized Capital Start Up costs, $150,000 annualized Operating and Maintenance Costs (O&M), and $975,913 annualized labor costs.

Changes in the Estimates: There is no change in the labor hours or cost in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR are used in this ICR and there is no change in burden to industry.

Dated: December 4, 2006.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. E6–21114 Filed 12–11–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2006–0139; FRL–8254–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Pollutant Discharge Elimination System (NPDES) and Sewage Sludge Management State Program Requirements, EPA ICR Number 0168.09, OMB Control Number 2040–0057

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 11, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OW–2006–0139, to (1) EPA online using FDMS (our preferred method), by e-mail to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lynn Stabenfeldt, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202.564.0602; fax number: 202.501.2399; e-mail address: *stabenfeldt.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 7, 2006 (71 FR 11407–11411), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments on the draft ICR.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2006–0139, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through the Federal Docket Management System (FDMS) at *http://www.regulations.gov/.* Use FDMS to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in FDMS as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in FDMS. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in FDMS.

Title: National Pollutant Discharge Elimination System (NPDES) and Sewage Sludge Management State Program Requirements.

ICR Numbers: EPA ICR No. 0168.09. OMB Control No. 2040–0057.

ICR Status: This ICR is scheduled to expire on December 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Under the NPDES program, States, Federally Recognized Indian Tribes, and U.S. Territories, hereafter referred to as States, may acquire the authority to issue permits. These governments have the option of acquiring authority to issue general permits (permits that cover a category or categories of similar discharges). States with existing NPDES programs must submit requests for program modifications to add Federal facilities, or general permit authority. In addition, as Federal statutes and regulations are modified, States must submit program modifications to ensure that their program continues to meet Federal requirements. States have the option of obtaining a sludge management program. This program may be a component of a State NPDES Program, or it may be administered as a separate program. To obtain a NPDES or sludge program, a State must submit an application that includes a program description, an Attorney General's Statement, draft Memorandum of Agreement (MOA) with the EPA Region, and copies of the State's statutes and regulations. Once a State obtains authority for an NPDES or sludge program, it becomes responsible for implementing the program in that jurisdiction. The State must retain records on the permittees and perform inspections. In addition, when a State obtains NPDES or sludge authority, EPA must oversee the program. Thus, States must submit permit information and compliance reports to the EPA. When EPA issues a permit in an unauthorized State, that State must certify that the permit requirements comply with State water laws. According to the Clean Water Act (CWA) (section 510), States may adopt discharge requirements that are equal to or more stringent than requirements in the CWA or Federal regulations. There are three categories of reporting requirements that are covered by this ICR. The first category, ''State Program Requests,'' includes the activities States must complete to request a new NPDES or sludge program, or to modify an existing program. The second category, ''State Program Implementation,'' includes the activities that approved States must complete to implement an existing

program, such as certification of EPA-issued permits by non-NPDES States. The third category, ''State Program Oversight,'' includes activities required of NPDES States so that EPA may satisfy its statutory requirements for state program oversight. The information collected by EPA is used to evaluate the adequacy of a State's NPDES or sludge program and to provide EPA with the information necessary to fulfill its statutory oversight functions over State program performance and individual permit actions. EPA will use this information to evaluate State requests for full or partial program approval and program modifications. In order to evaluate the adequacy of a State's proposed program, appropriate information must be provided to ensure that proper procedures, regulations, and statutes are in place and consistent with the CWA requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 52 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States, Territories, and American Indian Tribal Entities.

Estimated Number of Respondents: 618.

Frequency of Response: Semi-annually, quarterly, on occasion, every 5 years, on-going.

Estimated Total Annual Hour Burden: 1,013,802 hours.

Estimated Total Annual Cost: $37,470,111, which includes $0 for capital or O&M.

Changes in the Estimates: The estimated increase in burden is 46,836 hours compared to the total estimated burden hours currently identified in the OMB Inventory of Approved ICR Burdens. This change is primarily the result of (1) EPA's continuous effort to improve the quality of data in its PCS database. This change may reflect more accurate data rather than a significant change in the number of permits actually administered. The total number of permits in PCS has decreased, but the number of major facilities has increased. (2) Changes and adjustments in the number and types of permits administered by the states and EPA under the NPDES program. Non-NPDES authorized states continue to apply for NPDES program and sludge program authorization, impacting recordkeeping and reporting, resulting in a shift of burden from Federal to State governments. (3) The shift toward the use of general permits to cover certain categories of dischargers, reducing the number of standard permits.

Dated: December 4, 2006.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. E6–21115 Filed 12–11–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2005–0023; FRL–8254–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Clean Water Act Section 404 State-Assumed Programs; EPA ICR No. 0220.10, OMB Control Number 2040–0168

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 11, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2005–0023, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *ow.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kathy Hurld, Office of Wetlands, Oceans, and Watersheds, Wetlands Division (4502T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: 202–566–1348; fax number: 202–566–1349; e-mail address: *hurld.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 11, 2006, (71 FR 39102), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2005–0023, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other

information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Clean Water Act Section 404 State-Assumed Programs.

ICR Numbers: EPA ICR No. 0220.10, OMB Control No. 2040–0168.

ICR Status: This ICR is scheduled to expire on January 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection request has three parts: A. Information needed for States or Tribes to request program assumption; B. Information needed from permit applicants; and C. Information included in the State or Tribe's annual report.

A. Section 404(g) of the Clean Water Act authorizes States [and Tribes] to assume the Section 404 permit program. States/Tribes must demonstrate that they meet the statutory and regulatory requirements (40 CFR part 233) for an approvable program. Specified information and documents must be submitted by the State/Tribe to EPA to request assumption. Once the required information and documents are submitted and EPA has a complete assumption request package, the statutory time clock for EPA's decision to either approve or deny the State/Tribe's assumption request starts. The information contained in the assumption request is made available to the other involved Federal agencies (Corps of Engineers, U.S. Fish and Wildlife Service, and National Marine Fisheries Service) and to the general public for review and comment. These minimum information requirements are based on the information that must be submitted when applying for a Section 404 permit from the Corps of Engineers. [33 CFR part 328].

B. States/Tribes must be able to issue permits that comply with the 404(b)(1) Guidelines, the environmental review criteria. States/Tribes and the reviewing Federal agencies must be able to review proposed projects to evaluate, avoid, minimize and compensate for anticipated impacts. EPA's assumption regulations establish recommended elements that should be included in the State/Tribe permit application, so that sufficient information is available to make a thorough analysis of anticipated impacts. These minimum information requirements are based on the information that must be submitted when applying for a Section 404 permit from the Corps of Engineers (CWA Section 404(h)(1)(A)(i) and Section 404(j) and 40 CFR 230.10, 233.20, 233.21, 233.34, and 233.50) (33 CFR 325.1).

C. EPA is responsible for oversight of assumed programs to ensure that State/Tribal programs are in compliance with applicable requirements and that State/Tribal permit decisions adequately consider, avoid, minimize and compensate for anticipated impacts. States/Tribes must evaluate their programs annually and submit the results in a report to EPA. EPA's assumption regulations establish minimum requirements for the annual report (40 CFR 233.52).

If a State or Tribe chooses to assume the CWA Section 404 Program, the information collected during the approval process is required and the reporting requirements for each permit and the annual report are mandatory (CWA Section 404(h)(1)(A)(i) and Section 404(j) and 40 CFR 230.10, 233.20, 233.21, 233.34, and 233.50) (33 CFR 325.1). The nature and extent of confidentiality is addressed in Section 404(o) of the Clean Water Act which requires that all permits and permit applications under this section be made available to the public.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is listed below. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States and Tribes.

Estimated Number of Respondents: 2 States/Tribes to request assumption; 20,000 permit applicants; and 4 States/Tribes to submit annual report to EPA.

Frequency of Response: One time when requesting assumption; one time when filing a permit; and annually for program annual report (once the program is assumed).

Estimated Total Annual Hour Burden: 101,360 hours.

Estimated Total Annual Cost: There are no capital or O&M costs associated with this collection.

Dated: December 4, 2006.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. E6–21116 Filed 12–11–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8253–9]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 128(a); Notice of Grant Funding Guidance for State and Tribal Response Programs

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will begin to accept requests, from December 15, 2006 through February 15, 2007, for grants to supplement State and Tribal Response Programs. This notice provides guidance on eligibility for funding, use of funding, grant mechanisms and process for awarding funding, the allocation system for distribution of funding, and terms and reporting under these grants. EPA has consulted with state and tribal officials in developing this guidance.

The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and a public record. Another goal is to provide funding for other activities that increase the number of response actions conducted or overseen by a state or tribal response program. This funding is not intended to supplant current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response capacity.

For fiscal year 2007, EPA will consider funding requests up to a

maximum of $1.5 million per state or tribe. Subject to the availability of funds, EPA regional personnel will be available to provide technical assistance to states and tribes as they apply for and carry out these grants.

DATES: This action is effective as of December 15, 2006. EPA expects to make non-competitive grant awards to states and tribes which apply during fiscal year 2007.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters can be located at *http://www.epa.gov/brownfields.*

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

SUPPLEMENTARY INFORMATION: The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, by adding Section 128(a). Section 128(a) authorizes a $50 million grant program [1] to establish and enhance state [2] and tribal [3] response programs. Generally, these response programs address the assessment, cleanup and redevelopment of brownfields sites and other contaminated sites. Section 128(a) grants will be awarded and administered by U.S. Environmental Protection Agency regional offices. This document provides guidance that will enable states and tribes to apply for and use Section 128(a) funds in Fiscal Year 2007.

State and tribal response programs oversee assessment and cleanup activities at the majority of brownfield sites across the country. The depth and breadth of state and tribal response programs vary. Some focus solely on CERCLA related activities, while others are multi-faceted, for example, addressing sites regulated by both CERCLA and the Resource Conservation and Recovery Act (RCRA). Many state programs also offer accompanying financial incentive programs to spur cleanup and redevelopment. In passing Section 128(a),[4] Congress recognized the accomplishments of state and tribal response programs in cleaning up and redeveloping brownfield sites. Section 128(a) also provides EPA with an opportunity to strengthen its partnership with states and tribes.

The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and a ''public record.'' The secondary goal is to provide funding for other activities that increase the number of response actions conducted or overseen by a state or tribal response program. This funding is not intended to supplant current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response program's capacity. Subject to the availability of funds, EPA will be available to provide technical assistance to states and tribes as they apply for and carry out Section 128(a) grants.

Eligibility for Funding

To be eligible for funding under CERCLA Section 128(a), a state or tribe must: demonstrate that their response program includes, or is taking reasonable steps to include, the four elements of a response program, described below; *or* be a party to voluntary response program Memorandum of Agreement (VRP MOA)[5] with EPA;

and

maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year, see CERCLA Section 128(b)(1)(C).

Matching Funds/Cost-Share

States and tribes are not required to provide matching funds for cooperative agreements awarded under Section 128(a), with the exception of the Section 128(a) funds a state or tribe uses to capitalize a Brownfields Revolving Loan Fund under CERCLA Section 104(k)(3).

The Four Elements—Section 128(a)

Section 128(a) recipients that do not have a VRP MOA with EPA must demonstrate that their response program includes, or is taking reasonable steps to include, four elements. Achievement of the four elements should be viewed as a priority. Section 128(a) authorizes funding for activities necessary to establish and enhance the four elements and to establish and maintain the public record requirement.

Generally, the four elements are: *Timely survey and inventory of brownfields sites in state or tribal land.* EPA's goal in funding activities under this element is to enable the state or tribe to establish or enhance a system or process that will provide a reasonable estimate of the number, likely locations, and the general characteristics of brownfields sites in their state or tribal lands.

EPA recognizes the varied scope of state and tribal response programs and will not require states and tribes to develop a ''list'' of brownfields sites. However, at a minimum, the state or tribe should develop and/or maintain a system or process that can provide a reasonable estimate of the number, likely location, and general characteristics of brownfields sites within their state or tribal lands.

Given funding limitations, EPA will negotiate work plans with states and tribes to achieve this goal efficiently and effectively, and within a realistic time frame. For example, many of EPA's Brownfields Assessment cooperative agreement recipients conduct inventories of brownfields sites in their communities or jurisdictions. EPA encourages states and tribes to work with these cooperative agreement recipients to obtain the information that they have gathered and include it in their survey and inventory.

Oversight and enforcement authorities or other mechanisms and resources. EPA's goal in funding activities under this element is to have state and tribal response programs that include oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that:

a response action will protect human health and the environment and be conducted in accordance with applicable federal and state law; and the necessary response activities are completed if the person conducting the response activities fails to complete the necessary response activities (this includes operation and maintenance or long-term monitoring activities).

Mechanisms and resources to provide meaningful opportunities for public participation.[6] EPA's goal in funding

[1] The Catalogue of Federal Domestic Assistance entry for the Section 128(a) State and Tribal Response Programs grant program is 66.817.

[2] The term ''state'' is defined in this document as defined in CERCLA Section 101(27).

[3] The term ''Indian tribe'' is defined in this document as it is defined in CERCLA Section 101(36). Intertribal consortia, as defined in the **Federal Register** notice at 67 FR 67181, are also eligible for funding under CERCLA Section 128(a).

[4] The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends CERCLA by adding Section 128(a).

[5] The legislative history of SBLRBRA indicates that Congress intended to encourage states and Tribes to enter into MOAs for their voluntary response programs. States or tribes that are parties to VRP MOAs and that maintain and make available a public record are automatically eligible for Section 128(a) funding.

[6] States and tribes establishing this element may find useful information on public participation on EPA's community involvement Web site at *http://*

activities under this element is to have states and tribes include in their response program mechanisms and resources for public participation, including, at a minimum: Public access to documents and related materials that a state, tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;

Prior notice and opportunity for public comment on cleanup plans and site activity; and

A mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site—located in the community in which the person works or resides—may request that a site assessment be conducted. The appropriate state or tribal official must consider this request and appropriately respond.

Mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete. EPA's goal in funding activities under this element is to have states and tribes include in their response program mechanisms to approve cleanup plans and to verify that response actions are complete, including a requirement for certification or similar documentation from the state, the tribe, or a licensed site professional to the person conducting the response action that the response action is complete. Written approval by a state or tribal response program official of a proposed cleanup plan is an example of an approval mechanism.

Public Record Requirement

In order to be eligible for Section 128(a) funding, states and tribes (including those with MOAs) must establish and maintain a public record system, described below, in order to receive funds. Specifically, under Section 128(b)(1)(C), states and tribes must:

Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions have been completed during the previous year;

Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions are planned to be addressed in the next year; and

Identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy.

www.epa.gov/superfund/action/community/index.htm.

Section 128(a) funds may be used to maintain and make available a public record system that meets the requirements discussed above.

Distinguishing the ''survey and inventory'' element from the ''public record.'' It is important to note that the public record requirement differs from the ''timely survey and inventory'' element described in the ''Four Elements'' section above. The public record addresses sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year. In contrast, the ''timely survey and inventory'' element, described above, refers to a general approach to identifying brownfields sites.

Making the public record easily accessible. EPA's goal is to enable states and tribes to make the public record and other information, such as information from the ''survey and inventory'' element, easily accessible. For this reason, EPA will allow states and tribes to use Section 128(a) funding to make the public record, as well as other information, such as information from the ''survey and inventory'' element, available to the public via the Internet or other means. For example, the Agency would support funding state and tribal efforts to include detailed location information in the public record such as the street address and latitude and longitude information for each site.[7] A state or tribe may also choose to use the Section 128(a) funds to make their survey and inventory information available on the Internet as well.

In an effort to reduce cooperative agreement reporting requirements and increase public access to the public record, EPA encourages states and tribes to place their public record on the internet. If a state or tribe places the public record on the internet, maintains the substantive requirements of the public record, and provides EPA with the link to that site, EPA will, for purposes of cooperative agreement funding only, deem the public record reporting requirement met.

Long-term maintenance of the public record. EPA encourages states and tribes to maintain public record information, including data on institutional controls, on a long term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, states or tribes may include development and operation of systems that ensure long term maintenance of the public record, including information on institutional controls, in their work plans.[8]

Use of Funding

Overview

Section 128(a)(1)(B) describes the eligible uses of cooperative agreement funds by states and tribes. In general, a state or tribe may use a cooperative agreement to ''establish or enhance'' their response programs, including elements of the response program that include activities related to responses at brownfields sites with petroleum contamination. Eligible activities include, but are not limited to, the following:

Develop legislation, regulations, procedures, ordinances, guidance, etc. that would establish or enhance the administrative and legal structure of their response programs;

Establish and maintain the required public record described above. EPA considers activities related to maintaining and monitoring institutional controls to be eligible costs under Section 128(a); or

Conduct limited site-specific activities, such as assessment or cleanup, provided such activities establish and/or enhance the response program and are tied to the four elements.

Capitalize a revolving loan fund (RLF) for brownfields cleanup under CERCLA Section 104(k)(3). These RLFs are subject to the same statutory requirements and cooperative agreement terms and conditions applicable to RLFs awarded under Section 104(k)(3). Requirements include a 20% match on the amount of Section 128(a) funds used for the RLF, a prohibition on using EPA cooperative agreement funds for administrative costs relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under Section 107 of CERCLA. Other prohibitions contained in CERCLA Section 104(k)(4) also apply;

Purchase environmental insurance or develop a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program;

Uses Related to ''Establishing'' a State or Tribal Response Program

Under CERCLA Section 128(a), ''establish'' includes activities necessary to build the foundation for the four elements of a state or tribal response program and the public record requirement. For example, a state or tribal response program may use Section 128(a) funds to develop regulations, ordinances, procedures, or guidance.

[7] For further information on latitude and longitude information, please see EPA's data standards Web site available at *http://oaspub.epa.gov/edr/epastd$.startup.*

[8] States and tribes may find useful information on institutional controls on EPA's institutional controls Web site at *http://www.epa.gov/superfund/action/ic/index.htm.*

For more developed state or tribal response programs, establish may also include activities that keep their program at a level that meets the four elements and maintains a public record required as a condition of funding under CERCLA Section 128(b)(1)(C).

Uses Related to ''Enhancing'' a State or Tribal Response Program

Under CERCLA Section 128(a), ''enhance'' is related to activities that add to or improve a state or tribal response program or increase the number of sites at which response actions are conducted under a state or tribal response program.

The exact ''enhancement'' uses that may be allowable depend upon the work plan negotiated between the EPA regional office and the state or tribe. For example, regional offices and states or tribes may agree that Section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program, and improving the skills of program staff. It may also include developing better coordination and understanding of other state response programs, e.g., RCRA or USTs. Other ''enhancement'' uses may be allowable as well.

Uses Related to Site-Specific Activities

States and tribes may use Section 128(a) funds for activities that improve state or tribal capacity to increase the number of sites at which response actions are conducted under the state or tribal response program.

Eligible uses of funds include, but are not limited to, site-specific activities such as:

- Conducting assessments or cleanups at *brownfields* sites (see next section for additional information);
- Oversight of response action;
- Technical assistance to federal brownfields cooperative agreement recipients;
- Development and/or review of site-specific quality assurance project plans (QAPPs);
- Preparation and submission of Property Profile Forms; and
- Auditing site cleanups to verify the completion of the cleanup.

Uses Related to Site-Specific Assessment and Cleanup Activities

Site-specific assessment and cleanup activities should establish and/or enhance the response program and be tied to the four elements. Site-specific assessments and cleanups must comply with all applicable Federal and State laws and are subject to the following restrictions:

- Section 128(a) funds can only be used for assessments or cleanups at sites that meet the definition of a brownfields site at CERCLA Section 101(39).
- No more than $200,000 per site can be funded for assessments with Section 128(a) funds, and no more than $200,000 per site can be funded for cleanups with Section 128(a) funds.
- Absent EPA approval, the state/tribe may not use funds awarded under this agreement to assess and clean up sites owned by the recipient.

Assessments and cleanups cannot be conducted at sites where the state/tribe is a potentially responsible party pursuant to CERCLA Section 107, except:

at brownfields sites contaminated by a controlled substance as defined in CERCLA Section 101(39)(D)(ii)(I); or when the recipient would satisfy all of the elements set forth in CERCLA Section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was on or before January 11, 2002.

Subgrants cannot be provided to entities that may be potentially responsible parties (pursuant to CERCLA Section 107) at the site for which the assessment or cleanup activities are proposed to be conducted.

Costs Incurred for Activities at ''Non-brownfields'' Sites

Costs incurred for activities at non-brownfields sites, *e.g.*, oversight, may be eligible and allowable if such activities are included in the state's or tribe's work plan. For example, auditing completed site cleanups in jurisdictions where states or tribes use licensed site professionals, to verify that sites have been properly cleaned up, may be an eligible cost under Section 128(a). These costs need not be incurred in connection with a brownfields site to be eligible, but must be authorized under the state's or tribe's work plan to be allowable. Other uses may be eligible and allowable as well, depending upon the work plan negotiated between the EPA regional office and the state or tribe. However, assessment and cleanup activities may only be conducted on eligible brownfields sites, as defined in CERCLA Section 101(39).

Uses Related to Site-Specific Activities at Petroleum Brownfields Sites

States and tribes may use Section 128(a) funds for activities that establish and enhance their response programs, even if their response programs address petroleum contamination. Also, the costs of site-specific activities, such as site assessments or cleanup at petroleum contaminated brownfields sites, defined at CERCLA Section 101(39)(D)(ii)(II), are eligible and are allowable if the activity is included in the work plan negotiated between the EPA regional office and the state or tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfields sites contaminated by petroleum to the extent allowed under the CERCLA Section 104(k)(3) RLF program.

General Programmatic Guidelines For 128(a) Grant Funding Requests

Funding authorized under CERCLA Section 128(a) is awarded through a cooperative agreement [9] with a state or tribe. The program is administered under the general EPA grant and cooperative agreement regulations for states, tribes, and local governments found in the Code of Federal Regulations at 40 CFR part 31. Under these regulations, the cooperative agreement recipient for Section 128(a) grant program is the government to which a cooperative agreement is awarded and which is accountable for the use of the funds provided. The cooperative agreement recipient is the entire legal entity even if only a particular component of the entity is designated in the cooperative agreement award document.

One application per state or tribe. Subject to the availability of funds, EPA regional offices will negotiate and enter into Section 128(a) cooperative agreements with eligible and interested states or tribes. *EPA will accept only one application from each eligible state or tribe.*

Define the State or Tribal Response Program. States and tribes must define in their work plan the ''Section 128(a) response program(s)'' to which the funds will be applied, and may designate a component of the state or tribe that will be EPA's primary point of contact for negotiations on their proposed work plan. When EPA funds the Section 128(a) cooperative agreement, states and tribes may distribute these funds among the appropriate state and tribal agencies that are part of the Section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

Separate cooperative agreements for the capitalization of RLFs using Section 128(a) funds. If a portion of the Section 128(a) grant funds requested will be used to capitalize a revolving loan fund

[9] A cooperative agreement is an assistance agreement to a state or a tribe that includes substantial involvement of EPA regional enforcement and program staff during performance of activities described in the cooperative agreement work plna. Examples of this involvement include technical assistance and collaboration on program development and site-specific.

for cleanup, pursuant to 104(k)(3), two separate cooperative agreements must be awarded, i.e., one for the RLF and one for non-RLF uses. States and tribes may, however, submit one initial request for funding, delineating the RLF as a proposed use. Section 128(a) funds used to capitalize an RLF are not eligible for inclusion into a Performance Partnership Grant (PPG).

Authority to Manage a Revolving Loan Fund Program. If a state or tribes chooses to use its Section 128(a) funds to capitalize a revolving loan fund program, the state or tribe must have the authority to manage the program, e.g., issue loans. If the agency/department listed as the point of contact for the 128(a) cooperative agreement does not have this authority, it must be able to demonstrate that another state or tribal agency does have the authority to manage the RLF and is willing to do so.

Section 128(a) cooperative agreements are eligible for inclusion in the Performance Partnership Grant (PPG). States and tribes may include Section 128(a) cooperative agreements in their PPG. 69 FR 51756 (2004). Section 128(a) funds used to capitalize an RLF are not eligible for inclusion in the PPG.

Project Period. EPA regional offices will determine the project period for each cooperative agreement. These may be for multiple years depending on the regional office's cooperative agreement policies. Each cooperative agreement must have an annual budget period tied to an annual work plan.

Demonstrating the Four Elements. As part of the annual work plan negotiation process, states or tribes that do *not* have VRP MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described above. EPA will not fund, in future years, state or tribal response program annual work plans if EPA determines that these requirements are not met or reasonable progress is not being made. EPA may base this determination on the information the state or tribe provides to support its work plan, or on EPA's review of the state or tribal response program.

Establishing and Maintaining the Public Record. Prior to funding a state's or tribe's annual work plan, EPA regional offices will verify and document that a public record, as described above, exists and is being maintained.[10]

• *States or tribes that received initial funding in FY03, FY04, and FY05:* Requests for FY07 funds will *not* be accepted from states or tribes that fail to demonstrate, by the February 15, 2007 request deadline, that they established and are maintaining a public record.

(Note , this would potentially impact any state or tribe that had a term and condition placed on their FY06 cooperative agreement that prohibited drawdown of FY06 funds prior to meeting public record requirement.) States or tribes in this situation will not be prevented from drawing down their prior year funds, once the public record requirement is met, but will be restricted from applying for FY07 funding.

• *States or Tribes that received initial funding in FY06:* by the time of the actual FY07 award, the state or tribe must demonstrate that they established and maintained the public record (those states and tribes that do not meet this requirement will have a term and condition placed on their FY07 cooperative agreement that prevents the drawdown of FY07 funds until the public record requirement is met).

• *Recipients receiving funds for the first time in FY07:* these recipients have one year to meet this requirement and may utilize the Section 128(a) cooperative agreement funds to do so.

Demonstration of Significant Utilization of Prior Years Funding

During the allocation process, EPA headquarters places significant emphasis on the utilization of prior years' funding. When submitting your request for FY07 funds, the following information must be submitted:

• For those states and tribes with Superfund VCP Core or Targeted Brownfields Assessment cooperative agreements awarded under CERCLA Section 104(d), you must provide, by agreement number, the amount of funds that have not been requested for reimbursement (i.e., those funds that remain in EPA's Financial Data Warehouse) and must provide a detailed explanation and justification for why such funds should not be considered in the funding allocation process.

• For those states and tribes that received FY03, FY04, and/or FY05 Section 128 funds, you must provide the amount of FY03, FY04, and FY05 funds that have not been requested for reimbursement (i.e, those funds that remain in EPA's Financial Data Warehouse) and must provide a detailed explanation and justification for why such funds should not be considered in the funding allocation process.

Note: EPA Regional staff will review EPA's Financial Database Warehouse to confirm the amount of outstanding funds reported. It is strongly recommended that you work with your regional counterpart to determine the amount of funds ''outstanding.'' In making this determination, EPA will take into account those funds that have been committed through an appropriate state or tribal contract, inter-agency agreement, or similar type of binding agreement, but have not been requested for reimbursement, *i.e.*, that are not showing as ''drawn down'' in EPA's Data Warehouse.

Demonstration of Need To Receive Funds Above the FY06 Funding Distribution. Due to the limited amount of funding available, recipients must demonstrate a specific need when requesting an amount above the amount allocated to the state or tribe in FY06.

Allocation System and Process for Distribution of Fund

EPA regional offices will work with interested states and tribes to develop their preliminary work plans and funding requests. Final cooperative agreement work plans and budgets will be negotiated with the regional office once final allocation determinations are made.

For Fiscal Year 2007, EPA will consider funding requests up to a maximum of $1.5 million per state or tribe. This limit may be changed in future years based on appropriation amounts and demand for funding.

EPA will target funding of at least $3 million per year for tribal response programs. If this funding is not used, it will be carried over and added to at least $3 million in the next fiscal year. It is expected that the funding demand from tribes will increase through the life of this cooperative agreement program and this funding allocation system should ensure that adequate funding for tribal response programs is available in future years.

After the February 15, 2007 deadline, regional offices will submit summaries of state and tribal requests to EPA headquarters. Before submitting requests to EPA headquarters, regional offices may take into account additional factors when determining recommended allocation amounts. Such factors include, but are not limited to, the depth and breadth of the state or tribal program; scope of the perceived need for the funding, e.g., size of state or tribal jurisdiction or the proposed work plan balanced against capacity of the program, amount of prior funding, and funds remaining from prior years, etc.

After receipt of the regional recommendations, EPA headquarters will consolidate requests and allocate funds accordingly.

Information To Be Submitted With the Funding Request

States and tribes requesting 128 FY07 funds *must submit the following*

[10] For purposes of cooperative agreement funding, the state's or tribe's public record applies to that state's or tribe's response program(s) that utilized the Section 128(a) funding.

information, as applicable, to their regional contact on or before February 15, 2007 (regions may request additional information, as needed):

• For those states and tribes with prior Superfund VCP Core or Targeted Brownfields funding awarded under CERCLA Section 104(d), provide, by agreement number, the amount of funds that have not been requested for reimbursement (i.e., those funds that remain in EPA's Financial Data Warehouse) and a detailed explanation and justification for why such funds should not be considered in the funding allocation process.

• For those states and tribes that received an allocation of FY03, '04, and/or '05 128 funds, provide the amount of FY03, '04, and/or '05 funds that have not been requested for reimbursement (i.e, those funds that remain in EPA's Financial Data Warehouse) and a detailed explanation and justification for why such funds should not be considered in the funding allocation process.

• For those states and tribes requesting amounts above their FY06 allocation, provide an explanation of the specific need(s) that triggered the request for increased funding.

• All states and tribes requesting FY07 funds must submit a summary of the planned use of the funds with associated dollar amounts. Please provide it in the following format, if possible:

Funding use	Requested	Summary of intended use
"Establish or Enhance" the four elements ..	$XX,XXX	(EXAMPLE USES) • Develop a community involvement process. • Fund an outreach coordinator. • Develop/enhance ordinances, regulations, procedures for response programs. • issue public notices of site activities. • review cleanup plans and verify completed actions.
Establish and Maintain the Public Record ..	$XX,XXX	(EXAMPLE USES) • maintain public record. • create web site for public record. • disseminate public information on how to access the public record.
"Enhance the Response Program or Cleanup Capacity".	$XX,XXX	(EXAMPLE USES) • hire additional staff for oversight of brownfields cleanups. • attend training and conferences on brownfields cleanup technologies & other brownfields topics. • perform program management activities. • negotiate/manage contracts for response programs. • enhance program management & tracking systems.
Site-specific Activities	$XX,XXX	(EXAMPLE USES) • perform 10 site assessments in rural communities • negotiate brownfields agreements/voluntary cleanup contracts • provide technical assistance to federal brownfields cooperative agreement recipients • develop and/or review QAPPs • conduct cleanup activities at brownfields sites • prepare Property Profile Forms
Environmental Insurance	$XX,XXX	(EXAMPLE USES) • review potential uses of environmental insurance
Revolving Loan Fund	$XX,XXX	(EXAMPLE USES) • create a cleanup revolving loan fund
Total Funding Requested	$XXX,XXX	

Terms and Reporting

Cooperative agreements for state and tribal response programs will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement including technical assistance and collaboration on program development and site-specific activities.

Progress Reports. In accordance with 40 CFR 31.40, state and tribes must provide progress reports as provided in the terms and conditions of the cooperative agreement negotiated with EPA regional offices. State and tribal costs for complying with reporting requirements are an eligible expense under the Section 128(a) cooperative agreement. As a minimum, state or tribal progress reports must include both a narrative discussion and performance data relating to the state's or tribe's accomplishments and environmental outputs associated with the approved budget and workplan and should provide an accounting of Section 128(a) funding. If applicable, the state or tribe must include information on activities related to establishing or enhancing the four elements of the state's or tribe's response program. All recipients must provide information relating to establishing or, if already established, maintaining the public record.

Reporting Requirements. Depending upon the activities included in the state's or tribe's work plan, an EPA regional office may request that a progress report include:

Information related to the public record. All recipients must report information related to establishing or, if already established, maintaining the public record, described above. States and tribes can refer to an already existing public record, *e.g.*, Web site or other public database to meet this requirement.

For the purposes of cooperative agreement funding only, and depending upon the activities included in the state or tribe's work plan, this *may* include: A list of sites at which response actions have been completed including:

• Date the response action was completed.

• Site name.

• The name of owner at time of cleanup, if known.

• Location of the site (street address, and latitude and longitude).

• Whether an institutional control is in place;

• Explain the type of the institutional control in place (e.g., deed restriction, zoning restriction, local ordinance, state

registries of contaminated property, deed notices, advisories, etc.)

• Nature of the contamination at the site (e.g., hazardous substances, contaminants, or pollutants, petroleum contamination, etc.).

• Size of the site in acres

A list of sites planned to be addressed by the state or tribal response program including:

• Site name and the name of owner at time of cleanup, if known.

• Location of the site (street address, and latitude and longitude).

• To the extent known, whether an institutional control is in place;

• Explain the type of the institutional control in place (*e.g.*, deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.)

• To the extent known, the nature of the contamination at the site (e.g., hazardous substances, contaminants, or pollutants, petroleum contamination, etc.)

• Size of the site in acres

Reporting environmental insurance. Recipients with work plans that include funding for environmental insurance must report:

• Number and description of insurance policies purchased (e.g., type of coverage provided; dollar limits of coverage; category and identity of insured persons; premium; first dollar or umbrella; site specific or blanket; occurrence or claims made, etc.)

• The number of sites covered by the insurance

• The amount of funds spent on environmental insurance (e.g., amount dedicated to insurance program, or to insurance premiums) and the amount of claims paid by insurers to policy holders

Reporting for site-specific assessment or cleanup activities. Recipients with work plans that include funding for brownfields site assessment or cleanup must complete the OMB-approved Property Profile Form for each site assessment and cleanup.

Reporting for other site-specific activities. Recipients with work plans that include funding for other site-specific related activities must include a description of the site-specific activities and the number of sites at which the activity was conducted. For example:

• Number and frequency of oversight audits of licensed site professional certified cleanups

• Number and frequency of state/tribal oversight audits conducted

• Number of sites where staff conducted audits, provided technical assistance, or conducted other oversight activities

• Number of staff conducting oversight audits, providing technical assistance, or conducting other oversight activities

Reporting for RLF uses. Recipients with work plans that include funding for Revolving Loan Fund (RLF) must include the information required by the terms and conditions for progress reporting under CERCLA Section 104(k)(3) RLF cooperative agreements.

Reporting for Non-MOA states and tribes. All recipients *without* a VRP MOA must report activities related to establishing or enhancing the four elements of the state's or tribe's response program. For each element state/tribes must report how they are maintaining the element or how they are taking reasonable steps to establish or enhance the element as negotiated in individual state/tribal work plans. For example, pursuant to CERCLA Section 128(a)(2)(B), reports on the oversight and enforcement authorities/mechanisms element may include:

• A narrative description and copies of applicable documents developed or under development to enable the response program to conduct enforcement and oversight at sites. For example:

○ Legal authorities and mechanisms (e.g., statutes, regulations, orders, agreements);

○ Policies and procedures to implement legal authorities; and other mechanisms;

• A description of the resources and staff allocated/to be allocated to the response program to conduct oversight and enforcement at sites as a result of the cooperative agreement;

• A narrative description of how these authorities or other mechanisms, and resources, are adequate to ensure that:

○ A response action will protect human health and the environment; and be conducted in accordance with applicable Federal and State law; and if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed; and

• A narrative description and copy of appropriate documents demonstrating the exercise of oversight and enforcement authorities by the response program at a brownfields site.

Where applicable, EPA may require states/tribes to report specific performance measures related to the four elements which can be aggregated for national reporting to Congress.

The regional offices may also request other information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan.

EPA regions may allow states or tribes to provide performance data in appropriate electronic format. The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of CERCLA Section 128(a) funding to states and tribes.

Dated: November 29, 2006.

David R. Lloyd,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. E6–21102 Filed 12–11–06; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

Date and Time: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 14, 2006, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

• September 21, 2006 (Regular Meeting).

B. Business Reports

• September 30, 2006 Financial Reports.

• Report on Insured and Other Obligations.

• Quarterly Report on Annual Performance Plan.

C. New Business

• Policy on Internal Controls and Audit Coverage and the Audit Charter.

• Civil Money Penalties for Inflation.

Closed Session

• Confidential Report on System Performance.

• Audit Plan for the Year Ended December 31, 2006.

Dated: December 6, 2006.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. E6–21120 Filed 12–11–06; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 27, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Geffrey A. Sawtelle, Neshkoro, Wisconsin; to acquire at least 25 percent of the voting shares of FEB Bancshares, Inc., Neshkoro, Wisconsin, and thereby indirectly acquire voting shares of Farmers Exchange Bank, Neshkoro, Wisconsin.

Board of Governors of the Federal Reserve System, December 6, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–21036 Filed 12–11–06; 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 January 5, 2007.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Atlantic Southern Financial Group, Inc., Macon, Georgia; to acquire 100 percent of the voting shares of First Community Bank of Georgia, Roberta, Georgia.

Board of Governors of the Federal Reserve System, December 6, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–21035 Filed 12–11–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *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 January 5, 2007.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. 1895 MHC and 1895 Corp., both of Worcester, Massachusetts; to become bank holding companies by acquiring 100 percent of the voting shares of Bay State Savings Bank, Worcester, Massachusetts.

2. Danvers Bancorp, Inc., Danvers, Massachusetts; to acquire 100 percent of the voting shares of BankMalden Cooperative Bank, Malden, Massachusetts.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First State Bancorporation, Albuquerque, New Mexico; to acquire 100 percent of the voting shares of Front Range Capital Corporation, and thereby indirectly acquire voting shares of Heritage Bank, both in Louisville, Colorado.

Board of Governors of the Federal Reserve System, December 7, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–21042 Filed 12–11–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP), NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Announcement of an Independent Scientific Peer Review Meeting on the Use of In Vitro Pyrogenicity Testing Methods; Request for Comments

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Meeting announcement and request for comments.

SUMMARY: NICEATM in collaboration with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) announces an independent scientific peer review meeting to evaluate the validation status of five in vitro pyrogenicity test methods: (1) Human PBMC/IL–6 *in vitro* pyrogen test (PBMC/IL–6), (2) human whole blood/IL–1 *in vitro* pyrogen test (WB/IL–1), (3) human whole blood/IL–1 *in vitro* pyrogen test: application of cryopreserved human whole blood (cryo WB/IL–1), (4) the human whole blood/IL–6 *in vitro* pyrogen test (WB/IL–6), and (5) an alternative *in vitro* pyrogen test using the human monocytoid cell line MONO MAC–6 (MM6/IL6). These five *in vitro* test methods are proposed as replacements for the in vivo rabbit pyrogen test (RPT). At this meeting, a scientific panel will peer review the draft background review document (BRD) on each test method, evaluate the extent that the BRD addresses established validation and acceptance criteria for each test method, and provide comment on draft ICCVAM recommendations on the proposed use of these test methods, draft test method protocols, and draft performance standards. NICEATM invites public comments on the draft BRDs, draft ICCVAM test method recommendations, draft test method protocols, and draft performance standards.

DATES: The meeting will be held on February 6, 2007, from 8:30 a.m. to 5 p.m. The meeting is open to the public with attendance limited only by the space available. In order to facilitate planning for this meeting, persons wishing to attend are asked to register by January 23, 2007, via the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov*). Comments should be sent by mail, fax, or email to the address given below by January 26, 2007.

ADDRESSES: The meeting will be held at the National Institutes of Health (NIH), Natcher Conference Center, 45 Center Drive, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, Director of NICEATM, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC, 27709, (phone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov*. Courier address: NICEATM, 79 T.W. Alexander Drive, Building 4401, Room 3128, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

Background

The European Centre for the Validation of Alternative Methods (ECVAM) conducted a validation study to independently evaluate the usefulness and limitations of five *in vitro* pyrogenicity test methods (PBMC/IL–6, WB/IL–1, cryo WB/IL–1, WB/IL–6, and MM6/IL6). In June 2005, ECVAM submitted BRDs for these five methods to NICEATM for consideration as replacements for the currently required test, the RPT. ICCVAM and NICEATM reviewed the BRDs for completeness and concluded that these five *in vitro* test methods appear to have considerable potential for pyrogenicity testing, but that the sponsor needed to provide additional information prior to a formal scientific review by an expert panel. In anticipation of proceeding with an evaluation of these test methods, ICCVAM and NICEATM requested public comments as to the appropriateness and relative priority of a panel review activity and the nomination of scientists with relevant knowledge and experience to potentially serve on the panel (**Federal Register** Vol. 70, No. 241, pp. 74833–4, December 16, 2005). NICEATM also requested submission of data using the standard in vivo rabbit pyrogen test, the bacterial endotoxin test (BET), and *in vitro* pyrogenicity tests. These requests were sent directly to over 100 interested stakeholders; no additional data were received.

In March 2006, ECVAM responded to the ICCVAM/NICEATM request for information by providing a revised BRD for each test method. ICCVAM and NICEATM drafted a BRD that combines all of the available information on the five *in vitro* pyrogenicity test methods into a single document and includes each of the ECVAM BRDs as an appendix. Based on this information, ICCVAM developed draft test method recommendations regarding the proposed usefulness, limitations, and validation status of these test methods. ICCVAM subsequently recommended that an independent scientific panel be convened to (1) peer review the draft BRD for the test methods and (2) determine whether the data and analyses in the draft BRDs support the draft ICCVAM test method recommendations. The panel will also be asked to comment on the adequacy of the draft recommended performance standards, proposed future validation studies, draft standardized test method protocols, and recommended reference substances. In making their conclusions and recommendations, NICEATM will ask the panel to consider all available information including the scientific studies cited in the draft BRD, public comments, and any new information identified during the peer review.

Peer Review Panel Meeting

The purpose of this meeting is the scientific peer review evaluation of the validation status of five *in vitro* pyrogenicity test methods as replacements for the RPT. First, the panel will review the draft BRD on the current status of five in vitro test methods for the detection of pyrogenicity and evaluate the extent that established validation and acceptance criteria are addressed for each test method (Validation and Regulatory Acceptance of Toxicological Test Methods: A Report of the ad hoc Interagency Coordinating Committee on the Validation of Alternative Methods, NIH Publication No. 97–981, *http://iccvam.niehs.nih.gov*). Next, the panel will comment on the extent to which the ICCVAM recommendations are supported by the information provided in the BRD and on the proposed use of these test methods, draft test method protocols, draft performance standards, and any proposed validation studies.

Information about the panel meeting, including a roster of the panel members and the draft agenda, will be made available two weeks prior to the meeting on the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov*) or can be

obtained after that date by contacting NICEATM (see **FOR FURTHER INFORMATION CONTACT** above).

Attendance and Registration

This public meeting will take place February 6, 2007, at the NIH Campus, Natcher Conference Center, Bethesda, MD (a map of the NIH campus and other visitor information are available at *http://www.nih.gov/about/visitor/index.htm*). The meeting begins at 8:30 a.m. and will conclude at approximately 5 p.m. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 (voice), 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or by e-mail to *niehsoeeo@niehs.nih.gov*. Requests should be made at least seven business days in advance of the event.

Availability of the BRD and Draft ICCVAM Recommendations

NICEATM prepared a BRD on five *in vitro* pyrogenicity test methods that describes the current validation status of the in vitro test methods and contains all of the data and analyses supporting this validation status. The draft BRDs, draft ICCVAM test method recommendations, draft test method protocols, and draft test method performance standards are available from the ICCVAM/NICETAM Web site (*http://iccvam.niehs.nih.gov*) or by contacting NICEATM (see **FOR FURTHER INFORMATION CONTACT** above).

Request for Comments

NICEATM invites the submission of written comments on the BRDs, draft ICCVAM test method recommendations, draft test method protocols, and draft test method performance standards. When submitting written comments, it is important to refer to this **Federal Register** notice and include appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if applicable). Written comments should be sent by mail, fax, or e-mail to Dr. William Stokes, Director of NICEATM, at the address listed above, not later than January 26, 2007. All comments received will be placed on the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov*), sent to the panel and ICCVAM agency representatives, and made available at the meeting.

This meeting is open to the public and time will be provided for the presentation of public oral comments at designated times during the peer review. Members of the public who wish to present oral statements at the meeting (one speaker per organization) should contact NICEATM (see **FOR FURTHER INFORMATION CONTACT** above) no later than January 26, 2007. Speakers will be assigned on a consecutive basis and up to seven minutes will be allotted per speaker. Persons registering to make comments are asked to provide NICEATM a written copy of their statement by January 26, 2007, so that copies can be distributed to the panel prior to the meeting or if this is not possible to bring 40 copies to the meeting. Written statements can supplement and expand the oral presentation. Each speaker is asked to provide contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if applicable) when registering to make oral comments.

Summary minutes and the panel's final report will be available following the meeting on the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov*). ICCVAM will consider the panel's conclusions and recommendations and any public comments received in finalizing their test method recommendations and performance standards for these methods.

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285l–3, available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*) establishes ICCVAM as a permanent interagency committee of the NIEHS under the NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://iccvam.niehs.nih.gov*.

Dated: November 27, 2006.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E6–21038 Filed 12–11–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Center for the Evaluation of Risks to Human Reproduction (CERHR); Availability of the Draft Expert Panel Report on Bisphenol A and Request for Public Comment on the Draft Report; Announcement of the Bisphenol A Expert Panel Meeting

AGENCY: National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Announcement of a meeting and request public comment.

SUMMARY: The CERHR announces the availability of the draft expert panel report for bisphenol A on December 15, 2006, from the CERHR Web site (*http://cerhr.niehs.nih.gov*) or in printed text from CERHR (see **FOR FURTHER INFORMATION CONTACT** below). The CERHR invites the submission of public comments on sections 1–4 of the draft expert panel report (see **SUPPLEMENTARY INFORMATION** below). The expert panel will meet on March 5–7, 2007, at the Radisson Hotel Old Town in Alexandria, Virginia to review and revise the draft expert panel report and reach conclusions regarding whether exposure to bisphenol A is a hazard to human development or reproduction. The expert panel will also identify data gaps and research needs. CERHR expert panel meetings are open to the public with time scheduled for oral public comment. Attendance is limited only by the available meeting room space. Following the expert panel meeting and completion of the expert panel report, the CERHR will post the final report on its Web site and solicit public comment on it through a **Federal Register** notice.

DATES: The expert panel meeting for bisphenol A will be held on March 5–7, 2007. Sections 1–4 of the draft expert panel report will be available for public comment on December 15, 2006. Written public comments on the draft report must be received by February 2, 2007. Time is set-aside at the expert panel meeting on March 5, 2007 for oral public comments. Individuals wishing to make oral public comments are asked to contact Dr. Michael D. Shelby,

CERHR Director, by February 26, 2007, and if possible, send a copy of the statement or talking points at that time. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 (voice), 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or by e-mail to *niehsoeeo@niehs.nih.gov*. Requests should be made at least seven business days in advance of the event.

ADDRESSES: The expert panel meeting on bisphenol A will be held at the Radisson Hotel Old Town 901 N. Fairfax Street Alexandria, Virginia 22314–1501 (telephone: 703–683–6000, facsimile: 703–683–7597). Comments on the draft expert panel report should be sent to Dr. Michael D. Shelby, CERHR Director, NIEHS, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (e-mail). Courier address: CERHR, 79 T.W. Alexander Drive, Building 4401, Room 103, Research Triangle Park, NC 27709.

FOR FURTHER INFORMATION CONTACT: Dr. Michael D. Shelby, CERHR Director, 919–541–3455, *shelby@niehs.nih.gov*.

SUPPLEMENTARY INFORMATION:

Background

Bisphenol A (CAS RN: 80–5–07) is a high production volume chemical used in the production of epoxy resins, polyester resins, polysulfone resins, polyacrylate resins, polycarbonate plastics, and flame retardants. Polycarbonate plastics are used in food and drink packaging; resins are used as lacquers to coat metal products such as food cans, bottle tops, and water supply pipes. Some polymers used in dental sealants and tooth coatings contain bisphenol A. Exposure to the general population can occur through direct contact to bisphenol A or by exposure to food or drink that has been in contact with a material containing bisphenol A. CERHR selected this chemical for evaluation because of (1) high production volume, (2) widespread human exposure, (3) evidence of reproductive toxicity in laboratory animal studies, and (4) public concern.

At the meeting, the expert panel will review and revise the draft expert panel report and reach conclusions regarding whether exposure to bisphenol A is a hazard to human reproduction or development. Each draft expert panel report has the following sections:

1.0 Chemistry, Use, and Human Exposure.
2.0 General Toxicological and Biological Effects.
3.0 Developmental Toxicity Data.
4.0 Reproductive Toxicity Data.
5.0 Summary, Conclusions, and Critical Data Needs (to be prepared at expert panel meeting).

Request for Comments

The CERHR invites written public comments on sections 1–4 of the draft expert panel report on bisphenol A. Any comments received will be posted on the CERHR website prior to the meeting and distributed to the expert panel and CERHR staff for their consideration in revising the draft report and/or preparing for the expert panel meeting. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any) and send them to Dr. Shelby (see **ADDRESSES** above) for receipt by February 2, 2007.

Time is set-aside on March 5, 2007, for the presentation of oral public comments at the expert panel meeting. Seven minutes will be available for each speaker (one speaker per organization). When registering to comment orally, please provide your name, affiliation, mailing address, telephone and facsimile numbers, email and sponsoring organization (if any). If possible, send a copy of the statement or talking points to Dr. Shelby by February 2. This statement will be provided to the expert panel to assist them in identifying issues for discussion and will be noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on March 5, 2007, from 7:30–8:30 a.m. Persons registering at the meeting are asked to bring 20 copies of their statement or talking points for distribution to the expert panel and for the record.

Preliminary Agenda

The meeting begins each day at 8:30 a.m. On March 5 and 6, it is anticipated that a lunch break will occur from noon–1 p.m. and the meeting will adjourn at 5–6 p.m. The meeting is expected to adjourn by noon on March 7; however, adjournment may occur earlier or later depending upon the time needed by the expert panel to complete its work. Anticipated agenda topics for each day are listed below.

March 5, 2007

- Opening remarks.
- Oral public comments (7 minutes per speaker; one representative per group).
- Review of sections 1–4 of the draft expert panel report on bisphenol A.
- Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs.

March 6, 2007

- Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs.
- Preparation of draft summaries and conclusion statements.

March 7, 2007

- Presentation, discussion of, and agreement on summaries, conclusions, and data needs.
- Closing comments.

Expert Panel Roster

The CERHR expert panel is composed of independent scientists selected for their scientific expertise in reproductive and/or developmental toxicology and other areas of science relevant for these evaluations.

Robert E. Chapin, PhD (Chair)	Pfizer Inc., Groton, CT.
Jane Adams, PhD	University of Massachusetts, Boston, MA.
Kim Boekelheide, MD, PhD	Brown University, Providence, RI.
Michael A. Gallo, PhD	University of Medicine & Dentistry NJ, Piscataway, NJ.
Leon Earl Gray, Jr, PhD	U.S. Environmental Protection Agency, Research Triangle Park, NC.
Simon William Hayward, PhD	Vanderbilt University Medical Center, Nashville, TN.
Peter S.J. Lees, PhD	The Johns Hopkins University, Baltimore, MD.
Barry S. McIntyre, PhD	Schering-Plough Research Institute, Summit, NJ.
Michael John McPhaul, MD	The University of Texas, Dallas, Texas.
Kenneth Portier, PhD	American Cancer Society, Atlanta, GA.
Teresa Schnorr, PhD	Centers for Disease Control, National Institute for Occupational Safety & Health, Cincinnati, OH.
Sherry G. Selevan, PhD	Retired, U.S. Public Health Service, Silver Spring, MD.
John G. Vandenbergh, PhD	North Carolina State University, Raleigh, NC.
Kendall B. Wallace, PhD	University of Minnesota, Duluth, MN.

Susan R. Woskie, PhD	University of Massachusetts Lowell, Lowell, MA.

Background Information on the CERHR

The NTP established CERHR in June 1998 [**Federal Register**, December 14, 1998 (Volume 63, Number 239, page 68782)]. CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. Expert panels conduct scientific evaluations of agents selected by the CERHR in public forums.

CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (see **FOR FURTHER INFORMATION CONTACT** above). CERHR selects chemicals for evaluation based upon several factors including production volume, potential for human exposure from use and occurrence in the environment, extent of public concern, and extent of data from reproductive and developmental toxicity studies.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** on July 16, 2001 (Volume 66, Number 136, pages 37047–37048) and is available on the CERHR Web site under ''About CERHR'' or in printed copy from CERHR.

Dated: November 27, 2006.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E6–21040 Filed 12–11–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Pilot Study of Proposed Nursing Home Survey on Resident Safety''. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by February 12, 2007.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5036, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Pilot Study of Proposed Nursing Home Survey on Resident Safety''

This activity is an expansion and refinement of AHRQ's Hospital Survey on Patient Safety Culture (HSOPSC) which was developed and released to the public for use in November 2004. This proposed new tool is based on the HSOPSC but also contains new and revised items as well as dimensions that more accurately apply to the nursing home setting. The instrument will be pilot tested with staff in 40 nursing homes. The data collected will be analyzed to determine the psychometric properties of the survey's items and dimensions and provide information for the revision and shortening of the final survey based on an assessment of its reliability and construct validity. The final survey will be made publicly available to enable nursing homes to assess their resident safety culture.

Methods of Collection

A purposive sample of 40 nursing homes will be recruited and selected. These nursing homes will represent a distrubition of bed size, nature of ownership (non-profit/for-profit), urbanity (urban/rural), and geographic region of the United States. Recruited nursing homes will be allocated to each category in numbers roughly proportionate to the national distribution of homes in each category.

All employees, contractors and agency staff in all job classes in nursing homes with up to 200 employees will be asked to respond to the survey. In nursing homes with more than 200 employees, a random sample of 200 employees will be selected. Since not all nursing homes staff have access to or are familiar with e-mail or the internet, paper surveys will be administered. Standard non-response follow-up techniques such as reminder postcards and distrubiton of a second survey will be used. Individuals and organizations contacted will be assured of the confidentiality of their replies under Section 924(c) of the Healthcare Research and Quality Act of 1999.

Estimated Annual Respondent Burden

The survey will be distributed to approximately 5,500 nursing home employees, with a target response rate of 70%, or 3,850 returned surveys. Respondents should take approximately 15 minutes to complete the survey. Therefore, we estimate that the respondent burden for completing the survey will be 963 hours (3,850 completes multiplied by 0.25 hours per completed survey).

Type of Respondent	Number of Respondents	Number of Responses per Respondent	Estimated Time per Respondent (hours)	Estimated Total Respondent Burden Hours
Nursing home staff member	3,850	1	0.25	963

Estimated Annual Costs to the Federal Government

The total cost to the Government for developing this survey is approximately $319,000, and is being funded solely by AHRQ. This estimate includes the costs of a background literature review, survey development, cognitive testing, pilot data collection, data analysis, and preparation of final deliverables and reports.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 1, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–9642 Filed 12–11–06; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Development of an Electronic System for Reporting Medication Errors and Adverse Drug Events in Primary Care Practice (MEADERS).'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by February 12, 2007.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5036, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Development of an Electronic System for Reporting Medication Errors and Adverse Drug Events in Primary Care Practice (MEADERS)''

The project is being conducted in response to an AHRQ RFP entitled ''Resource Center for Primary Care Practice-Based Research Networks (PBRNs)'' (issued under Contract 290–88–0008).

In response to a proposed modification to AHRQ contract no. 290.02.0008, the PBRN Resource Center is proposing to assist AHRQ in its continued commitment to assessing the status and capabilities of its funded PBRNs and making available to them the tools and resources necessary to improve the quality of care they provide. Through the modification of this contract, the PBRN Resource Center will develop and make available an electronic system for reporting medication errors and adverse drug events that occur in outpatient physician practices of selected PBRNs to their own practices for quality improvement purposes and to the Food and Drug Administration (FDA).

The landmark Harvard Medical Practice Study was published in 1991 and stated that 98,000 Americans die each year from medical errors. [1] Although the exact figure has been disputed, no one disputes the fact that too many Americans are injured unnecessarily by medical mistakes that could be avoided.[2 3] Another study performed by the Department of Veterans Affairs suggests that in one out of every 10,000 hospitalizations, a patient dies due directly to a medical error .[4]

In response to the growing concern over medical errors, the Agency for Healthcare Research and Quality (AHRQ) has published three important monographs outlining the problem of errors,[5] their effects on the quality of care,[6] and offering suggestions on improving patient safety.[7] The first recommendation of this third monograph was to ''*capture information on patient safety—including both adverse events and near misses—as a byproduct of care, and use this information to design even safer care delivery systems.*'' One central theme to each of these monographs is that there simply is too much chaotic information flowing in the medical environment for a single provider to handle effectively. Therefore, solutions to the problem of medical errors should include some combination of health information technology and redesign of health care systems to enhance the prevalence of appropriate decisions (*i.e.*, avoiding errors of omission) and reduce the occurrence of avoidable mistakes (*i.e.*, avoiding errors of commission).

A recent conference sponsored by AHRQ highlighted interventions to improve medical decision-making and reduce medical errors.[8] Most of the interventions presented were based in hospitals, where the most intensive and immediately life-threatening events occur. Yet the majority of medical decisions are made in outpatient practices and offices where there has been little error-reduction research performed. Further, most outpatient studies have been performed in academic medical centers which have capabilities, providers, and patients that may not typify the average U.S. medical practice.[9]

With the recent passing of the Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21–b–26, now is an opportune time to evaluate a primary care error reporting system, and PBRNs are an ideally suited place to study interventions aimed at reporting and reducing medical errors. In most primary care practices there is no mechanism in place to report medical errors as they occur. We propose to develop, implement, and study an outpatient error reporting system to better understand the ability of physicians to identify their own errors and their willingness to report them to their own practices and the FDA and AHRQ. We will focus on the most common invasive intervention invoked in outpatient practice—drug treatment

of acute and chronic conditions—and will create and test a paper- and computer-based system for both capturing medication errors and reporting adverse drug events, which are also under-reported.[10]

The fundamental objective is to utilize the Resource Center's expertise in health information technology and its working relationships with PBRNs to support AHRQ's objectives in developing and evaluating systems for reporting medication errors and adverse drug events in primary care. We will accomplish this objective through (1) Developing and implementing an electronic and paper-based outpatient medication error and adverse event reporting system, (2) evaluating the usefulness, ease of use, and actual use of the system in everyday clinical practices, and (3) identifying patient, provider, and practice characteristics that predict uptake and use of this system in participating primary care practices.

Methods of Collection

The value of MEADERS to practicing primary care clinicians will be illustrated by performing demonstration implementations in two PBRNs. A PBRN is a group of clinicians working together, either locally or nationally, to conduct research and implement research findings into practice settings. A total of 45 physicians and their practice staff will participate in the field test in addition to completing baseline surveys of their practice.

A request for proposals will be sent to all PBRNs that have registered with the PBRN Resource Center. A review committee consisting of a selection of four expert panel members, one or two PBRN representatives, and some members of the PBRN Resource Center will evaluate the applications. The AHRQ Project Officer will chair the review committee and, together with PBRN Resource Center staff, develop a set of review criteria. The review committee will make recommendations to the PBRN Resource Center who will make the final determination of participating PBRNs. Once the PBRNs are selected, each PBRN will choose up to three of its affiliated practices to participate in this trial. Although initial participation by a practice is voluntary, once selected the practice must provide assurances that at least three to five clinicians will agree to use the system and that the practice will support the project.

The PBRN Resource Center will develop a series of surveys to capture data describing the practice and the patients it serves, the extent of the error reporting system's use, and an assessment of the users' overall satisfaction with the system. practice and provider information will be collected at baseline along with characteristics that could be facilitators (such as an electronic medical record system) or barriers (such as lack of time and resources needed to report information) to implementation of the MEADER system. Data collected on the system's use will include the number of clinicians who have used MEADERS at least once, the number of times used overall, the time it takes to enter data into the electronic MEADERS, and the types of medication errors and adverse drug events that are being reported. Both the paper and electronic versions of the system will be assessed at the conclusion of the evaluation period. The follow-up assessment will include clinicians' and managers' satisfaction with the system (*e.g.,* ease of use, usefulness of the generated reports and individual feedback) and whether they intend to continue its use after the initial study period has concluded. Finally, semi-structured interviews and conference call discussions will be used to collect additional comments and suggestions for future implementation of MEADERS.

Although any clinician in the practice will be able to use the system, physicians are likely to be the primary users of the system. The Resource Center is estimating that physicians will account for about 80% of MEADERS use and Nurse Practitioners, Physician Assistants and Medical Assistants will make up the remainder (See Exhibit 1). The time for entering an event into the system is estimated to require no more than 8 minutes of a clinician's time.

Wherever possible, existing validated measures will be used. Where validated measures do not exist, new measures will be developed and assessed. The final instruments will be field tested within selected practices in the PBRNs chosen to participate in the implementation study.

Estimated Annual Respondent Burden

EXHIBIT 1.—ESTIMATE OF COST BURDEN TO RESPONDENTS

Data collection effort	Number of responses*	Estimated time per respondent in hours	Estimated total burden hours	Average hourly wage rate**	Estimated annual cost burden to respondents
Office Manager baseline survey	45	0.25	11.25	$34.67	$390.04
Physician baseline survey	45	0.25	11.25	57.90	651.38
Physician opinion survey of system	45	0.25	11.25	57.90	651.83
Physician entry of medication error	216	0.134	28.94	57.90	1675.63
Nurse opinion survey of system	45	0.25	11.25	27.35	307.69
Nurse entry of medication error	18	0.134	2.4	27.35	65.64
PA/NP opinion survey of system	45	0.25	11.25	34.17	384.41
PA/NP entry of medication error	18	0.134	2.4	34.17	82.00
Medical assistant survey of system	45	0.25	11.25	12.58	141.53
Medical assistant entry of medication error	18	0.134	2.4	12.58	30.19
Officer Manager opinion-survey of system	45	0.25	11.25	34.67	390.04
Total	585	.....	114.89	.....	4769.93

*Based on a six month trial period of MEADER reporting system.

**Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States 2004, ''U.S. Department of Labor, Bureau of Labor Statistics.''

This information collection will not impose a cost burden on the respondent beyond that associated with their time to provide the required data. There will be no additional costs for capital equipment, software, computer services, etc.

Estimated Costs to the Federal Government

The total cost to the government for this activity is estimated to be $1,000,000.00.

Request for Comments

In accordance with the above-cited legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of health care research and information dissemination functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

References

[1] Brennan TA, Leape LL, Laird NM, et al. Incidence of adverse events and negligence in hospitalized patients: Results of the Harvard Medical Practice Study. N Engl J Med 1991; 324:370–376.

[2] McDonald CJ, Weiner M, Hui SL. Deaths due to medical errors are exaggerated in the Institute of Medicine Report. JAMA 2000; 284:93–95.

[3] Leape LL. Institute of Medicine medical error figures are not exaggerated. JAMA. 2000; 28:95–97.

[4] Hayward RA, Hofer TP. Estimating hospital deaths due to medical errors: preventability is in the eye of the reviewer. JAMA. 2001; 286:415–420.

[5] Institute of Medicine. To Err is Human: Building a Safer Health System. Washington, DC: National Academy Press, 2000.

[6] Institute of Medicine. Crossing the Quality Chasm: A New System for the 21st Century. Washington, DC: National Academy Press, 2001.

[7] Institute of Medicine. Patient Safety: Achieving a New Standard for Care. Washington, DC: National Academy Press, 2004.

[8] *http://www.blsmeetings.net/PatientSafetyandHIT/* (Accessed August 11, 2005).

[9] Green LA, Fryer GE, Yawn BP, Lanier D, Dovey SM: The ecology of medical care revisited. N Engl J Med 2001; 344:2021–2025.

[10] Uribe CL, Schweikhart SB, Pathak DS, Dow M, Marsh GB. Perceived barriers to medical-error reporting: an exploratory investigation. J Healthcare Management. 2002;47(4):263–79.

Dated: December 1, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–9643 Filed 12–11–06; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–0008]

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

Emergency Epidemic Investigations (0920–0008)—Revision—Office of Workforce and Career Development (OWCD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

One of the objectives of CDC's epidemic services is to provide for the prevention and control of epidemics and protect the population from public health crises such as man made or natural biological disasters and chemical emergencies. This objective is carried out, in part, by training investigators, maintaining laboratory capabilities for identifying potential problems, collecting and analyzing data, and recommending appropriate actions to protect the public's health. When state, local, or foreign health authorities request help in controlling an epidemic or solving other health problems, CDC dispatches skilled epidemiologists from the Epidemiologist Intelligence Service (EIS) to investigate and resolve the problem.

The purpose of the Emergency Epidemic Investigation surveillance is to collect data on the conditions surrounding and preceding the onset of a problem. The data must be collected in a timely fashion so that information can be used to develop prevention and control techniques, to interrupt disease transmission and to help identify the cause of an outbreak. Since the events necessitating the collections of information are of an emergency nature, most data collection is done by direct interview or written questionnaire and are one-time efforts related to a specific outbreak or circumstance. If during the emergency investigation, the need for further study is recognized, a project is designed and separate OMB clearance is required. Interviews are conducted to be as unobtrusive as possible and only the minimal information necessary is collected. The Emergency Epidemic Investigations is the principal source of data on outbreaks of infectious and noninfectious diseases, injuries, nutrition, environmental health and occupational problems.

Each investigation does contribute to the general knowledge about a particular type of problem or emergency, so that data collections are designed to take into account similar situations in the past. Some questionnaires are standardized, such as investigations of outbreaks aboard aircraft or cruise vessels.

The Emergency Epidemic Investigations provides a range of data on the characteristics of outbreaks and those affected by them. Data collected include demographic characteristics, exposure to the causative agent(s), transmission patterns and severity of the outbreak on the affected population. These data, together with trend data, may be used to monitor the effects of change in the health care system, planning of health services, improving the availability of medical services and assessing the health status of the population.

Users of the Emergency Epidemic Investigations data include, but are not limited to EIS Officers in investigating the patterns of disease or injury, investigating the level of risky behaviors, identifying the causative agent and identifying the transmission of the condition and the impact of interventions.

Epi Trip Reports are delivered to the state health agency official requesting assistance shortly after completion of the Emergency Epidemic Investigation. The official can comment on both the timeliness and the practical utility of the recommendations from the investigation. CDC is requesting that a new form be added to the current clearance. Upon completion of the Emergency Epidemic Investigation, requesting officials at the state or local health department will be asked to complete a brief questionnaire to assess

the promptness of the investigation and the usefulness of the recommendations.

The total burden hours are 3,775. This slight increase over the last request for clearance is due to additional data that will be collected from the requesting state or local officials described above.

Estimated Annualized Burden Table:

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General Public	15,000	1	15/60
State and Local Officials	100	1	15/60

Dated: December 6, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–21117 Filed 12–11–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–0603]

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) 639–4766 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

Information Network (REACH IN)–Extension-National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Racial and Ethnic Approaches to Community Health 2010 (REACH 2010) currently funds forty local coalitions to establish community based programs and culturally appropriate interventions to eliminate racial and ethnic health disparities. Two previously funded grantees also retain access to the system. Communities served by REACH 2010 include: African American, American Indian, Hispanic American, Asian American, and Pacific Islander. These communities select among infant mortality, deficits in breast and cervical cancer screening and management, cardiovascular diseases, diabetes, HIV/AIDS, and deficits in childhood and adult immunizations to focus their interventions. Guided by logic models, each community articulates goals, objectives, and related activities; tracks whether goals and objectives are met, ongoing, or revised; and evaluates all program activities. This information is then entered into the REACH Information Network (REACH IN). REACH IN is a customized internet-based support system that allows REACH 2010 grantees to perform remote data entry and retrieval of data.

This support system is designed to create on-demand graphs and reports of grantees' activities and accomplishments, monitor progress toward the achievement of goals and objectives, and share and synthesize information across grantees' activities. Both quantitative and qualitative analyses can be performed. These analyses relate primarily to three stages of the REACH 2010 logic model: capacity building, targeted actions (interventions), and community and systems change and change among change agents. Users are supported with technical assistance and training, covering the usage of the system from a content/project goals perspective, and technical operations.

The annualized estimated burden is based on 42 respondents, including 40 currently funded grantees and two that were funded previously who retain access to the system. It is estimated that they each use the system four times a year to enter data, each data entry taking about 30 minutes.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 84.

Estimated Annualized Burden Table:

Type of responses or kinds of respondents	Nunber of respondents	Number of responses per respondent	Average burden per response (in hours)
REACH 2010 grantees	42	4	30/60

Dated: December 6, 2006.

Deborah Holtzman,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–21118 Filed 12–11–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–07AC]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance

Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Formative Research to Inform the Routine HIV Testing for gynecologists providing primary care services and Prevention Is Care (PIC) Social Marketing Campaigns—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP)[Proposed], Coordinating Center for Infectious Diseases (CCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project involves formative research to inform the development of two Centers for Disease Control and Prevention (CDC)-sponsored social marketing campaigns: Social Marketing Campaign to Make HIV Testing a Routine Part of Medical Care for Gynecologists Providing Primary Care Services (Routine HIV Testing), and Prevention Is Care (PIC). The goal of the Routine HIV Testing Campaign is to increase HIV testing rates among women seeking gynecological primary care services and the objective of the campaign is to make HIV testing a routine part of primary care provided by obstetrician/gynecologists (OB/GYN). PIC entails encouraging primary care physicians (PCP) and Infectious Disease Specialists who deliver care to patients living with HIV and screen them for HIV transmission behaviors and deliver brief messages on the importance of protecting themselves and others by reducing their risky behaviors. The long-term objective of the campaign is to establish PIC as the standard of care for persons living with HIV. The study entails conducting focus groups and interviews to test creative materials with a sample of Obstetrician/Gynecologists (OB/GYN) for Routine HIV Testing and with PCP and Infectious Disease Specialists for PIC. Findings from this study will be used by CDC and its partners to inform current and future program activities.

For Routine HIV Testing, we expect a total of 81 physicians to be screened for eligibility. Of the 81 physicians who are screened, we expect that 27 will participate in a focus group and 27 will participate in an interview.

For PIC, we expect a total of 162 physicians to be screened for eligibility. Of the 162 physicians who are screened, we expect that 54 will participate in a focus group and 54 will participate in an interview. There are no costs to the respondents other than their time.

Estimate of Annualized Burden Hours

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hours)	Total burden hours
Routine HIV Testing Screener	81	1	10/60	14
Routine HIV Testing Focus Group	27	1	2	54
Routine HIV Testing Interview	27	1	1	27
PIC Screener	162	1	10/60	27
PIC Focus Group	54	1	2	108
PIC Interview	54	1	1	54
Total				284

Dated: December 6, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–21124 Filed 12–11–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–07AD]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Formative Research to Inform an HIV Testing Social Marketing Campaign for African American Heterosexual Men—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP)[Proposed], Coordinating Center for Infectious Diseases (CCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project involves formative research to inform the development of the HIV Testing Social Marketing Campaign for African American Heterosexual Men, a CDC-sponsored social marketing campaign aimed at increasing HIV testing rates among

young, single, African American men. The study entails conducting focus groups and interviews with a sample of single African American heterosexual men, ages 18 to 45, with less than 4 years of college education to: (1) Explore participants' knowledge, attitudes and beliefs about HIV and HIV testing to inform the development of campaign messages; (2) identify the most motivating approach, supporting data, and key messages for materials development; (3) test creative concepts, potential campaign themes, logos and names; and (4) test creative materials developed based on the findings from the previous phases of the research. Findings from this study will be used by CDC and its partners to inform current and future program activities.

We expect a total of 306 participants to be screened for eligibility. Of the 306 participants who are screened, we expect that 81 people will participate in a focus group and 72 people will participate in an interview. There are no costs to the respondents other than their time.

Estimated Annualized Burden Hours and Burden Table:

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Screener	306	1	10/60	51
Focus Group	81	1	2	162
Interview	72	1	1	72
Total				285

Dated: December 6, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–21125 Filed 12–11–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Devices Dispute Resolution Panel of the Medical Devices 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 meeting of the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee. This meeting was originally announced in the **Federal Register** of November 24, 2006 (71 FR 67879). The amendment is being made to reflect a change in the *Date and Time* portion of the document, specifically, a change in the start time of the meeting. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Nancy Collazo-Braier, Office of the Center Director (HFZ–1), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3959, *nancy.braier@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014510232. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 24, 2006, FDA announced that a meeting of the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee would be held on December 15, 2006. On page 67879, in the second column, the *Date and Time* portion of the document is amended to read as follows:

Date and Time: The meeting will be held on December 15, 2006, from 8 a.m. to 5 p.m.

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: December 5, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–21020 Filed 12–11–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[Funding Opportunity Number HHS–2006–IHS–SP–0001; CFDA Numbers: 93.971, 93.123, and 93.972]

Health Professions Preparatory, Health Professions Pregraduate and Indian Health Professions Scholarship Programs; Announcement Type: Initial

Key Dates: Application Deadline: February 28, 2007; *Application Review:* March 26–30, 2007; *Application Notification:* First week of July, 2007; *Award Start Date:* August 1, 2007.

I. Funding Opportunity Description

The Indian Health Service (IHS) is committed to encouraging American Indians and Alaska Natives to enter the health professions and to assuring the availability of Indian health professionals to serve Indians. The IHS is committed to the recruitment of students for the following programs:

- The Indian Health Professions Preparatory Scholarships authorized by section 103 of the Indian Health Care Improvement Act (IHCIA), as amended.
- The Indian Health Professions Pregraduate Scholarships authorized by section 103 of the IHCIA, as amended.
- The Indian Health Professions Scholarships authorized by section 104 of the IHCIA, as amended.

Full-time and part-time scholarships will be funded for each of the three scholarship programs.

II. Award Information

Awards under this initiative will be administered using the grant mechanism of the IHS.

Estimated Funds Available: An estimated $14.3 million will be available for FY 2007 awards.

Anticipated Number of Awards: Approximately 194 awards will be made under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians. The awards are for 10 months in duration and the average award to a full-time student is approximately $24,366. An estimated 338 awards will be made under the Indian Health Scholarship (Professions) Program. The awards are for 12 months in duration and the average award to a full-time student is for approximately $38,236. In FY 2007, an estimated $5,130,000 is available for continuation awards, and an estimated $9,170,000 is available for new awards.

Project Period—The project period for the Health Professions Preparatory Scholarship support is limited to 2 years

for full-time students and the part-time equivalent of 2 years, not to exceed 4 years for part-time students. The project period for the Health Professions Pregraduate Scholarship Support is limited to 4 years for full-time students and the part-time equivalent of 4 years, not to exceed 8 years for part-time students. The Indian Health Professions Scholarship support is limited to 4 years for full-time students and the part-time equivalent of 4 years, not to exceed 8 years for part-time students.

III. Eligibility Information

This announcement is a limited competition for awards made to American Indians (Federally recognized Tribal members, state recognized Tribal members, and first and second degree descendants of Tribal members), or Alaska Natives only.

1. Eligible Applicants

The Health Professions Preparatory Scholarship (Section 103) awards are made to American Indians (Federally recognized Tribal members, state recognized Tribal members, and first and second degree descendants of Tribal members), or Alaska Natives who:

- Have successfully completed high school education or high school equivalency;
- Have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum; and
- For initial awards, priority will be given to those who are eligible to continue in the section 104 scholarship program to meet the need of the service to increase the number of Indian health professionals who have an active duty service obligation to work in Indian communities under written contract with the Secretary.

The Health Professions Pregraduate Scholarship (Section 103) awards are made to American Indians (Federally recognized Tribal members, state recognized Tribal members, and first and second degree Tribal members), or Alaska Natives who:

- Have successfully completed high school education or high school equivalency;
- Have been accepted for enrollment or are enrolled in an accredited pregraduate program leading to a baccalaureate degree in pre-medicine, pre-dentistry and pre-podiatry; and
- For initial awards, priority will be given to those who are eligible to continue in the section 104 scholarship program to meet the need of the service to increase the number of Indian health professionals who have an active duty service obligation to work in Indian communities under written contract with the Secretary.

The Indian Health Professions Scholarship (Section 104) may be awarded only to an individual who is a member of a federally recognized Indian Tribe as provided by section 4(c), and 4(d) of the IHCIA. Membership in a Tribe recognized only by a state does not meet this statutory requirement. To receive an Indian Health Scholarship (Professions) an otherwise eligible individual must be enrolled in an appropriately accredited school and pursuing a course of study in a health profession as defined by section 4(n) of the IHCIA.

2. Cost Sharing/Matching

The Scholarship Program does not require matching funds or cost sharing to participate in the competitive grant process.

IV. Application and Submission Information

1. Address To Request Application Package

Applicants are responsible for contacting and requesting an application packet from their IHS Area coordinator. They are listed on the IHS Web site at *http://www.ihs.gov/JobsCareerDevelop/DHPS/Scholarships/SCoordinator_Directory.asp.* This information is listed below. Please review the following list to identify the appropriate IHS Area coordinator for your state. Application packets may be obtained by calling or writing to the following individuals listed below:

IHS area office and states/locality served	Scholarship coordinator/address
Aberdeen Area IHS, Iowa, Nebraska, North Dakota, South Dakota	Ms. Kim Lawrence, IHS Area Coordinator, Aberdeen Area IHS, 115 4th Avenue, SE, Aberdeen, SD 57401. Tele: (605) 226–7532.
Alaska Native Tribal Health Consortium, Alaska	Ms. Rita Dotomain, Alternate: Ms. Rea Bavilla, IHS Area Coordinator, 4000 Ambassador Drive, Anchorage, Alaska 99508. Tele: (907) 729–1332.
Albuquerque Area IHS, Colorado, New Mexico	Ms. Cora Boone, IHS Area Coordinator, Albuquerque Area IHS, 5300 Homestead Road, NE, Albuquerque, NM 87110. Tele: (505) 248–4418.
Bemidji Area IHS, Illinois, Indiana, Michigan, Minnesota, Wisconsin	Mr. Tony Buckanaga, IHS Area Coordinator, Bemidji Area IHS, 522 Minnesota Avenue, NW., Room 209, Bemidji, MN 56601. Tele: (218) 444–0486.
Billings Area IHS, Montana, Wyoming	Mr. Delon Rock Above, Alternate: Ms. Bernice Hugs, IHS Area Coordinator, Billings Area IHS, Area Personnel Office, P.O. Box 36600, 2900 4th Avenue, North, Suite 400, Billings, MT 59103. Tele: (406) 247–7100.
California Area IHS, California, Hawaii	Ms. Mona Celli, IHS Area Coordinator, California Area IHS, 650 Capitol Mall, Suite 7–100, Sacramento, CA 95814. Tele: (916) 930–3981.
Nashville Area IHS, Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, District of Columbia.	Ms. Cora Boone, IHS Area Coordinator, Nashville Area IHS, 5300 Homestead Road, NE, Albuquerque, NM 87110. Tele: (505) 248–4418.
Navajo Area IHS, Arizona, New Mexico, Utah	Ms. Roselinda Allison, IHS Area Coordinator, Navajo Area IHS, P.O. Box 9020, Window Rock, AZ 86515. Tele: (928) 871–1358.
Oklahoma City Area IHS, Kansas, Missouri, Oklahoma	Ms. Melissa Westfall, IHS Area Coordinator, Oklahoma City Area IHS, Five Corporate Plaza, 3625 NW. 56th Street, Oklahoma City, Oklahoma 73112. Tele: (405) 951–6040.
Phoenix Area IHS, Arizona, Nevada, Utah	Ms. Kimberly Honahnie, IHS Area Coordinator, Phoenix Area IHS, Two Renaissance Square, 40 North Central Avenue, Suite #510, Phoenix, AZ 85004. Tele: (602) 364–5253.

IHS area office and states/locality served	Scholarship coordinator/address
Portland Area IHS, Idaho, Oregon, Washington	Ms. Laurie Veitenheimer, IHS Area Coordinator, Portland Area IHS, 1220 SW Third Avenue, Rm. 476, Portland, OR 97204–2892. Tele: (503) 326–6983.
Tucson Area IHS, Arizona, Texas	Ms. Reanetta Siquieros, IHS Area Coordinator, Tucson Area IHS, 7900 South ''J.'' Stock Rd., Tucson, AZ 85746. Tele: (520) 295–2440.

2. Content and Form of Application Submission

Each applicant will be responsible for submitting a completed application and 1 copy (Forms IHS–856–1, through 856–8) to their IHS Area Coordinator. Electronic applications are not being accepted for this cycle. The application will be considered complete if the following documents (original and 1 copy) are included.

- Completed Signed Application Checklist.
- Original Signed Complete Application Form IHS–856 (For Continuation Students—Data Sheet in place of IHS–856).
- Current Letter of Acceptance from College/Proof of Application to Health Professions Program.
- Official Transcripts for All Colleges.
- Cumulative GPA: Applicants Calculation.
- Documents for Indian Eligibility.

A. If you are a member of a Federally recognized Tribe (recognized by the Secretary of the Interior), provide evidence of membership such as:

(1) Certification of Tribal enrollment by the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA Certification: Form 4432—Category A or D, whichever is applicable); or

(2) In the absence of BIA certification, documentation that you meet requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official, or

(3) Other evidence of Tribal membership satisfactory to the Secretary of the Interior.

B. If you are a member of a Tribe terminated since 1940 or a State recognized Tribe, provide official documentation that you meet the requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official; or other evidence, satisfactory to the Secretary of the Interior, that you are a member of the Tribe. In addition, if the terminated or state recognized Tribe of which you are a member is not on a list of such Tribes published by the Secretary of the Interior in the **Federal Register**, you must submit an official signed document that the Tribe has been terminated since 1940 or is recognized by the state in which the Tribe is located in accordance with the law of that state.

C. If you are not a Tribal member but are a natural child or grandchild of a Tribal member, you must submit: (1) Evidence of that fact, e.g., your birth certificate and/or your parent's birth certificate showing the name of the Tribal member; and (2) evidence of your parent's or grandparent's Tribal membership in accordance with paragraphs A and B. The relationship to the Tribal member must be clearly documented. Failure to submit the required documentation will result in the application not being accepted for review.

Note: If you meet the criteria of B or C, you are eligible only for the Preparatory or Pregraduate Scholarships.

- Two Faculty/Employer Evaluations with original signature.
- Reasons for Requesting Scholarship.
- Delinquent Debt Form.
- 2007 W–4 Form with original signature.
- Course Curriculum Verification with original signature.
- Acknowledgment Card.
- Curriculum for Major.

Health Professions Applicants Only:

- Health Related Experience (MPH only)—Optional Form

3. Submission Dates and Times

Application Receipt Date: The application deadline for new applicants is Wednesday, February 28, 2007. Applications (original and 1 copy) shall be considered as meeting the deadline if they are received by the appropriate IHS Area Coordinator on the deadline date or postmarked on or before the deadline date. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing and will not be considered for funding. Once the application is received, the applicant will receive an ''Acknowledge of Receipt of Application'' (IHS–815) card that is included in the application packet.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

No more than 5% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of 6 hours of instruction and are not considered in full-time status by their college/university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status. Both part-time and full-time scholarship awards will be made in accordance with 42 CFR 136.320, 136.330 and 136.370 incorporated in the application materials; and for Health Professions Scholarship Program for Indians.

6. Other Submission Requirements

New applicants are responsible for contacting and requesting an application packet from their IHS Area Coordinator. Electronic applications are not being accepted for this award cycle. The Division of Grants Operations will mail continuation students an application packet and if you do not receive this information please contact your IHS Area Coordinator to request a continuation application.

V. Application Review Information

1. Criteria

Applications will be reviewed and scored with the following criteria:

- Needs of the IHS (Health Manpower needs in Indian Country).

Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health manpower needs. Applications for each health career category are reviewed and ranked separately.

- Academic Performance (40 points).

Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are asked to provide a personal judgement of the applicant's achievement. Health Professions applicants with a cumulative GPA below 2.0 are not eligible to apply.

• Faculty/Employer Recommendations (30 points).

Applicants are rated according to evaluations by faculty members, current and/or former employers and Tribal officials regarding the applicant's potential in the chosen health related professions.

• Stated Reasons for Asking for the Scholarship and Stated Career Goals (30 points).

Applicants must provide a brief written explanation of reasons for asking for the scholarship and of their career goals. The applicant's narrative will be judged on how well it is written and its content.

• Applicants who are closest to graduation or completion are awarded first. For example, senior and junior applicants under the Health Professions Pregraduate Scholarship receive funding before freshmen and sophomores.

• Priority Categories.

The following is a list of health professions that will be funded in each scholarship program in FY 2007.

• Health Professions Preparatory Scholarships.

A. Pre-Clinical Psychology (Jr & Sr undergraduate years).
B. Pre-Dietetics.
C. Pre-Engineering.
D. Pre-Medical Technology.
E. Pre-Nursing.
F. Pre-Occupational Therapy.
G. Pre-Pharmacy.
H. Pre-Physical Therapy (Jr and Sr undergraduate years).
I. Pre-Sanitation.
J. Pre-Social Work (Jr and Sr undergraduate years).

• Health Professions Pregraduate Scholarships.

A. Pre-Dentistry.
B. Pre-Medicine.
C. Pre-Podiatry

• Indian Health Scholarships (Professions).

A. Chemical Dependency Counseling: Baccalaureate and Masters Level.
B. Clinical Psychology: Ph.D. Program.
C. Coding Specialist.
D. Dental Hygiene: B.S.
E. Dentistry: D.D.S. or D.M.D.
F. Diagnostic Radiology Technology: Certificate, Associate, and B.S.
G. Dietitian: B.S.
H. Environmental Health & Engineering: B.S.
I. Health Care Administration: Bachelors & Masters Level.
J. Health Education: Bachelors & Masters Level.
K. Health Records: R.H.I.T and R.H.I.A.
L. Injury Prevention Specialist: Certificate.
M. Medical Technology: B.S.
N. Medicine: Allopathic and Osteopathic.
O. Nurse: Associate & Bachelor Degrees & advanced degrees in Psychiatry, Geriatric, Women's Health, Pediatric Nursing, Nurse Anesthetist, & Nurse Practitioner.
*(Priority consideration will be given to Registered Nurses employed by the Indian Health Service; in a program assisted under a contract entered into under the Indian Self-Determination Act; or in a program assisted under Title V of the Indian Health Care Improvement Act.)
P. Occupational Therapy: B.S.
Q. Optometry: O.D.
R. Pharmacy: Pharm D.
S. Physician Assistant: PAC.
T. Physical Therapy Assistant: Associate degree.
U. Physical Therapy: M.S. and D.P.T.
V. Podiatry: D.P.M.
W. Public Health: M.P.H. only (Applicants must be enrolled or accepted in a school of public health with concentration in Epidemiology).
X. Public Health Nutrition: Masters Level only.
Y. Respiratory Therapy: Associate degree.
Z. Social Work: Masters Level only (Direct Practice and Clinical concentrations).
AA. Ultrasonography (Prerequisite: Diagnostic Radiology Technology).

2. Review and Selection Process

The applications will be reviewed & scored by the IHS Scholarship Programs' Application Review Committee appointed by the IHS. Each reviewer will not be allowed to review an application from his/her area or his/her own Tribe. Each application will be reviewed by three reviewers. The average score of the three reviews provide the final Ranking Score for each applicant. To determine the ranking of each applicant, these scores are sorted from the highest to the lowest within each scholarship, health discipline, date of graduation, and score. If several students have the same date of graduation and score within the same discipline, computer ranking list will randomly sort and will not be sorted by alphabetical name. Selections for recommendations to the Director, IHS, are then made from the top of each ranking list to the extent that funds allocated by the IHS among the three scholarships are available for obligation.

VI. Award Administration Information

1. Award Notices

It is anticipated that applicants will be notified in writing during the first week of July, 2007. An Award Letter will be issued to successful applicants. Unsuccessful applicants will be notified in writing, which will include a brief explanation of the reasons the application was not successful and provide the name of the IHS official to contact if more information is desired.

2. Administrative and National Policy Requirements

Regulations at 42 CFR 136.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Indian Health Professions Preparatory and Pregraduate Scholarships and Indian Health Scholarships (Professions). Section 104(b)(1) of the IHCIA, as amended by the Indian Health Care Amendment of 1988, Public Law 100–713, authorizes the IHS to determine specific health professions for which Indian Health Scholarships will be awarded. Awards for the Indian Health Scholarships (Professions) will be made in accordance with 42 CFR 136.330. Recipients shall incur a service obligation prescribed under section 338A of the Public Health Service Act (42 U.S.C. 254l) which shall be met by service:

(1) In the Indian Health Service;

(2) In a program conducted under a contract or compact entered into under the Indian Self-Determination Act and Education Assistance Act (Pub. L. 93–638) and its amendments;

(3) In a program assisted under Title V of the Indian Health Care Improvement Act (Pub. L. 94–437) and its amendments; and

(4) In a private practice option of his or her profession, if the practice: (a) is situated in a health professional shortage area, designated in regulations promulgated by the Secretary; and (b) addresses the health care needs of a substantial number (51%) of Indians as determined by the Secretary in accordance with guidelines of the Service.

Pursuant to the Indian Health Amendments of 1992 (Pub. L. 102–573), a recipient of an Indian Health Professions Scholarship may, at the election of the recipient, meet his/her

active duty service obligation prescribed under section 338A of the Public Health Service Act (42 U.S.C. 254l) by a program specified in options (1)–(4) above that:

(i) Is located on the reservation of the Tribe in which the recipient is enrolled; or

(ii) Serves the Tribe in which the recipient is enrolled.

In summary, all recipients of the Indian Health Scholarship (Health Professions) are reminded that recipients of this scholarship incur a service obligation. Moreover, this obligation shall be served at a facility determined by the Director, IHS, consistent with IHCIA, Pub. L. 94–437, as amended by Public Law 100–713, and Public Law 102–573.

3. Reporting

Scholarship Program Minimum Academic Requirements

It is the policy of the IHS that a scholarship recipient awarded under the Health Professions Scholarship Program of the Indian Health Care Improvement Act maintain a 2.0 cumulative grade point average (GPA) each semester/quarter and be a full-time student (minimum of 12 credit hours considered by your school as full-time). A recipient of a scholarship under the Health Professions Pre-Graduate and Health Professions Preparatory Scholarship authority must maintain a good academic standing each semester/quarter and be a full time student (minimum of 12 credit hours or the number of credit hours considered by your school as full-time). In addition to the two requirements stated above, a Health Professions Scholarship program grantee must be enrolled in an approved/accredited school for a health professions degree. Part-time students for the three scholarship programs must also maintain a 2.0 cumulative GPA and must take at least 6 credit hours each semester/quarter but less than the number of hours considered full-time by your school. Scholarship grantees must be approved for part-time status at the time of scholarship award. Scholarship grantees may not change from part-time status to full-time status or vice versa in the same academic year.

The following reports must be sent to the IHS Scholarship Program at the identified time frame. Each scholarship grantee will be provided with an IHS Scholarship Handbook where the below needed reports are located. If a scholarship grantee fails to submit these reports as required, they will be ineligible for continuation of scholarship support and scholarship award payments will be discontinued.

A. Recipient's Enrollment and Initial Progress Report

Within thirty (30) days from the beginning of each semester or quarter, scholarship grantees must submit a Recipient's Enrollment and Initial Progress Report (Form F–02 of the student handbook).

B. Transcripts

Within thirty (30) days from the end of each academic period, i.e., semester, quarter, or summer session, scholarship grantees must submit an Official Transcript showing the results of the classes taken during that period.

C. Notification of Academic Problem/Change

If at any time during the semester/quarter, scholarship grantees are advised to reduce the number of credit hours for which they are enrolled below the minimum of 12 (or the number of hours considered by their school as full time) for a full-time student or at least 6 hours for part-time students; or if they experience academic problems, they must submit this report (page F–04 of student handbook).

D. Change of Status

- Change of Academic Status.

Scholarship Grantees must immediately notify the IHS Area Coordinator if they are placed on academic probation, dismissed from school, or voluntarily withdraw for any reason (personal or medical).

- Change of Health Discipline.

Scholarship Grantees may not change from the approved IHS Scholarship Program health discipline during the school year. If an unapproved change is made, scholarship payments will be discontinued.

- Change in Graduation Date.

Any time that a change occurs in a scholarship grantee's expected graduation date, they must notify their IHS Area Coordinator immediately in writing. Justification must be attached from the school advisor.

VII. Agency Contacts

Please address application inquiries to the appropriate IHS Area Coordinator. Other programmatic inquiries may be addressed to Ms. Patricia Lee McCoy, Director, Division of Health Professions Support, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443–6197. (This is not a toll free number.) For grants information, contact the Grants Scholarship Coordinator, Division of Grants Operations, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443–0243. (This is not a toll-free number).

VIII. Other Information

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may obtain a copy of *Healthy People 2010*, (Full Report; Stock No. 017–001–00474–0) or Healthy People 2010 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 [Telephone (202) 783–3238].

Interested individuals are reminded that the list of eligible health and allied health professions is effective for applicants for the 2007–2008 academic year. These priorities will remain in effect until superseded. Applicants for health and allied health professions not on the above priority list will be considered pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

Dated: December 4, 2006.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. E6–21026 Filed 12–11–06; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Erythroid Progenitor Cells and Methods for Producing Parvovirus B19 Therein

Description of Technology: The present technology offers novel methods of cell culture for production of human parvovirus B19 (B19). B19, a common infection of children adults, is the cause of fifth disease. Symptoms of B19 infection are usually mild in otherwise healthy individuals, but some adults can suffer chronic arthopathy. Severe health conditions and mortality may result from B19 infection of immunocompromised individuals and patients with chronic hemolytic anemia such as sickle cell disease. In addition, B19 infection during pregnancy may cause hydrops fetalis and fetal death. There is no specific antiviral drug for B19, and some forms of chronic infection are difficult to diagnose. Vaccination is an effective strategy for other animal parvoviruses and is feasible for B19 in humans.

B19 selectively infects erythroid progenitor cells of bone marrow, fetal liver and a small number of specialized cell lines. These specific cell lines demonstrate limited infectability and commonly produce little or no virus following initial inoculation with B19. Current methods for producing infectious B19 require phlebotomy of infrequently available infected donors.

The available technology describes a method of producing pure populations of human erythroid progenitor cells that are fully permissive to B19 infection. This discovery uses CD34+ hematopoietic stem cells present in peripheral blood to supply erythroid progenitor cells, which demonstrate a significant increase in viral production after initial inoculation. The ability to efficiently generate significant amounts of infectious B19V in cells is useful for the development of killed or attenuated vaccines, therapeutics and efficient diagnostic tools for prevention and treatment of B19V. Furthermore, this technology would allow development of new diagnostic assays, which use the entire virus as the antigenic target, thus providing more sensitive and accurate results than current diagnostic tools, which rely on antibodies against a single viral protein.

Applications: (1) Diagnosis of human parvovirus B19; (2) Vaccination of individuals at risk for severe effects of parvovirus infection; (3) Research and development of anti-parvovirus agents.

Development Status: Preclinical data is available at this time.

Inventors: Susan Wong and Neal Young (NHLBI).

Related Publications: 1. MC Giarratana, L Kobari, H Lapillonne, D Chalmers, L Kiger, T Cynober, MC Marden, H Wajcman, L Douay. Ex vivo generation of fully mature human red blood cells from hematopoietic stem cells. Nat Biotechnol. 2005 Jan; 23(1):69–74.

2. JM Freyssinier, C Lecoq-Lafon, S Amsellem, F Picard, R Ducrocq, P Mayeux, C Lacombe, S Fichelson. Purification, amplification and characterization of a population of human erythroid progenitors. Br J Haematol. 1999 Sep; 106(4):912–922.

Patent Status: U.S. Provisional Application No. 60/808,904 filed 26 May 2006 (HHS Reference No. E–188–2006/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing and commercial development.

Licensing Contact: Chekesha S. Clingman, Ph.D.; 301/435–5018; *clingmac@mail.nih.gov.*

Collaborative Research Opportunity: The NHLBI Hematology Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize novel methods to produce parvovirus B19 and use as diagnostic or vaccine. Please contact Dr. Neal Young at 301–496–5093, *YoungNS@mail.nih.gov* for more information.

Small Molecules for Imaging Protein-Protein Interactions

Description of Technology: Imaging techniques like positron emission tomography and photon emission computerized tomography are often used with imaging agents to detect the presence and accumulation of amyloid plaques within the human brain. These imaging agents have high specificity for beta amyloid peptides, and administration of such agents aids in the early detection of amyloid plaques in brains of Alzheimer's victims. However, currently available imaging agents have limited success for detecting pre-plaque beta amyloid proteins because they are small and reside within the tissue for a short period of time. Therefore, new imaging agents are needed for enhanced identification of amyloid deposits.

Available for licensing and commercial development are small molecules for imaging protein-protein interactions in Alzheimer's disease. This technology describes a bifunctional molecule with high specificity for beta amyloid proteins that is applicable for in vivo imaging. The molecule contains two moieties with different binding affinities, one moiety has an affinity for amyloid beta proteins, and the other moiety has an affinity for a tissue-specific chaperone. The different moieties of the subject invention are conjoined by an inert linkage group, typically comprised of a hydrocarbon chain, peptide, or carbohydrate. The subject invention is affixed with a label, such as a fluorophore or radioisotope, which adheres to the binding site of the beta amyloid protein, the chaperone, or the linkage group. The choice of label makes the subject invention versatile and employable in several types of imaging modalities such as single photon emission computed tomography (SPECT), positron emission tomography (PET), magnetic resonance imaging (MRI), and computerized tomography (CT) scans.

Applications: (1) Applicable for identification of beta amyloid plaques in patients with or at risk for Alzheimer's disease and pre-plaque amyloid beta proteins; (2) Applicable for in vivo imaging protein-protein interactions using small molecules; (3) Applicable for image guided therapy of Alzheimer's disease.

Market: (1) Alzheimer's disease affects approximately 4.5 million people within the United States; (2) The direct and indirect annual costs associated with Alzheimer's disease are at least $100 billion.

Development Status: Pre-clinical data is available.

Inventors: King C. Li and S. Narasimhan Danthi (CC).

Patent Status: U.S. Provisional Application No. 60/815,740 filed 21 Jun 2006 (HHS Reference No. E–046–2006/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Chekesha S. Clingman , Ph.D.; 301–435–5018; *clingmac@mail.nih.gov.*

Collaborative Research Opportunity: The National Institutes of Health Clinical Center, Laboratory of Diagnostic Radiology Research, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Small Molecules for Imaging Protein-Protein Interactions. Please contact Betty Tong, Ph.D. at 301–594–4263 for more information.

Methods and Systems for Identifying and Classifying Drug Targets

Description of Technology: Available for licensing and commercial development is a novel method for a-priori evaluation of the therapeutic relevance of gene products for various diseases, in order to make drug development more cost-efficient. In addition, this technology may be used to identify novel therapeutic uses for known drugs. For example, the current invention has the potential to uncover the role of an established cancer drug target, in an alternative disorder such as Alzheimer's disease, thus providing an additional use for the available cancer drug.

The multivariable model used by the method, which is based on a training set of targets that have already passed FDA review, is capable of ranking drug targets in terms of prospective clinical success. This innovative approach integrates multiple datasets that describe each single gene product from a broad range of analyses, such as microarrays, x-ray crystallography, and phylogenetics, to rapidly characterize a proteins structure, function, and gene regulation information. An algorithm subsequently scores a protein's potential as a drug target for use in future drug design studies. The resulting set of targets is enriched 28-fold as compared to randomly selected gene products.

Applications: (1) Early evaluation of a candidate drug target's potential to yield a therapeutic effect, given the target's inhibitor is provided; (2) Efficient discovery of novel drugs and drug targets; (3) Classification of genes according to their involvement in specific diseases.

Development Status: The technology is ready to be used in drug discovery and development.

Inventors: Anatoly L. Mayburd (NCI), James L. Mulshine (NCI), et al.

Patent Status: U.S. Provisional Application No. 60/788,522 filed 31 Mar 2006 (HHS Reference No. E–268–2005/0–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., M.B.A.; 301–435–4507; *thalhamc@mail.nih.gov.*

Systems and Methods for Intelligent Quality Control of Instruments and Processes

Description of Technology: Available for licensing and commercial development is a cost-effective system and method for evaluation of instruments and processes for real-time detection of error. The subject invention includes the capacity to identify imprecision in a variety of data analysis tools, which may be susceptible to malfunction. Such processes include instrumental analysis of patient specimens, assembly line manufacturing and general plant or factory operation. This system provides an automated platform for the dual purpose of (1) monitoring data to detect unusual events in real time and (2) enhancement of human and machine recognition and analysis of improper occurrences based on time-varying patterns of measured values.

The scheme of the current system is straightforward and in general the method involves the following steps: (1) Collection of data elements from an instrument or process (2) counting data elements having values within predetermined intervals of the data range (3) applying counts of data to a neural network that monitors data trends and (4) production of an output based on the neural network, which demonstrates whether the instrument or process is generating results within an appropriate range. This system is advantageous because output is generated in real time and thus available without delay for immediate correction of malfunctions.

Applications: (1) Quality control for processes and instruments; (2) Automated system for real time notification of malfunctions in an instrument or process for immediate correction of the procedure.

Development Status: The technology is fully developed.

Inventors: James M. Deleo (CIT) and Alan T. Remaley (CC).

Patent Status: U.S. Patent No. 6,556,951 issued 29 Apr 2003 (HHS Reference No. E–042–1997/0–US–03).

Licensing Status: Available for non-exclusive and exclusive licensing.

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., M.B.A.; 301–435–4507; *thalhamc@mail.nih.gov.*

Collaborative Research Opportunity: The National Institutes of Health Clinical Center, Radiologic and Imaging Sciences, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Intelligent Quality Control of Instruments. Please contact Elaine Ayres at 301/594–3019 for more information.

Sample Delivery System With Laminar Mixing for Microvolume Biosensing

Description of Invention: The invention is a sample delivery system with at least two microchannels connected to a sample chamber containing a biosensor. Biosensing for studying molecular recognition has become an important biophysical tool for biomedical research. The system aspirates a small sample volume into the microfluidic channels and applies a periodic oscillatory flow pattern to the sample. This prevents sample depletion in the stagnant layer across the sensor surface and results in efficient mixing of the sample during the biosensor measurement. Because the oscillatory flow pattern does not produce a net transport of the sample with time, there is a very long incubation time of the sensor surfaces with a very small sample volume. The new sample delivery system uses sample volumes of only 3 to 8 microliters, compared to the 25 to 200 microliter volumes of conventional systems, which use cuvette principles or continuous flow microfluidics. The present invention is substantially better than existing systems with respect to biosensor contact time and required sample volume.

Application: Sample delivery for biosensing.

Development Status: A prototype of the technology is currently being implemented in inventor's lab and technology is ready for commercialization.

Inventor: Peter Schuck (ORS).

Publication: M Abrantes, MT Magone, LF Boyd, P Schuck. Adaptation of a surface plasmon resonance biosensor with microfluidics for use with small sample volumes and long contact times. Anal Chem. 2001 Jul 1;73(13):2828–2835.

Patent Status: U.S. Patent Application No. 10/415,909 filed 05 May 2003, claiming priority to 06 Nov 2000 (HHS Reference No. E–143–2000/0–US–03); European Patent Application No. 01990651.0 filed 11 Jun 2001 (HHS Reference No. E–143–2000/0–EP–04).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301/435–5019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: The NIH Office of Research Services, Division of Bioengineering and Physical Science, Protein Biophysics Resource, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this Sample Delivery System technology. Please contact Dr. Peter Schuck at 301–435–1950 or *pschuck@helix.nih.gov* for more information.

Vaccine for Dengue Virus

Description of Technology: The claimed invention relates to viable chimeric dengue viruses or their derived recombinant mutants for use as vaccines against dengue and other flavivirus diseases, including tick-borne encephalitis and West Nile encephalitis. Dengue is a mosquito-transmitted viral disease which occurs in tropical and subtropical regions throughout the world. Inactivated whole dengue virus vaccines have been shown to be insufficiently immunogenic and live dengue virus vaccines prepared by serial passage in cell culture have not been shown to be consistently attenuated. A dengue vaccine is still not available. The present invention represents a technical breakthrough, which provides new approaches to dengue vaccines by construction of chimeric dengue viruses of all four serotypes and strategic modification to produce attenuated virus strains. Several fields of use remain available for licensing.

Applications: Prevention of dengue outbreaks, severe and fatal dengue caused by dengue viruses, a major public health problem in tropical and subtropical regions.

Inventors: Ching-juh Lai, et al. (NIAID).

Patent Status: U.S. Patent 6,184,024 issued 06 Feb 2001 (HHS Reference No. E–171–1988/1–US–02); U.S. Patent 6,676,926 issued 13 Jan 2004 (HHS Reference No. E–171–1988/1–US–03).

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov.*

Murine Monoclonal Antibodies Effective To Treat Respiratory Syncytial Virus

Description of Technology: Available for licensing through a Biological Materials License Agreement are the murine MAbs described in Beeler et al, ''Neutralization epitopes of the F glycoprotein of respiratory syncytial virus: effect of mutation upon fusion function,'' J Virol. 1989 Jul;63(7):2941–2950. The MAbs that are available for licensing are the following: 1129, 1153, 1142, 1200, 1214, 1237, 1112, 1269, and 1243. One of these MAbs, 1129, is the basis for a humanized murine MAb (see U.S. Patent 5,824,307 to humanized 1129 owned by MedImmune, Inc.), recently approved for marketing in the United States. MAbs in the panel reported by Beeler et al. have been shown to be effective therapeutically when administered into the lungs of cotton rats by small-particle aerosol. Among these MAbs several exhibited a high affinity (approximately 109M–1) for the RSV F glycoprotein and are directed at epitopes encompassing amino acid 262, 272, 275, 276 or 389. These epitopes are separate, nonoverlapping and distinct from the epitope recognized by the human Fab of U.S. Patent 5,762,905 owned by The Scripps Research Institute.

Applications: Research and drug development for treatment of respiratory syncytial virus.

Inventors: Robert M. Chanock, Brian R. Murphy, Judith A. Beeler, and Kathleen L. van Wyke Coelingh (NIAID).

Patent Status: HHS Reference No. B–056–1994/1—Research Tool.

Licensing Status: Available for non-exclusive licensing under a Biological Materials License Agreement.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Dated: December 1, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–21028 Filed 12–11–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Noncovalent HIV Env-CD4 Complexes as HIV Vaccines

Description of Technology: HIV vaccine technology based on HIV envelope protein (Env) have been less successful than anticipated to date. One possible reason for this is the potential conformational masking of neutralizing epitopes. The current technology combines HIV Env and cell surface polypeptides CD4 in non-covalent complexes to expose epitopes not present on the uncomplexed Env molecules. These complexes can thus be used to elicit neutralizing antibodies when used as vaccines, immunogenic compositions or immunotherapies. The CD4 inducing epitopes found in regions of the virus that are most conserved across clades are unmasked and immune sera generated with this technology neutralized primary HIV–1 viruses from several clades. Additionally, cell surface polypeptide CD4 is in its native conformation and masked by Env, therefore it is unlikely to induce autoantibodies.

Applications and Advantages: (1) HIV vaccine based on conformationally masked epitopes; (2) Presents epitopes to immune system that are the same or similar as with actual HIV infection; (3) Multiple copies of Env may enhance immune response and limit dosage.

Inventors: Jinhai Wang and Michael Norcross (CDER/FDA).

Patent Status: U.S. Provisional Application No. 60/711,985 filed 25 Aug 2005 (HHS Reference No. E–173–2005/0–US–01); PCT Application filed 25 Aug 2006 (HHS Reference No. E–173–2005/1–PCT–01).

Licensing Contact: Susan Ano, PhD; 301–435–5515; *anos@mail.nih.gov.*

Collaborative Research Opportunity: The FDA Center for Drug Evaluation and Research is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this HIV Env-CD4 technology. Please contact Beatrice A. Droke at 301/827–7008 or *bea.droke@fda.hhs.gov* for more information.

Modified Bacterial Strain for Otitis Media Vaccine

Description of the Technology: This invention relates to a strain of Moraxella catarrhalis containing a gene mutation that prevents endotoxic lipooligosaccharide (LOS) synthesis and potential use of the mutant for developing novel vaccines against the pathogen, for which there is currently

no licensed vaccine. M. catarrhalis is one of the causative agents of otitis media (middle ear infection), sinusitis, and lung infections. The mutant is defective in the lpxA gene, whose enzyme product is relevant in lipid A biosynthesis (lipid A is part of the LOS). The nontoxic mutant was found to elicit high levels of antibodies with bactericidal activity and provided protection against wild type bacterial challenge. Use of this mutant bacterium is envisioned as a new approach for vaccines against M. catarrhalis.

Applications: Otitis media vaccine, sinusitis, and lung infections.

Inventors: Xin-Xing Gu and Daxin Peng (NIDCD).

Patent Status: U.S. Provisional Application No. 60/577,244 filed 04 Jun 2004 (HHS Reference No. E–174–2004/0–US–01); U.S. Provisional Application No. 60/613,139 filed 23 Sep 23 (HHS Reference No. E–174–2004/1–US–01); PCT Application No. PCT/US2005/019479 filed 03 Jun 2005 (HHS Reference No. E–174–2004/2–PCT–01).

Licensing Status: Available for non-exclusive licensing—biological materials.

Licensing Contact: Susan Ano, PhD; 301/435–5515; *anos@mail.nih.gov.*

Collaborative Research Opportunity: The Vaccine Research Section in the National Institute on Deafness and Other Communication Disorders (NIDCD) is seeking statements of capability or interest from parties interested in collaborative research. NIDCD is interested in developing outer membrane proteins (OMP), outer membrane vesicle (OMV), and whole cell vaccines generated from the mutant. The mutant strain can also be used as an effective vehicle to express and deliver protective antigens from other important human pathogens. Please contact Dr. Xin-Xing Gu by phone (301–402–2456) or e-mail (*guxx@nidcd.nih.gov*) for more information.

A Method With Increased Yield for Production of Polysaccharide-Protein Conjugate Vaccines Using Hydrazide Chemistry

Description of Technology: Current methods for synthesis and manufacturing of polysaccharide-protein conjugate vaccines employ conjugation reactions with low efficiency (about twenty percent). This means that up to eighty percent of the added activated polysaccharide (PS) is lost. In addition, inclusion of a chromatographic process for purification of the conjugates from unconjugated PS is required.

The present invention utilizes the characteristic chemical property of hydrazide groups on one reactant to react with aldehyde groups or cyanate esters on the other reactant with an improved conjugate yield of at least sixty percent. With this conjugation efficiency the leftover unconjugated protein and polysaccharide would not need to be removed and thus the purification process of the conjugate product can be limited to diafiltration to remove the by-products of small molecules. The new conjugation reaction can be carried out within one or two days with reactant concentrations between 1 and 25 mg/mL at PS/protein ratios from 1:2 to 3:1, at temperatures between 4 and 40 degrees Centigrade, and in a pH range of 5.5 to 7.4, optimal conditions varying from PS to PS.

Application: Cost effective and efficient manufacturing of conjugate vaccines.

Inventors: Che-Hung Robert Lee and *Carl E. Frasch* (CBER/FDA).

Patent Status: U.S. Patent Application No. 10/566,899 filed 01 Feb 2006, claiming priority to 06 Aug 2003 (HHS Reference No. E–301–2003/0–US–10); U.S. Patent Application No. 10/566,898 filed 01 Feb 2006, claiming priority to 06 Aug 2003 (HHS Reference No. E–301–2003/1–US–02); International rights available.

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

HIV Entry Inhibitor

Description of Technology: The technology relates to a chimeric molecule, N_{CCG}-gp41, in which the internal trimeric helical coiled-coil of the ectodomain of gp41 is fully exposed and stabilized by both fusion to a minimal ectodomain core of gp41 and by engineered intersubunit disulfide bonds. N_{CCG}-gp41 inhibits HIV envelope mediated cell fusion at nanomolar concentrations with an IC_{50} of 16 nM. It is proposed that N_{CCG}-gp41 targets the exposed C-terminal region of the gp41 ectodomain in its pre-hairpin intermediate state, thereby preventing the formation of the fusogenic form of the gp41 ectodomain that comprises a highly stable trimer of hairpins arranged in a six-helix bundle. Antibodies have been raised against N_{CCG}-gp41 that inhibit HIV envelope mediated cell fusion.

Applications: (1) Entry inhibitor HIV therapeutic; (2) HIV/AIDS vaccine; (3) As a component of a high throughput screening assay for small molecule inhibitors of HIV envelope mediated cell fusion.

Development Status: The technology is currently in pre-clinical stage of development.

Inventors: G. Marius Clore et al. (NIDDK).

Publications:

1. JM Louis et al. Design and properties of N_{CCG}-gp41, a chimeric gp41 molecule with nanomolar HIV fusion inhibitory activity. J Biol Chem. 2001 Aug 3;276(31):29485–29489.

2. CA Bewley et al. Design of a novel peptide inhibitor of HIV fusion that disrupts the internal trimeric coiled-coil of gp41. J Biol Chem. 2002 Apr 19;277(16):14238–14245.

3. JM Louis et al. Covalent trimers of the internal N-terminal trimeric coiled-coil of gp41 and antibodies directed against them are potent inhibitors of HIV envelope-mediated cell fusion. J Biol Chem. 2003 May 30;278(22):20278–20285.

4. JM Louis et al. Characterization and HIV–1 fusion inhibitory properties of monoclonal Fabs obtained from a human non-immune phage library selected against diverse epitopes of the ectodomain of HIV–1 gp41. J Mol Biol. 2005 Nov 11;353(5):945–951.

Patent Status: U.S. Patent Application No. 10/499,094 filed 14 Jun 2004 (HHS Reference No. E–252–2001/0–US–03); EP application 02795951.9 and IN application 1535/CHENP/2004.

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Susan Ano, Ph.D.; 301/435–5515; *anos@mail.nih.gov.*

Subgenomic Replicons of the Flavivirus Dengue

Description of Technology: Dengue virus, with its four serotypes Den-1 to Den-4, is the most important member of the Flavivirus genus with respect to infection of human producing diseases that range from flu-like symptoms of dengue fever (DF) to severe or fatal illness of dengue hemorrhagic fever (DHF) and dengue shock syndrome (DSS). Dengue outbreaks continue to be a major public health problem in densely populated areas of the tropical and subtropical regions, where mosquito vectors are abundant. This invention relates to the construction of all four types of dengue subgenomic replicons (chromosome and plasmid which contain genetic information necessary for their own replication) containing large deletions in the structural region (C-preM–E) of the genome. Immunization using these replicons should be effective in eliciting not only a humoral-mediated immune response but also a cell-mediated

immune response. These replicons should be safer than a live attenuated vaccine because they cannot cause disease in the host and they should be better than subunit vaccines because they can replicate in the host.

Applications: Prevention of severe and/or fatal human disease caused by dengue virus, a major health concern in tropical and subtropical regions.

Inventor: Xiaowu Pang (CBER/FDA).

Patent Status: U.S. Patent Application 10/656,721 filed 05 Sep 2003, claiming priority to 09 Mar 2001 (HHS Reference No. E–228–2000/0–US–03).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Dated: December 1, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–21029 Filed 12–11–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

ARH3, a Therapeutic Target for Cancer, Ischemia, and Inflammation

Description of Technology: ADP-ribosylation is important in many cellular processes, including DNA replication and repair, maintenance of genomic stability, telomere dynamics, cell differentiation and proliferation, and necrosis and apoptosis. Poly-ADP-ribose is important in a number of critical physiological processes such as DNA repair, cellular differentiation, and carcinogenesis. Until recently, only one human enzyme, PARG, had been identified that degrades the ADP-ribose polymer. Another ADP-ribose, O-acetyl-ADP ribose, is formed via the deacetylation of proteins, such as acetyl-histone, by proteins in the Sir2 family. Sir2 proteins have been implicated in regulation of chromatin structure and longevity.

The NIH announces the discovery of a novel PARG-like enzyme, ARH3. ARH3 possesses PARG activity, yet is structurally distinct from PARG. ARH3 also hydrolyzes O-acetyl-ADP-ribose, and is the only protein recognized to date with such activity. ARH3 thus appears to function in two important signaling pathways, serving to regulate both poly-ADP-ribose and O-acetyl-ADP-ribose levels. It may affect chromatin structure through effects on both pathways. Since ARH3 structures differs from PARG or other enzymes that participate in these pathways, it may be possible to design specific inhibitors to target both the poly-ADP-ribose and Sir2 pathways. These drugs may be used as anticancer agents, radiosensitizers or antiviral agents, or for treating disorders involving oxidative damage, such as acute tissue injury, ischemia, and inflammation.

Applications: (1) Development of therapeutics for cancer or disorders associated with excessive DNA damage; (2) Development of therapeutics for diseases involving oxidative damage, such as acute tissue injury, ischemia and inflammation.

Market: (1) Patients with chemotherapy-resistant tumors, or with cancers that are genetically deficient in DNA repair; (2) Patients with inflammatory or ischemia/reperfusion diseases, particularly those associated with acute cardiovascular disease.

Development Status: Early stage.

Inventors: Joel Moss et al. (NHLBI).

Related Publications:

1. S Oka, J Kato, J Moss. Identification and characterization of a mammalian 39-kDa poly(ADP-ribose) glycohydrolase. J Biol Chem. 2006 Jan 13;281(2):705–713.

2. T Ono, A Kasamatsu, S Oka, J Moss. The 39-kDa poly(ADP-ribose) glycohydrolase ARH3 hydrolyzes *O*-acetyl-ADP-ribose, a product of the Sir2 family of acetyl-histone deacetylases. Proc Natl Acad Sci USA 2006 Nov 7;103(45):16687–16691. Epub 2006 Oct 30, doi 10.1073/pnas.0607911103.

Patent Status: U.S. Provisional Application No. 60/716,807 filed 12 Sep 2005 (HHS Reference No. E–347–2004/0-US–01); PCT Application No. PCT/US2006/035771 filed 12 Sep 2006 (HHS Reference No. E–347–2004/0–PCT–02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Tara L. Kirby, PhD; 301/435–4426; *tarak@mail.nih.gov.*

Collaborative Research Opportunity: The Pulmonary Critical Care Medicine Branch in the National Heart, Lung, and Blood Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the invention. Please contact Marianne Lynch in the NHLBI Office of Technology Transfer and Development by phone (301–594–4094) or e-mail (*lynchm@nhlbi.nih.gov*) for more information.

Antisera To Detect Phosphorylated Phosphoinositide-Dependent Kinase 1 (PDK–1)

Description of Technology: PDK–1 phosphorylates and activates a number of cellular kinases, and plays a major role in insulin and growth factor signaling. PDK–1 also represents a promising drug target for a number of cancers. Autophosphorylation at Ser244 (mouse) or Ser241 (human) is critical for PDK–1 activity.

Available for licensing are polyclonal rabbit antisera that specifically detect mouse PDK–1 protein phosphorylated at Ser244. These antisera are also expected to be specific for the human PDK–1 protein phosphorylated at Ser241.

Applications: (1) Tool for screening PDK–1 autophosphorylation inhibitors for cancer and other indications; (2) Tool for studying insulin and growth factor signaling.

Inventor: Michael J. Quon (NCCAM).

Publication: MJ Wick, FJ Ramos, H Chen, MJ Quon, LQ Dong, F Liu. Mouse 3-phosphoinositide-dependent protein kinase-1 undergoes dimerization and trans-phosphorylation in the activation loop. J Biol Chem. 2003 Oct 31;278(44):42913–42919.

Patent Status: HHS Reference No. E–330–2003/0—Research Tool.

Licensing Status: This technology is available as a research tool under a Biological Materials License.

Licensing Contact: Tara Kirby, PhD; 301/435–4426; *tarak@mail.nih.gov*

Collaborative Research Opportunity: The NIH, NCCAM, Diabetes Unit is seeking statements of capability or interest from parties interested in collaborative research to further

develop, evaluate, or commercialize phospho-specific PDK–1 antibody and insulin signaling. Please contact Michael J. Quon, Chief, Diabetes Unit, NCCAM, NIH at *quonm@nih.gov* for more information.

Dated: December 6, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–21037 Filed 12–11–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 the following meeting.

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 portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: February 22–23, 2007.

Open: February 22, 2007, 9 a.m. to 11 a.m.

Agenda: Administrative reports and program discussions.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: February 22, 2007, 11 a.m. to 5 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: February 23, 2007, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, MLS, Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38/Room 2W06, Bethesda, MD 20894, 301–496–6921. *Sheldon_Kotzin@nlm.nih.gov.*

Any interested person may file written comments with the Committee by forwarding the statement to the Contact Person listed on this Notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 4, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 06–9631 Filed 12–11–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2006–25522]

Exercise of Authority To Require Pilots To Submit Results of Annual Chemical Test for Dangerous Drugs and Extension of Deadline for Pilots To Submit Most Recent Annual Physical Examination

ACTION: Notice.

SUMMARY: By this notice, the Coast Guard is exercising authority currently set forth in Coast Guard regulations to require all first class pilots on vessels greater than 1600 gross registered tons (GRT), and other individuals who ''serve as'' pilots on certain types of vessels greater than 1600 GRT, to provide the passing results of their annual chemical test for dangerous drugs to the Coast Guard, subject to certain exceptions. In addition, the Coast Guard is extending the deadline for pilots to submit the most recent copy of their annual physical examination.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart A. Walker, National Maritime Center. Phone: 202–493–1022, e-mail: *Stewart.A.Walker@uscg.mil*

DATES: Unless excepted under 46 CFR 16.220(c), each pilot must do the following: Submit the passing results of his or her most recent annual chemical test for dangerous drugs to the Coast Guard on or before April 11, 2007; submit the passing results of his or her annual chemical test for dangerous drugs to the Coast Guard no later than 30 calendar days after receiving the results of the test; and undergo a chemical test for dangerous drugs annually within 30 calendar days of the anniversary date of the individual's most recent chemical test for dangerous drugs.

In addition, the Coast Guard is extending the deadline for pilots to submit a copy of their most recent physical examinations until April 11, 2007. This information was initially requested to be submitted to the Coast Guard no later than December 27, 2006 in a **Federal Register** notice published on September 28, 2006 at 71 FR 56999.

SUPPLEMENTARY INFORMATION: On September 28, 2006, the Coast Guard provided notice that it is exercising its authority to require first class pilots on vessels greater than 1600 GRT, and those individuals who ''serve as'' pilots in accordance with 46 CFR 15.812(b)(3) & (c) on vessels greater than 1600 GRT, to submit copies of their annual physical examinations to the Coast Guard. 71 Fed. Reg. 56999. Copies of that notice, as well as this notice are available electronically by searching for docket number USCG–2006–25522 at *http://dms.dot.gov.* The purpose of the physical examination notice was to implement the recommendation made by the National Transportation Safety Board (NTSB), in their report on the 2003 allision of the Staten Island Ferry ANDREW J. BARBERI, that the Coast Guard require submission of annual pilot physicals. This notice is a continuation of the Coast Guard's efforts to fully implement the NTSB's recommendation.

Coast Guard regulations require that, unless excepted under 46 CFR 16.220(c), each pilot who is required to complete an annual physical examination must also pass a chemical test for dangerous drugs, and that he or she must submit the passing (i.e. negative) results of the chemical test to the Coast Guard when applying for license renewal, or when requested by the Coast Guard. 46 CFR 16.220(b). This includes first class pilots on vessels greater than 1600 GRT, and those individuals who ''serve as'' pilots in accordance with 46 CFR 15.812(b)(3) &

(c) on vessels greater than 1600 GRT. Individuals who ''serve as'' pilots on vessels of not more than 1600 GRT are not required to complete an annual physical or pass an annual chemical test for dangerous drugs. Positive results of any Coast Guard required chemical test must be reported to the Coast Guard under other existing regulatory authority in 46 CFR part 16.

In accordance with 46 CFR 16.220(c), individuals are excepted from the chemical test requirements if they provide satisfactory evidence that they have: (1) Passed a chemical test for dangerous drugs required by 46 CFR part 16 within the previous six months with no subsequent positive chemical tests during the remainder of the six-month period; or (2) during the previous 185 days been subject to a random testing program required by 46 CFR 16.230 for at least 60 days and did not fail or refuse to participate in a chemical test for dangerous drugs required pursuant to 46 CFR part 16.

This notice serves as the request, pursuant to the authority set forth in 46 CFR 16.220(b), that all first class pilots on vessels greater than 1600 GRT, and all other individuals who ''serve as'' pilots in accordance with 46 CFR 15.812(b)(3) & (c) on vessels greater than 1600 GRT, provide the passing results of their annual chemical tests for dangerous drugs to the Coast Guard, unless they provide satisfactory evidence that they have met the exceptions stated in 46 CFR 16.220(c). This information should be submitted to the Regional Examination Center (REC) which issued the mariner's license.

The Coast Guard may initiate appropriate administrative action, up to and including suspension or revocation of the mariner's credential in accordance with 46 CFR part 5, if any licensed pilot serves as a first class pilot on vessels greater than 1600 GRT, or any other individual who ''serves as'' a pilot in accordance with 46 CFR 15.812(b)(3) & (c) on vessels greater than 1600 GRT, fails to submit the results of his or her annual chemical test for dangerous drugs or satisfactory evidence that he or she has met the exceptions in 46 CFR 16.220(c).

Individuals with pilot licenses, pilot endorsements, master licenses and mate licenses (and individuals applying for those credentials) who do not serve as first class pilots on vessels greater than 1600 GRT, and do not otherwise ''serve as'' pilots in accordance with 46 CFR 15.812(b)(3) & (c) on vessels greater than 1600 GRT, do not need to submit the passing results of an annual chemical test for dangerous drugs pursuant to 46 CFR 16.220(b); however, they must do so before serving as first class pilots on vessels greater than 1600 GRT, or before otherwise ''serving as'' pilots in accordance with 46 CFR 15.812(b)(3) & (c) on vessels greater than 1600 GRT.

In addition, in response to the notice published September 28, 2006 referenced above, the Coast Guard received a number of requests to extend the initial deadline of December 27, 2006 for pilots to submit a copy of their most recent physical examination in order to provide more time for compliance. The Coast Guard agrees and is extending the deadline to April 11, 2007.

Dated: December 5, 2006.

L.W. Thomas,

Acting Director of National and International Standards, Assistant Commandant for Prevention.

[FR Doc. E6–21017 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL]

Powder River Regional Coal Team Activities: Notice of Public Meeting in Casper, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Powder River Regional Coal Team (RCT) has scheduled a public meeting for January 18, 2007, to review current and proposed activities in the Powder River Coal Region and to review pending coal lease applications (LBA).

DATES: The RCT meeting will begin at 9 a.m. MST on January 18, 2007. The meeting is open to the public.

ADDRESSES: The meeting will be held at the Wyoming Oil and Gas Conservation Commission, 2211 King Boulevard, Casper, Wyoming.

FOR FURTHER INFORMATION CONTACT: Robert Janssen, Regional Coal Coordinator, BLM Wyoming State Office, Division of Minerals and Lands, 5353 Yellowstone Road, Cheyenne, Wyoming 82009: telephone 307–775–6206 or Rebecca Spurgin, Regional Coal Coordinator, BLM Montana State Office, Division of Resources, 5001 Southgate Drive, Billings, Montana 59101: telephone 406–896–5080.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss pending coal lease by applications (LBA's) in the Powder River Basin as well as other federal coal related actions in the region. Specific coal lease applications and other matters for the RCT to consider include:

1. The Maysdorf II LBA, a new lease application filed by Cordero Mining Co. on September 1, 2006, is adjacent to the Cordero-Rojo mine. Approximately 4,654 acres and 483 million tons of Federal coal are involved. More details will be presented at the meeting. The RCT needs to consider the BLM processing schedule for the Maysdorf II LBA.

2. The Porcupine LBA, a new lease application filed by BTU Western Resources on September 27, 2006, is adjacent to the North Antelope-Rochelle mine. Approximately 5,116 acres and 598 million tons of Federal coal are involved. More details will be presented at the meeting. The RCT needs to consider the BLM processing schedule for the Porcupine LBA.

3. The BLM is doing a coal review study in the Powder River Basin. The results of this review will be used in the preparation of coal related NEPA documents in the Powder River coal region. The RCT will be updated on the progress and results of this study.

4. Update on U.S. Geological Survey coal inventory work.

5. The RCT will hear a discussion on coal conversion technologies and projects in Wyoming.

6. Update on BLM land use planning efforts in the Powder River Basin of Wyoming and Montana.

7. Other Coal Lease Applications and issues that may arise prior to the meeting.

The RCT may generate recommendation(s) for any or all of these topics and other topics that may arise prior to the meeting date.

The meeting will serve as a forum for public discussion on Federal coal management issues of concern in the Powder River Basin region. Any party interested in providing comments or data related to the above pending applications, or any party proposing other issues to be considered by the RCT, may either do so in writing to the State Director (922), BLM Wyoming State Office, P.O. Box 1828, Cheyenne, WY 82003, no later than January 5, 2007, or by addressing the RCT with his/her concerns at the meeting on January 18, 2007.

The draft agenda for the meeting follows:

1. Introduction of RCT Members and guests.

2. Approval of the Minutes of the April 19, 2006 Regional Coal Team meeting held in Casper, Wyoming.

3. Coal activity since last RCT meeting.

4. Industry Presentations on Lease Applications:

—Cordero Mining Co., Antelope II LBA;

—BTU Western Resources, Porcupine LBA.

5. BLM presentation on Powder River Basin coal review study.

6. U.S. Geological Survey presentation on Coal Inventory.

7. Presentation by State of Wyoming on coal conversion projects.

8. BLM land use planning efforts.

9. Other pending coal actions and other discussion items that may arise.

10. Discussion of the next meeting.

11. Adjourn.

Dated: December 5, 2006.

Robert A. Bennett,

State Director.

[FR Doc. E6–21111 Filed 12–11–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–100–07–0777–XX]

Notice of Public Meetings, Northwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Northwest Colorado RAC meetings will be held February 22, 2007; May 17, 2007; August 16, 2007; and November 15, 2007.

ADDRESSES: The Northwest Colorado RAC meetings will be held February 22, 2007, in Grand Junction, CO, at the Doubletree Hotel, 743 Horizon Drive; May 17, 2007, in Meeker, CO, at the Fairfield Center, 200 Main St.; August 16, 2007, in Kremmling, CO, at the Chamber of Commerce, 203 Park Avenue; and November 15, 2007, in Glenwood Springs, CO, at the Glenwood Springs Community Center, 100 Wulfsohn Road. All Northwest Colorado RAC meetings except the Grand Junction meeting will begin at 8 a.m. and adjourn at approximately 3 p.m., with public comment periods regarding matters on the agenda at 10:30 a.m. and 2 p.m. The Grand Junction meeting will begin at 9 a.m. and adjourn at 4 p.m., with public comment periods regarding matters on the agenda at 11:30 a.m. and 2 p.m.

FOR FURTHER INFORMATION CONTACT: Jamie Connell, BLM Glenwood Springs Field Manager, 50629 Hwy. 6&24, Glenwood Springs, CO; telephone 970–947–2800; or David Boyd, Public Affairs Specialist, 50629 Hwy. 6&24, Glenwood Springs, CO, telephone 970–947–2832.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

Topics of discussion during Northwest Colorado RAC meetings may include the BLM National Sage Grouse Conservation Strategy, working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, wild horse herd management, land exchange proposals, cultural resource management, and other issues as appropriate. These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: December 5, 2006.

Jamie Connell,

Glenwood Springs Field Manager, Lead Designated Federal Officer for the Northwest Colorado RAC.

[FR Doc. E6–21127 Filed 12–11–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU76510]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, Utah

November 30, 2006.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), GLNA LLC timely filed a petition for reinstatement of oil and gas lease UTU76510 for lands in Grand County, Utah, and it was accompanied by all required rentals and royalties accruing from July 1, 2006, the date of termination.

FOR FURTHER INFORMATION CONTACT: Douglas F. Cook, Chief, Branch of Fluid Minerals at (801) 539–4070.

SUPPLEMENTARY INFORMATION: The Lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The $500 administrative fee for the lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU76510, effective July 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Douglas F. Cook,

Chief, Branch of Fluid Minerals.

[FR Doc. E6–21039 Filed 12–11–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–5853–EU; N–81870; 7–08807]

Notice of Realty Action: Non-Competitive Sale in the Las Vegas Valley, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell a 5-acre parcel of public land in the southwest portion of the Las Vegas Valley, Nevada to Clark County for affordable housing purposes. BLM proposes that the parcel be sold by direct sale to Clark County at less than the appraised fair market value (FMV), pursuant to Section 7(b) of the Southern Nevada Public Land Management Act (Pub. L. 105–263, SNPLMA) and the Nevada Guidance on Policy and Procedures for Affordable Housing Disposals (Nevada Guidance) approved on August 8, 2006. BLM will sell the parcel under direct sale procedures in accordance with the applicable provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.* (FLPMA), and the BLM land sale and mineral conveyance regulations at 43 CFR parts 2710 and 2720.

DATES: On or before January 26, 2007, interested parties may submit comments

concerning the proposed sale, including the environmental assessment (EA), to the BLM Field Manager, Las Vegas Field Office, at the address stated below.

ADDRESSES: Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Jacqueline Gratton, Acting Supervisory Realty Specialist, at (702) 515–5054.

SUPPLEMENTARY INFORMATION: Pursuant to a request by Clark County, Nevada, BLM proposes to sell a 5-acre parcel of public land located in the southwest portion of the Las Vegas Metropolitan Area and further described below. The parcel is bound on three sides by developed residential property. The fourth side is bound by a developed street. The subject parcel would be sold using the direct sale procedures, and under such terms, covenants, or conditions as determined necessary for affordable housing purposes by the BLM Authorized Officer in accordance with Section 7(b) of SNPLMA, and the Nevada Guidance. Pursuant to Section 7(b) of SNPLMA, BLM, in consultation with the Department of Housing and Urban Development (HUD), may make lands available for affordable housing purposes, in the State of Nevada at less than the appraised FMV. The amount discounted from FMV is calculated according to the Nevada Guidance.

Under SNPLMA Section 7(b), housing is ''affordable housing'' if the housing serves low-income families as defined in Section 104 of the Cranston-Gonzales National Affordable Housing Act ([Cranston-Gonzales] 42 U.S.C 12704). In the Cranston-Gonzales Act, the term ''low-income families'' means families whose incomes do not exceed 80 percent of the median income for the area as determined by HUD.

The appraised FMV for the 5-acre parcel is $3,000,000. Under the Nevada Guidance, and after consultation with HUD, the BLM Authorized Officer has determined that the appropriate value for the property is $198,000.00, so long as the property is used for affordable housing purposes.

Under the Nevada Guidance, the preferred method of sale under SNPLMA Section 7(b) is direct sales (as opposed to competitive or modified competitive sales). In addition, the direct sale method is supported by 43 CFR 2711.3–3(1), which authorizes direct sales when, ''A tract is identified for transfer to State or local government,'' and 43 CFR 2711.3–3(2), which authorizes direct sales when, ''A tract is identified for sale that is an integral part of a project or public importance and speculative bidding would jeopardize a timely completion and economic viability of the project.'' Since SNPLMA was passed in 1998, Clark County has invested considerable time and substantial resources in finding eligible projects for affordable housing purposes. This project under SNPLMA Section 7(b) is called the ''Harmon Pines Senior Apartments.'' If successfully sold, this project would begin to meet the tremendous demand for affordable housing recognized by the State of Nevada and the local governmental entities in the Las Vegas Valley. Clark County's submission of the sale nomination to the BLM and HUD includes a comprehensive plan for assessment and evaluation of the need for and feasibility of this project. HUD has recommended approval of this project in accordance with the SNPLMA, the Nevada Guidance, and HUD's Policy and Procedures for Affordable Housing Disposals Section 4(C–H).

Therefore, the following described land in Clark County, Nevada, is proposed to be sold to Clark County for affordable housing purposes under Section 7(b) of SNPLMA:

Land Proposed for Sale

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 24, E½NW¼SW¼NW¼.
Clark County Tax Parcel No. 163–24–201–005.

The land described above contains 5.0 acres, more or less.

This parcel is within the disposal boundary adopted by Congress in SNPLMA and is also in conformance with the BLM Las Vegas Resource Management Plan, approved on October 5, 1998.

The land is not required for any Federal purpose. The sale will be made subject to the applicable provisions of FLPMA and the regulations of the Secretary of the Interior.

The patent shall include the following numbered terms, covenants, and conditions:

1. Pursuant to Section 7(b) of SNPLMA, the term ''affordable housing'' as used in this Patent, means housing that serves low-income families as defined in Section 104 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12704). For purposes of this Patent, the term ''affordable housing purpose'' means for the purpose of affordable housing projects, which commit 50 percent or more of living space to affordable housing and which are used for no purpose other than residential use.

2. Clark County hereby covenants and binds all successors-in-interests to use the land conveyed only for affordable housing purposes for a period of fifteen (15) years, which will commence upon the issuance of a certificate of occupancy or its equivalent by the HUD. This affordable housing covenant shall be deemed appurtenant to and to run with the ownership of the land conveyed. It shall be binding upon Clark County, its successors and assigns, during the time each owns the land.

3. If, at the end of five (5) years from the date of the sale Patent, any land conveyed through this proposed sale is not being used for affordable housing purposes, at the option of the United States, those lands not so used shall revert to the United States, or, in the alternative, the United States may require payment by the owner to the United States of the then fair market value.

4. All land conveyed shall be used only for affordable housing purposes during the period of affordability. If at any time all or any portion of the land conveyed is used for any purpose other than affordable housing purposes by Clark County, or any successor-in-interest, at the option of the United States, those lands not used for affordable housing purposes shall revert to the United States, or, in the alternative, the United States may at this time require payment by the owner to the United States of the then fair market value or institute a proceeding in a court of competent jurisdiction to enforce the covenant set forth above to use the land conveyed only for affordable housing purposes.

5. This use restriction and the reversionary interest may be enforced by the BLM or the HUD, or their successors-in-interest, as deemed appropriate by agreement of these two agencies at the time of enforcement.

6. Clark County, upon issuance and acceptance of the Patent, shall simultaneously transfer by deed the land conveyed by the Patent to its successor-in-interest.

When patented, title to the land will continue to be subject to the following numbered reservations to the United States:

1. A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945).

2. All discretionary leasable and saleable mineral deposits in the land so patented, and to it, its permittees, licensees, and lessees, the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and such

regulations as the Secretary of the Interior (Secretary) may prescribe, including all necessary access and exit rights.

3. A reversionary interest as further defined in the above terms, covenants and conditions.

When patented, title to the land will be subject to:

1. Valid existing rights of record, including, but not limited to those documented on the BLM public land records at the time of sale, and,

2. By accepting the patent, Clark County, subject to the limitations of law and to the extent allowed by law, shall be responsible for the acts or omissions of its officers, directors and employees in connection with the use or occupancy of the patented real property. Successors-in-interests of the patented real property, except Clark County, shall indemnify, defend, and hold the United States and Clark County harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the successors-in-interest, excluding Clark County, or its employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the successor-in-interests, excluding Clark County, use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the successor-in-interests, excluding Clark County, and its employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States or Clark County; (3) Costs, expenses, or damages of any kind incurred by the United States or Clark County; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property and other interests of the United States or Clark County; (5) Other activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may be enforced against successors-in-interest, excluding Clark County, by the United States or Clark County in a court of competent jurisdiction.

No warranty of any kind, express or implied is given or will be given by the United States as to the title, physical condition or potential uses of the land proposed for sale. However, to the extent required by law, such land is subject to the requirements of Section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended (42 U.S.C. 9620(h)).

Publication of this notice in the **Federal Register** temporarily segregates the above described land from appropriation under the public land laws, including the mining laws. The segregation effect of this notice will terminate in the future as specified in 43 CFR 2711.1–3(c)). The above described land was previously segregated from mineral entry under BLM case file number N–66364, with record notation as of October 19, 1998. This previous segregation will terminate upon publication of this notice in the **Federal Register**.

Detailed information concerning the proposed sale, including an environmental studies and documents, approved appraisal report and supporting documents, is available for review at the BLM Las Vegas Field Office at the address above. Interested parties may submit written comments regarding the sale, including the EA, to the address above. No facsimiles, e-mails, or telephone calls will be considered as validly submitted comments. The Field Manager, BLM, Las Vegas Field Office, will review the comments of all interested parties concerning the sale. To be considered, comments must be received at the BLM Las Vegas Field Office on or before the date stated above in this notice for that purpose. Comments received during this process, including respondent's name, address, and other contact information will be available for public review. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, address, and other contact information from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. The BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of a business or organization. Any adverse comments will be reviewed by the BLM, Nevada State Director who may sustain, vacate, or modify this realty action.

In the absence of any adverse comments, the decision will become effective on February 12, 2007. The lands will not be offered for sale until after the decision becomes effective.

(Authority: 43 CFR 2711.1–2(a)).

Dated: November 24, 2006.

Sharon DiPinto,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. E6–21041 Filed 12–11–06; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Long-Term Experimental Plan for the Operation of Glen Canyon Dam and Other Associated Management Activities

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and notice to solicit comments and hold additional public scoping meetings on the adoption of a Long-Term Experimental Plan for the operation of Glen Canyon Dam and other associated management activities under the authority of the Secretary of the Interior (Secretary).

SUMMARY: In a **Federal Register** notice published on November 6, 2006 (71 FR 64982–64983), and pursuant to § 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, and 40 CFR 1508.22, the Department of the Interior (Department), acting through the Bureau of Reclamation (Reclamation), provided notice that the Department intends to prepare an EIS and conduct public scoping meetings for the adoption of a Long-Term Experimental Plan for the operation of Glen Canyon Dam and other associated management activities. This **Federal Register** notice, prepared pursuant to 40 CFR 1508.22, provides information on additional public scoping meetings, the purpose and need for the proposed action, and additional

background on the Long-Term Experimental Plan.

The purpose of the Long-Term Experimental Plan is to increase understanding of the ecosystem downstream from Glen Canyon Dam and to improve and protect important downstream resources. The NEPA process would evaluate the implications and impacts of each of the alternatives on all of the purposes and benefits of Glen Canyon Dam as well as on downstream resources. The proposed plan would implement a structured, long-term program of experimentation (including dam operations, modifications to Glen Canyon Dam intake structures, and other non-flow management actions, such as removal of non-native fish species) and monitoring in the Colorado River below Glen Canyon Dam.

The proposed Long-Term Experimental Plan is intended to ensure a continued, structured application of adaptive management in such a manner as to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to natural and cultural resources and visitor use, consistent with applicable Federal law.

The Long-Term Experimental Plan will build on a decade of scientific experimentation and monitoring that has taken place as part of the Glen Canyon Dam Adaptive Management Program, and will build on the knowledge gained by experiments, operations, and management actions taken under the program. Accordingly, Reclamation intends to tier from earlier NEPA compliance documents prepared as part of the Department's Glen Canyon Adaptive Management Program efforts, see 40 CFR 1500.4(i), 1502.20, and 1508.20(b), such as the 2002 Environmental Assessment prepared on adaptive management experimental actions at Glen Canyon Dam (Proposed Experimental Releases from Glen Canyon Dam and Removal of Non-Native Fish).

Dates and Addresses: Two additional public scoping meetings will be held to solicit comments on the scope of the Long-Term Experimental Plan and the issues and alternatives that should be analyzed. The meetings will serve to expand upon the input received from the Glen Canyon Dam Adaptive Management Program meetings and the recommendations of the Adaptive Management Work Group (AMWG), a federal advisory committee. Oral and written comments will be accepted at the meetings to be held at the following locations:

- Thursday, January 4, 2007—6 p.m. to 8 p.m., Embassy Suites Phoenix Airport at 44th Street, 1515 North 44th Street, Cholla Room, Phoenix, Arizona.
- Friday, January 5, 2007—6 p.m. to 8 p.m., Hilton Salt Lake City Center, 255 South West Temple, Salon 1, Salt Lake City, Utah.

Written comments on the proposed development of the Long-Term Experimental Plan may be sent by close of business on Wednesday, February 28, 2007, to: Regional Director, Bureau of Reclamation, Upper Colorado Region, Attention: UC–402, 125 South State Street, Salt Lake City, Utah 84318–1147, faxogram at (801) 524–3858, or e-mail at *GCDExpPlan@uc.usbr.gov*.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, Bureau of Reclamation, telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *GCDExpPlan@uc.usbr.gov*. If special assistance is required regarding accommodations for attendance at either of the public meetings, please contact Jayne Kelleher at (801) 524–3680, faxogram at (801) 524–3858, or e-mail at *jkelleher@uc.usbr.gov* no less than 5 working days prior to the applicable meeting(s).

SUPPLEMENTARY INFORMATION: Glen Canyon Dam was authorized by the Colorado River Storage Project Act (CRSPA) of 1956 and completed by Reclamation in 1963. Below Glen Canyon Dam, the Colorado River flows for 15 miles through the Glen Canyon National Recreation Area which is managed by the National Park Service. Fifteen miles below Glen Canyon Dam, Lees Ferry, Arizona, marks the beginning of Marble Canyon and the northern boundary of Grand Canyon National Park.

The primary purpose and major function of Glen Canyon Dam is water conservation and storage. The dam is specifically managed to regulate releases of water from the Upper Colorado River Basin to the Lower Colorado River Basin to satisfy provisions of the 1922 Colorado River Compact and subsequent water delivery commitments, and thereby allow states within the Upper Basin to deplete water from the watershed upstream of Glen Canyon Dam and utilize their apportionments of Colorado River water.

In addition to the primary purpose of water delivery, another function of Glen Canyon Dam is to generate hydroelectric power. Between the dam's completion in 1963 and 1990, the dam's daily operations were primarily undertaken to maximize generation of hydroelectric power in accordance with Section 7 of the CRSPA, which requires production of the greatest practicable amount of power.

Over time, concerns arose with respect to the operation of Glen Canyon Dam, including effects of operations on species listed pursuant to the Endangered Species Act. In 1992, Congress passed and the President signed into law, the Grand Canyon Protection Act which addresses potential impacts of dam operations on downstream resources in Glen Canyon National Recreation Area and Grand Canyon National Park.

The Grand Canyon Protection Act of 1992 required the Secretary to complete an environmental impact statement evaluating alternative operating criteria, consistent with existing law, that would determine how Glen Canyon Dam would be operated to both meet the purposes for which the dam was authorized and meet the goals for protection of Glen Canyon National Recreation Area and Grand Canyon National Park. The final environmental impact statement was completed in March 1995. The Preferred Alternative (Modified Low Fluctuating Flow Alternative) was selected as the best means to operate Glen Canyon Dam in a Record of Decision (ROD) issued on October 9, 1996. In 1997 the Secretary adopted operating criteria for Glen Canyon Dam (62 FR 9447–9448) as required by Section 1804(c) of the Grand Canyon Protection Act of 1992.

Additionally, the Grand Canyon Protection Act of 1992 requires the Secretary to undertake research and monitoring to determine if revised dam operations were achieving the resource protection objectives of the final EIS and ROD. These provisions of the Grand Canyon Protection Act of 1992 were incorporated into the 1996 ROD and led to the establishment of the Glen Canyon Dam Adaptive Management Program, administered by Reclamation, and of the Grand Canyon Monitoring and Research Center within the U.S. Geological Survey (USGS).

The Adaptive Management Program includes a federal advisory committee known as the AMWG, a Technical Work Group, a monitoring and research center administered by the USGS, and independent review panels. The Technical Work Group is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG. The AMWG makes recommendations to the Secretary concerning Glen Canyon Dam operations and other management actions to protect resources downstream from Glen Canyon Dam consistent with

the Grand Canyon Protection Act and other applicable provisions of Federal law.

To improve scientific understanding of the downstream ecosystem, periodic experimental releases from Glen Canyon Dam were conducted in water years 1996 through 2006. Non-flow actions were also conducted, including removal of non-native fish and translocation of the endangered Kanab ambersnail and humpback chub. Specific experimental actions included:

- 1996 test of a Beach Habitat Building Flow (BHBF) at 45,000 cubic feet per second (cfs) and translocation of endangered Kanab ambersnail.
- 2000 test of Low Steady Summer Flows at 8,000 cfs.
- 2003—2005 block of experimental actions which included:
  - Translocation of endangered humpback chub above Chute Falls.
  - Winter fluctuating fish suppression releases (5,000 to 20,000 cfs).
  - Mechanical removal of non-native fish near the confluence of the Little Colorado River to benefit the humpback chub.
  - Fall constrained releases to test the conservation of sediment (6,500 to 9,000 cfs).
  - 2004 test of a BHBF at 42,000 cfs immediately following Paria River sediment inputs.

In addition, drought-induced reductions in Lake Powell elevations caused an increase in dam release temperatures during 2003 to 2005. Considerable monitoring and research on endangered fish, sediment conservation, and other resources in the Grand Canyon were conducted in concert with these actions. Among other documents related to adaptive management experimentation, two Environmental Assessments and Findings of No Significant Impacts were prepared: Proposed Experimental Releases from Glen Canyon Dam and Removal of Non-Native Fish (2002) and Proposed Experimental Actions for Water Years 2005–2006—Colorado River, Arizona, in Glen Canyon National Recreation Area and Grand Canyon National Park (2004). These two documents can be found at the following Internet location: *http://www.usbr.gov/uc/rm/gcdltep/index.html*.

Proposed Action

The proposed action is to develop and adopt a Long-Term Experimental Plan that will implement a structured, long-term program of experimentation (including dam operations, modifications to Glen Canyon Dam intake structures, and other non-flow management actions, such as removal of non-native fish species) in the Colorado River below Glen Canyon Dam.

Purpose and Need for Action

The purpose of the proposed action is to increase scientific understanding of the ecosystem downstream from Glen Canyon Dam and to improve and protect important downstream resources. Specific hypotheses to be addressed include the effect of dam release temperatures; ramp rates; non-native control; and the timing, duration, and magnitude of BHBF releases. Adoption of a Long-Term Experimental Plan is needed to ensure a continued, structured application of adaptive management in such a manner as to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to natural and cultural resources and visitor use, consistent with applicable Federal law. Adoption of a Long-Term Experimental Plan will assist scientists, policy makers, and resource managers to better understand resource management options, tradeoffs and consequences, and assist in the long-term operations of Glen Canyon Dam.

Scoping

The range of alternatives for the proposed action will be developed following recommendations provided by the AMWG and through information received from upcoming public scoping meetings. In addition, Reclamation will utilize information developed through prior meetings of the AMWG, Technical Work Group, and Science Planning Group as relevant information for the purposes of scoping the upcoming NEPA process and to develop the appropriate scope of analysis pursuant to 40 CFR 1508.25.

Public Disclosure

It is our practice to make comments, including names, home addresses, home telephone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: November 17, 2006.

Rick L. Gold,

Regional Director—UC Region, Bureau of Reclamation.

[FR Doc. E6–20756 Filed 12–11–06; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–961 (Final) (Remand)]

Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago; Notice and Scheduling of Remand Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The United States International Trade Commission (Commission) gives notice of the court-ordered remand of its final antidumping duty investigation, Investigation No. 731–TA–961 (Final) (Remand).

FOR FURTHER INFORMATION CONTACT: Jonathan J. Engler, Esq., Office of the General Counsel, telephone (202) 205–3112, or Mary Messer, Office of Investigations, telephone (202) 205–3193, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Reopening the Record

In October 2002, the Commission made a final affirmative determination in the referenced investigation. 67 FR 66662 (Nov. 1, 2002). Respondent appealed the determination to the U.S. Court of International Trade (CIT), which affirmed the Commission's determination. *Caribbean Ispat Ltd.* v. *United States,* Slip Op. 05–37 (March 22, 2005). Respondent appealed to the U.S. Court of Appeals for the Federal Circuit, which vacated and remanded the Commission's determination. *Caribbean Ispat Ltd.* v. *United States,*

450 F.3d 1336 (Fed. Cir. 2006). On October 13, 2006, the CIT issued an order remanding the case to the Commission to comply with the Federal Circuit's decision in *Caribbean Ispat* and giving the Commission until January 12, 2007, to issue its remand determination. The Commission is seeking an extension of that deadline in order to allow the Commission to send out additional questionnaires to obtain further data relevant to the remand instructions. In the meantime, the Commission is proceeding based on the existing deadline, in accordance with the schedule set out below.

In order to assist it in making its determination on remand, the Commission is reopening the record on remand in this investigation to include additional information on the role of non-subject imports of carbon and certain alloy steel wire rod in the U.S. market during the original period of investigation. The record in this proceeding will encompass the material from the record of the original investigation and additional information placed by Commission staff on the record during this remand proceeding.

Participation in the Proceeding

Only those persons who were interested parties in the original administrative proceeding and are parties to the ongoing litigation (*i.e.*, persons listed on the Commission Secretary's service list and parties to *Caribbean Ispat Ltd.* v. *U.S.,* Court No. 05–1400) may participate as interested parties in this remand proceeding.

Nature of the Remand Proceeding

On December 15, 2006, the Commission will make available to parties who participate in the remand proceeding information that has been gathered by the Commission as part of this remand proceeding. Parties that are participating in the remand proceeding may file comments on or before December 22, 2006, addressing the record facts as they relate to the question raised in the CIT's remand instructions. Such comments shall not exceed 25 double-spaced pages.

In addition, all written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002). Each document filed by a party participating in the remand investigation must be served on all other parties who may participate in the remand investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service. Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207), for provisions of general applicability concerning written submissions to the Commission.

At this time, the Commission's remand determination is due to be submitted to the CIT on January 12, 2007. On December 4, 2006, the Commission filed a motion with that Court to extend the time to file its remand determination until March 12, 2006. In the event the CIT grants the motion, or otherwise modifies the date on which the Commission's remand determination is due to the Court, the Commission intends to issue an amended notice and schedule.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to the referenced parties, as appropriate, under the administrative protective order (APO) in effect in the original investigation. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

By order of the Commission.

Issued: December 7, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–21119 Filed 12–11–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Systemic Initiative

Notice is hereby given that, on November 13, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open SystemC Initiative (''OSCI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Actis Design, LLC, Portland, OR; Broadcom Corporation, Bristol, United Kingdom; Denali Software, Inc., Palo Alto, CA; Freescale Semiconductor, Inc., Herzelia, Israel; NEC Corporation, Kawasaki, Japan; SpringSoft, Inc., Hsinchu, Taiwan; and Vast Systems, Inc., Sunnyvale, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSCI intends to file additional written notifications disclosing all changes in membership.

On October 9, 2001, OSCI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 3, 2002 (67 FR 350).

The last notification was filed with the Department on February 27, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 2006 (71 FR 15218).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–9645 Filed 12–11–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Power Tool Institute Table Saw Guarding Joint Venture Project

Notice is hereby given that, on november 2, 2006, pursuant to Section 6(a) of the national Cooperative

Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Power Tool Institute Table Saw Guarding Joint Venture Project has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: The Black & Decker Corp., Towson, MD; Makita USA, Inc., La Mirada, CA; Robert Bosch Tool Corporation, mount Prospect, IL; and Techtronic Industries—North America, Anderson, SC. The general area of Power Tool Institute Table Saw Guarding Joint Venture Project's planned activity is the evaluation, investigation, research and/or development of mechanical blade guarding systems that are technically viable for table saws and provide improved and consistent safety performance.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–9644 Filed 12–11–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,788]

Ace Products, LLC, Newport, TN; Notice of Revised Determination on Reconsideration

On November 8, 2006, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice will soon be published in the **Federal Register**.

The previous investigation initiated on July 25, 2006, resulted in a negative determination issued on September 14, 2006, based on the finding that imports of semi pneumatic and solid rubber tires did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on September 26, 2006 (71 FR 56172).

In the request for reconsideration, the petitioner provided additional information regarding the subject firm's declining customers.

The Department requested additional list of customers from the subject firm and conducted a survey of these customers regarding their purchases of like or directly competitive products to semi pneumatic and solid rubber tires. It was revealed that several declining customers increased their reliance on imports of tires while decreasing their purchases from the subject firm during the relevant period. The increases in imports accounted for a meaningful portion of the subject plant's lost sales.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Ace Products, LLC, Newport, Tennessee, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Ace Products, LLC, Newport, Tennessee, who became totally or partially separated from employment on or after July 19, 2005, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 5th day of December 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–21106 Filed 12–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 22, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 22, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 4th day of December 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 11/27/06 and 12/1/06]

TA–W	Subject Firm (Petitioners)	Location	Date of institution	Date of petition
60481	Neptco (Comp)	Lenoir, NC	11/27/06	11/22/06
60482	Du-Co Ceramics Co. (USW)	Saxonburg, PA	11/27/06	11/21/06
60483	AccuMed QCIV Laminating, Inc. (Comp)	Danville, PA	11/27/06	11/21/06
60484	Pioneer Furniture Mfg. Co. (Comp)	Athens, TN	11/27/06	11/25/06
60485	Lockheed Martin Simulation (Wkrs)	Orlando, FL	11/27/06	11/17/06
60486	Alma Products Co. (Comp)	Alma, MI	11/27/06	11/22/06
60487	Staff Mark (State)	Searcy, AR	11/27/06	11/27/06
60488	Tellabs (Wkrs)	Petaluma, CA	11/27/06	11/21/06
60489	EDS Electronic Data Systems (Union)	Rochester, NY	11/28/06	11/21/06
60490	Bollag International Corp. (SC)	Greenwood, SC	11/28/06	11/22/06
60491	Hipwell Manufacturing Co. (Wkrs)	Pittsburgh, PA	11/28/06	11/27/06
60492	Anderson Global (IAMAW)	Muskegon Heights, MI	11/28/06	11/27/06
60493	Progessive Logistics (Wkrs)	Mayfield, KY	11/28/06	11/13/06
60494	Walter Mcilvain Company (Comp)	Acme, PA	11/28/06	11/27/06
60495	Industrial Tool and Engineering (Comp)	Warrenville, SC	11/28/06	11/27/06
60496	Hill-Rom Company, Inc. (Comp)	Batesville, IN	11/28/06	11/27/06
60497	Bruard's, Inc. (Wkrs)	Conover, NC	11/28/06	11/27/06
60498	Anvil Knit Wear, Inc. (Comp)	Swannanoa, NC	11/29/06	11/28/06
60499	Eaton Corporation (Comp)	Belmond, IA	11/29/06	11/29/06
60500	Potlatch Corporation (State)	Warren, AR	11/29/06	11/29/06
60501	AET Films (Comp)	Terre Haute, IN	11/29/06	11/20/06
60502	Superior Industries (Comp)	Johnson City, TN	11/29/06	11/10/06
60503	Sourcing Connection., Inc. (Comp)	Statesville, NC	11/29/06	11/27/06
60504	Ford Motor Company (UAW)	Hazelwood, MO	11/29/06	11/21/06
60505	Calstar Textiles, Inc. (States)	Vernon, CA	11/29/06	11/08/06
60506	TRW Automotive (Wrks)	Mt. Vernon, OH	11/29/06	11/27/06
60507	Washington Mutual Bank (Wrks)	Florence, SC	11/29/06	11/17/06
60508	Enhanced Presentations, Inc. (Wrks)	Wilmington, NC	11/29/06	11/28/06
60509	K–C Fish Co., Inc. (Comp)	Blaine, WA	11/30/06	11/29/06
60510	BHK of America (Wkrs)	South Boston, VA	11/30/06	11/29/06
60511	Saturday Knight Ltd. (Comp)	Cincinnati, OH	11/30/06	11/27/06
60512	Showood, Inc. (Comp)	Ecru, MS	11/30/06	11/29/06
60513	Cadence Innovation (Wkrs)	Almont, MI	11/30/06	11/27/06
60514	Intel Hawthorne Farm Campus (State)	Hillsboro, OR	11/30/06	11/02/06
60515	Maytag Newton Division (Comp)	Newton, IA	11/30/06	11/16/06
60516	Milliken and Company (Wkrs)	Kingstree, SC	12/01/06	11/29/06
60517	Lexington Monitoring Operations Level 1 (Wkrs).	Lexington, KY	12/01/06	11/29/06
60518	Russell Corporation/DeSoto Mills (Wkrs)	Fort Payne, AL	12/01/06	12/01/06
60519	Sun Chemical Corporation (Comp)	Muskegon, MI	12/01/06	11/30/06
60520	Lear Corporation ESD (Wkrs)	Southfield, MI	12/01/06	11/30/06

[FR Doc. E6–21110 Filed 12–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,460]

Roseburg Forest Products, Coquille, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 20, 2006 in response to a petition filed jointly by the Carpenters and Joiners of America Local 2784 and a company official on behalf of workers of Roseburg Forest Products, Coquille, Oregon.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Dated: December 5, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–21108 Filed 12–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,465]

Saint Gobain Crystals, Solon, OH; Notice of Negative Determination on Reconsideration

By application dated July 7, 2006, the International Chemical Workers Union Council, Local 852C, (Union), requested administrative reconsideration of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The Department's Notice of Affirmative Determination Regarding Application for Reconsideration was issued on August 4, 2006. The Notice was

published in the **Federal Register** on October 4, 2006 (71 FR 58632).

In the request for reconsideration, the Union alleges that the Department's initial investigation did not include all of the articles produced at the subject firm. The determination states that the subject worker group produces calcium fluoride crystals.

Based on a careful review of previously-submitted documents, the Department determines on reconsideration that during the relevant period (May 2005 through May 2006), the subject workers produced more than one line of crystals and are not separately identifiable by product line.

During the reconsideration investigation, the Union asserted that cadmium, calcium fluoride, magnesium fluoride, lithium fluoride, and barium fluoride products were produced by the subject firm (August 17, 2006 letter) and that workers produced cadmium tungstate until ''Saint Gobain Crystals made the decision to transfer this operation to India'' (September 14, 2006 letter).

According to a company official, calcium fluoride has been the only product produced in significant volume at the subject facility since April 2005. Calcium fluoride constitutes about 90% of subject facility production. The remaining percentage of production at the subject facility during the relevant period consisted of magnesium fluoride, lithium fluoride, barium fluoride, lead chlorine, lead bromide and cadmium tungstate.

The company official also stated that cadmium tungstate production ceased in May 2005 and was shifted to India. The shift was completed in November 2005. When the cadmium tungstate production ceased, workers were shifted to other crystal lines, including the calcium fluoride line. Cadmium tungstate sales were a minuscule fraction (less than 0.24%) of calcium fluoride sales.

Production of the remaining products (magnesium fluoride, lithium fluoride, barium fluoride, lead chlorine, lead bromide, and calcium fluoride) ceased at the end of September 2006 and the subject facility will be completely closed by the end of 2006.

The Department has determined that the predominant cause of worker separations at the subject facility is not related to increased imports or a shift of production abroad. The subject facility's customers were foreign entities and all sales were shipped abroad. Furthermore, the subject firm is leaving the calcium fluoride crystal business due to insufficient demand for the product due to lack of progress in targeted markets and technological developments.

In order for the Department to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA), the subject worker group must be certified eligible to apply for Trade Adjustment Assistance (TAA). Since the subject workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

Conclusion

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Saint Gobain Crystals, Solon, Ohio.

Signed at Washington, DC this 6th day of December 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–21105 Filed 12–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,055]

Swift Textiles, d/b/a/ Swift Galey, Midland, GA; Notice of Revised Determination on Reconsideration

By letter dated November 6, 2006, the subject company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm. The denial was issued on October 17, 2006. The Department's Notice of determination was published in the **Federal Register** on November 6, 2006 (71 FR 65004). Workers produce denim fabric.

The denial was based on the Department's findings that the denim fabric is exported, there was no shift of production of fabric abroad, and the subject firm did not import denim fabric.

The request for reconsideration, dated November 6, 2006, states that the subject firm will be closing at the end of 2006 and alleges that the closure is due to increased imports.

During the reconsideration investigation, the Department was informed that the denim yarn produced at Swift Galey, Columbus, Georgia (TA–W–59,234; certified May 22, 2006 based on import impact from Mexico) was sent to Swift Galey, Midland, Georgia to be finished into denim fabric.

Based on this new information, the Department has determined that the subject firm is a downstream producer to Swift Galey, Columbus, Georgia and conducted an investigation to determine whether the subject workers are eligible to apply for Trade Adjustment Assistance (TAA) as workers of a secondarily-affected firm (a firm that either supplied component parts for articles produced by a firm with a currently TAA-certified worker group or assembled/finished articles provided by a firm with a currently TAA-certified worker group).

In order for the subject workers to be certified on a secondarily-affected basis, the following criteria must be met: (1) A significant number or proportion of the subject firm separated or threatened with separations and (2) the subject firm is a supplier or a downstream producer to a firm or subdivision that employed a TAA-certified worker group and such supply or production is related to the article that was the basis for the certification. In the case of downstream producers, the primary certification must be based on a shift of production to Canada or Mexico or import impact from Canada or Mexico.

Based on previously-submitted information and information obtained during the reconsideration investigation, the Department determines that Swift Textile, d/b/a/ Swift Galey, Midland, Georgia qualifies as a secondarily-affected firm.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the information obtained in the reconsideration investigation, I determine that workers of Swift Textiles, d/b/a/ Swift Galey, Midland, Georgia, qualify as adversely affected secondary workers under Section 222 of

the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of Swift Textile, d/b/a Swift Galey, Midland, Georgia who became totally or partially separated from employment on or after September 11, 2005 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 6th day of December 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–21107 Filed 12–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,494]

Walter Mcilvain Co., Acme, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 28, 2006 in response to a petition filed by a company official on behalf of workers at Walter McIlvain Co., Acme, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 1st day of December, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–21109 Filed 12–11–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of November 27 through December 1, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–60,355; Xyron, Inc., Garden Grove, CA: October 26, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–60,332; Valley-Dynamo, Richland Hills, TX: October 26, 2005.

The following certifications have been issued. The requirements of Section

222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–60,455; Malabar Manufacturing, Inc., On-Site Leased Workers From Time Services, Hudson, MI: November 16, 2005.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,894; HTC Sales Corporation, dba HTC Products, Inc., Royal Oak, MI: August 2, 2005.

TA–W–60,280; Parkdale America, LLC, Eden, NC: October 1, 2005.

TA–W–60,284; B and B Swimwear, Inc., Jefferson, NC: October 20, 2005.

TA–W–60,317; General Ribbon Corporation, Chatsworth, CA: October 25, 2005.

TA–W–60,342; General Cable Corporation, Telecommunications Division, Lawrenceburg, KY: October 29, 2005.

TA–W–60,426; Haldex Brakes Products, Paris, TN: November 13, 2005.

TA–W–60,242; Thornton Fashion Designs, Inc., San Francisco, CA: October 1, 2005.

TA–W–60,283; Parker Specialty Products, Engineered Seals Division, Waukesha, WI: October 20, 2005.

TA–W–60,312; Dana Corporation, Sealing Products, Fulton, KY: October 14, 2005.

TA–W–60,344; Georgia Pacific Corporation, Softwood Lumber Division, El Dorado, AR: October 30, 2005.

TA–W–60,346; Tubular Technologies LLC, Welcome, NC: October 27, 2005.

TA–W–60,357; Adapto Indiana, Inc., South Bend, IN: November 1, 2005.

TA–W–60,437; Euclid Industries, Inc., Manpower, Inc., Bay City, MI: November 13, 2005.

TA–W–60,041; Delphi Corporation, Automotive Holding, Needmore Rd, Plant 3, Dayton, OH: August 24, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,247; Advanced Technology Services, Working On-Site at Eaton Corporation, Vinita, OK: October 13, 2005.

TA–W–60,304; Gemtron Corporation, A Subsidiary of Schott AG, Vincennes, IN: October 20, 2005.

TA–W–60,358; Calhoun Apparel, Inc., Calhoun City, MS: October 30, 2005.

TA–W–60,370; Radio Frequency Systems, Inc., Microwave Antenna Division, Meriden, CT: November 6, 2005.

TA–W–60,370A; Radio Frequency Systems, Inc., Cable Assembly Division, Meriden, CT: November 6, 2005.

TA–W–60,402; Hayes Products, LLC, A Division of BHH Management, Inc., Buena Park, CA: November 7, 2005.

TA–W–60,418; Vesuvius USA, A Subsidiary of Cookson America, Including On-Site Leased Workers of Westaff, Fisher, IL: November 10, 2005.

TA–W–60,419; I & W Industries, On-Site Leased Workers of Northern Staffing, Traverse City, MI: November 9, 2005.

TA–W–60,453; Black and Decker, Fayetteville Site, Employment Control, Inc, Fayetteville, NC: December 17, 2006.

TA–W–60,469; Integrated Manufacturing Technologies (IMT), Formerly Pullbrite, Inc., Elgin, TX: November 21, 2005.

TA–W–60,176; Flextronics, Semiconductor Division, San Jose, CA: September 29, 2005.

TA–W–60,235; Fiskars Aquapore, Phoenix, Arizona Division, Tolleson, AZ: September 13, 2005.

TA–W–60,444; Thermo Fisher Scientific RMSI, Environmental Instruments Division, Santa Fe, NM: November 13, 2005.

TA–W–60,461; Davis Furniture Industries, Inc., DBA Astro-Lounger, Houlka, Ms: November 17, 2005.

TA–W–60,481; Neptco, Lenoir, NC: November 22, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–60,355; Xyron, Inc., Garden Grove, CA.

TA–W–60,455; Malabar Manufacturing, Inc., On-Site Leased Workers From Time Services, Hudson, MI.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–60,332; Valley-Dynamo, Richland Hills, TX.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–60,403; Metolius Mountain Products, Bend, OR.

TA–W–60,408; Textram, Inc., Charlotte, NC.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,413A; Bendix Commercial Vehicle Systems (C.V.S.), Air Disk Brake Products, Frankfort, KY.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,002; Pfizer Global Manufacturing, Augusta, GA.

TA–W–60,239; Fischbein, LLC, A Division of Fischbein-Inglett Co., Augusta, GA.

TA–W–60,254; Consolidated Metco, Inc., A Subsidiary of Amsted, Clackamas, OR.

TA–W–60,258; Woodbridge Foam Corporation, Atlanta Plant, Lithonia, GA.

TA–W–60,337; Production Products, Manufacturing and Sales, Inc., Bonne Terre, MO.

TA–W–60,356; Turtle Wax, Inc., Willowbrook, IL.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

None.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–60,318; Delphi Corporation, Automotive Holdings Group, Job Bank, Anaheim, CA.

TA–W–60,388; Hartz and Company, New York, NY.

TA–W–60,400; Unumprovident Corporation, Information Technology Division, Portland, ME.

TA–W–60,430; JP Morgan Chase Bank, N.A., JP Morgan Chase and Company, Louisville, KY.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

TA–W–60,322; Western Textile Products Co., Piedmont, SC.

I hereby certify that the aforementioned determinations were issued during the period of November 27 through December 1, 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 5, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–21104 Filed 12–11–06; 8:45 am]

BILLING CODE 4510–30–P

LIBRARY OF CONGRESS

United States Copyright Office

Notice of Roundtable on the World Intellectual Property Organization (WIPO) Treaty On the Protection of the Rights of Broadcasting Organizations

AGENCY: United States Copyright Office, Library of Congress.

ACTION: Notice Announcing Public Forum.

SUMMARY: The United States Copyright Office (USCO) and the United States Patent and Trademark Office (USPTO) announce a public roundtable discussion concerning the work at the World Intellectual Property Organization (WIPO) in the Standing Committee on Copyright and Related Rights (SCCR) on a proposed Treaty on the Protection of the Rights of Broadcasting Organizations. Members of the public are invited to attend the roundtable, or to participate in the roundtable discussion, on the topics outlined in the supplementary information section of this notice.

DATES: The roundtable will be held on Wednesday, January 3, 2007 beginning at 1 p.m. and ending at 3 p.m. Requests to participate in the roundtable should be submitted no later than 5 p.m. on December 29, 2006.

ADDRESSES: The roundtable will be held in the Atrium Conference Room at the USPTO, 600 Dulany Street, Madison West, 10th floor, Alexandria, VA 22313.

Persons wishing to participate in the roundtable are required to submit requests to participate, preferably by electronic mail through the Internet to *sking@loc.gov*. Alternatively, you may submit requests by facsimile at 202–707–8366 or via regular mail to: U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station,Washington, DC 20024, marked to the attention of Simone King. Please be aware that delivery of mail (U.S. Postal Service and private carrier) sent to the U.S. Copyright Office is subject to delay. Therefore, it is strongly suggested that any request to participate be made via e–mail or fax.

Requests for participation as a member of the roundtable must indicate the following information:

1. The name of the person desiring to participate;

2. The organization or organizations represented by that person, if any;

3. Contact information (address, telephone, and e–mail);

4. Information on the specific focus or interest of the participant (or his or her organization) and any questions or issues the participant would like to raise.

The deadline for receipt of requests to participate in the roundtable is 5:00 p.m. on December 29, 2006. Due to space limitations, attendance is limited to the first 40 respondents.

FOR FURTHER INFORMATION CONTACT: Simone King by telephone at 202–707–5516, by facsimile at 202–707–8366, by electronic mail at *sking@loc.gov*, or by mail addressed to the U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024, marked to the attention of Simone King.

SUPPLEMENTARY INFORMATION:

Background:

For the past eight years and since the first meeting of the Standing Committee on Copyright and Related Rights (SCCR) in November 1998, WIPO has been addressing the topic of updating the protection of the rights of broadcasting organizations. Although broadcasters' rights are protected under some existing international agreements, such as under the 1961 Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and the World Trade Organization's Agreement on Trade–Related Aspects of Intellectual Property Rights, there has been increasing concern that changes in technology and the opening up of much of the world to commercial broadcasting have made the protection provided in those agreements ineffective to protect broadcast signals against piracy.

At the September 2006 WIPO General Assembly, the decision was taken to convene two special sessions of the SCCR to clarify the outstanding issues, the first one in January 2007, and the second one in June 2007, to be held in conjunction with the meeting of the preparatory committee. It is understood that the special sessions of the SCCR should aim to agree and finalize, on a signal–based approach, the objectives, specific scope and object of protection with a view to submitting to the Diplomatic Conference a revised basic proposal, which will amend the agreed relevant parts of the Revised Draft Basic Proposal (Document SCCR/15/2). The

Diplomatic Conference will be convened in November 2007 if such agreement is achieved. If no such agreement is achieved, all further discussions will be based on Document SCCR/15/2. The first special session of the SCCR will be held from January 17 to 19, 2007.

WIPO posts various documents from their meetings, such as reports, member state submissions, meeting agendas, and texts prepared by the Chair of the SCCR. The most recent text available from July 31, 2006 — the Revised Draft Basic Proposal (Document SCCR/15/2) — can be found at *www.wipo.int/meetings/en/doc_details.jsp?doc_id=64712*. WIPO has not yet made available a draft report from the 2006 General Assemblies, but preparatory documents for the Assemblies are available at *www.wipo.int/meetings/en/details.jsp?meeting_id=11023*.

Throughout this process in WIPO, many points of view have been represented, including those of developed and developing countries, and many non–governmental organizations (NGOs), and numerous industry, creator and content owner groups. The USPTO and USCO have participated in several informal and formal meetings with interested parties such as broadcasters, netcasters, telecom companies, Internet service providers, content industries, creators and other NGOs, in order to obtain views and information relevant to the deliberations in the SCCR on this proposed treaty.

In order to allow further opportunity for interested parties to comment, USPTO and USCO are convening this roundtable to provide another forum for such parties to provide their views of and additional information related to the proposed treaty. In particular, the participants should be prepared to identify and discuss more fully the issues and problems associated with the Revised Draft Basic Proposal (Document SCCR/15/2).

Dated: December 7, 2006

David O. Carson,

General Counsel.

[FR Doc. E6–21130 Filed 12–11–06; 8:45 am]

BILLING CODE 1410–30–S

NUCLEAR REGULATORY COMMISSION

Notice of Sunshine Act Meeting

DATE: Weeks of December 11, 18, 25, 2006, January 1, 8, 15, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 11, 2006

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. Hydro Resources, Inc. (Crownpoint, NM) Intervenors' Petition for Review of LBP–06–19 (Final Partial Initial Decision—NEPA Issues) (Tentative).
b. Entergy Nuclear Vermont Yankee, LLC, & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP–06–20 (Sept. 22, 2006), reconsid'n denied (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.*

Thursday, January 11, 2007

1:30 p.m.
Periodic Briefing on New Reactor Issues (Public Meeting) (Contact: Donna Williams, 301 415–1322).

This meeting will be Webcast live at the Web address— *http://www.nrc.gov.*

Week of January 15, 2007—Tentative

There are no meetings scheduled for the Week of January 15, 2007.

* * * * *

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.

* * * * *

Additional Information: Affirmation of Hydro Resources, Inc. (Crownpoint, NM) Intervenors' Petition for Review of LBP–06–19 (Final Partial Initial Decision—NEPA Issues) tentatively scheduled on Thursday, December 7, 2006 at 9:25 a.m. has been rescheduled tentatively on Thursday, December 14, 2006 at 9:25 a.m.

Discussion of Management Issues (Closed—Ex. 2) previously scheduled on Thursday, December 7, 2006 at 9:30 a.m. has been cancelled.

* * * * *

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: December 7, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–9653 Filed 12–8–06; 10:10 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–06–289]

In the Matter of All Licensees Who Possess Radioactive Material In Quantities of Concern and All Other Persons Who Obtain Safeguards Information Described Herein; Order Imposing Requirements for the Protection of Certain Safeguards Information (Effective Immediately)

I

The Licensees, identified in Attachment 1 [1] to this Order, hold licenses issued in accordance with the Atomic Energy Act of 1954, by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State, authorizing them to possess and transfer items containing radioactive material quantities of concern. The NRC intends to issue security Orders to these licensees in the near future. Orders will be issued to both NRC and Agreement State materials licensees who may transport radioactive material quantities of concern. The Orders will require compliance with specific Additional Security Measures to enhance the security for transport of certain radioactive material quantities of concern. The NRC will issue Orders to both NRC and Agreement State licensees under its authority to protect the common defense and security, which has not been relinquished to the Agreement States. The Commission has determined that these documents will contain Safeguards Information (SGI), will not be released to the public, and must be protected from unauthorized disclosure. Therefore, the Commission is imposing the requirements, as set forth in Attachments 2 and 3 to this Order and in Order EA–06–290, so that affected Licensees can receive these documents. This Order also imposes requirements for the protection of SGI in the hands of any person,[2] whether or not a licensee of the Commission, who produces, receives, or acquires SGI.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to ''* * * issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information * * *'' This authority extends to information concerning transfer of special nuclear material, source material, and byproduct material. Licensees and all persons who produce, receive, or acquire SGI must ensure proper handling and protection of SGI to avoid unauthorized disclosure in accordance with the specific requirements for the protection of SGI contained in Attachments 2 and 3 to this Order. The Commission hereby provides notice that it intends to treat violations of the requirements contained in Attachments 2 and 3 to this Order applicable to the handling and unauthorized disclosure of SGI as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to SGI is limited to those persons who have established a need-to-know the information, are considered to be trustworthy and reliable, and meet the requirements of Order EA–06–290. A need-to-know means a determination by a person having responsibility for protecting SGI that a proposed recipient's access to SGI is necessary in the performance of official, contractual, or licensee duties of employment. Licensees and all other persons who obtain SGI must ensure that they develop, maintain and implement strict policies and procedures for the proper handling of SGI to prevent unauthorized disclosure, in accordance with the requirements in Attachments 2 and 3 to this Order. All licensees must ensure that all contractors whose employees may have access to SGI either adhere to the licensee's policies and procedures on SGI or develop, maintain and implement their own acceptable policies and procedures. The licensees remain responsible for the conduct of their contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in Attachments 2 and 3 to this Order must address, at a minimum, the following: the general performance requirement that each person who produces, receives, or acquires SGI shall ensure that SGI is protected against unauthorized disclosure; protection of SGI at fixed sites, in use and in storage, and while in transit; correspondence containing SGI; access to SGI; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; removal of the SGI category; the need-to-know the information; and background checks to determine access to the information.

In order to provide assurance that the licensees are implementing prudent measures to achieve a consistent level of protection to prohibit the unauthorized disclosure of Safeguards Information, all licensees who hold licenses issued by the NRC or an Agreement State authorizing them to possess and who may transport items containing radioactive material quantities of concern shall implement the requirements identified in Attachments 2 and 3 to this Order. The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 2 and 3 to this Order for handling of SGI in conjunction with current NRC license requirements or previous NRC Orders. Additional measures set forth in Attachments 2 and 3 to this Order should be incorporated into the licensee's current program for SGI. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 147, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, 10 CFR Part 32, 10 CFR Part 35, and 10 CFR Part 70, *it is hereby ordered,* effective immediately, that all licensees identified in attachment 1 to this order and all other persons who produce, receive, or acquire the additional security measures identified above (whether draft or final) or any related SGI shall comply with the requirements of attachments 2 and 3 to this order.

The Director, Office of Federal and State Materials and Environmental

[1] Attachment 1 contains sensitive information and will not be released to the public.

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department, except that the Department shall be considered a person with respect to those facilities of the Department specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 1st day of December 2006.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

Attachments:

1. List of Applicable Materials Licensees.
2. Modified Handling Requirements for the Protection of Certain Safeguards Information (SGI–M).
3. Trustworthy and Reliability Requirements for Individuals Handling Safeguards Information.

Attachment 1: List of Applicable Materials Licensees Redacted

Attachment 2: Modified Handling Requirements for the Protection of Certain Safeguards Information (SGI–M)

Modified Handling Requirements for the Protection of Certain Safeguards Information (SGI–M)

General Requirement

Information and material that the U.S. Nuclear Regulatory Commission (NRC) determines are safeguards information must be protected from unauthorized disclosure. In order to distinguish information needing modified protection requirements from the safeguards information for reactors and fuel cycle facilities that require a higher level of protection, the term ''Safeguards Information-Modified Handling'' (SGI–M) is being used as the distinguishing marking for certain materials licensees. Each person who produces, receives, or acquires SGI–M shall ensure that it is protected against unauthorized disclosure. To meet this requirement, licensees and persons shall establish and maintain an information protection system that includes the measures specified below. Information protection procedures employed by state and local police forces are deemed to meet these requirements.

Persons Subject to These Requirements

Any person, whether or not a licensee of the NRC, who produces, receives, or acquires SGI–M is subject to the requirements (and sanctions) of this document. Firms and their employees that supply services or equipment to materials licensees would fall under this requirement if they possess facility SGI-M. A licensee must inform contractors and suppliers of the existence of these requirements and the need for proper protection. (See more under Conditions for Access.)

State or local police units who have access to SGI–M are also subject to these requirements. However, these organizations are deemed to have adequate information protection systems. The conditions for transfer of information to a third party, i.e., need-to-know, would still apply to the police organization as would sanctions for unlawful disclosure. Again, it would be prudent for licensees who have arrangements with local police to advise them of the existence of these requirements.

Criminal and Civil Sanctions

The Atomic Energy Act of 1954, as amended, explicitly provides that any person, ''whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act.'' Furthermore, willful violation of any regulation or order governing safeguards information is a felony subject to criminal penalties in the form of fines or imprisonment, or both. See sections 147b. and 223 of the Act.

Conditions for Access

Access to SGI–M beyond the initial recipients of the order will be governed by the background check requirements imposed by the order. Access to SGI–M by licensee employees, agents, or contractors must include both an appropriate need-to-know determination by the licensee, as well as a determination concerning the trustworthiness of individuals having access to the information. Employees of an organization affiliated with the licensee's company, e.g., a parent company, may be considered as

employees of the licensee for access purposes.

Need-to-Know

Need-to-know is defined as a determination by a person having responsibility for protecting SGI–M that a proposed recipient's access to SGI–M is necessary in the performance of official, contractual, or licensee duties of employment. The recipient should be made aware that the information is SGI–M and those having access to it are subject to these requirements as well as criminal and civil sanctions for mishandling the information.

Occupational Groups

Dissemination of SGI–M is limited to individuals who have an established need-to-know and who are members of certain occupational groups. These occupational groups are:

A. An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government;

B. A member of a duly authorized committee of the Congress;

C. The Governor of a State or his designated representative;

D. A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;

E. A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies; or

F. A person to whom disclosure is ordered pursuant to Section 2.709(f) of Part 2 of Title 10 of the Code of Federal Regulations.

G. State Radiation Control Program Directors (and State Homeland Security Directors) or their designees.

In a generic sense, the individuals described above in (A) through (G) are considered to be trustworthy by virtue of their employment status. For non-governmental individuals in group (A) above, a determination of reliability and trustworthiness is required. Discretion must be exercised in granting access to these individuals. If there is any indication that the recipient would be unwilling or unable to provide proper protection for the SGI–M, they are not authorized to receive SGI–M.

Information Considered for Safeguards Information Designation

Information deemed SGI–M is information the disclosure of which could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials or facilities subject to NRC jurisdiction.

SGI–M identifies safeguards information which is subject to these requirements. These requirements are necessary in order to protect quantities of nuclear material significant to the health and safety of the public or common defense and security.

The overall measure for consideration of SGI–M is the usefulness of the information (security or otherwise) to an adversary in planning or attempting a malevolent act. The specificity of the information increases the likelihood that it will be useful to an adversary.

Protection While in Use

While in use, SGI–M shall be under the control of an authorized individual. This requirement is satisfied if the SGI–M is attended by an authorized individual even though the information is in fact not constantly being used. SGI–M, therefore, within alarm stations, continuously manned guard posts or ready rooms need not be locked in file drawers or storage containers.

Under certain conditions the general control exercised over security zones or areas would be considered to meet this requirement. The primary consideration is limiting access to those who have a need-to-know. Some examples would be:

Alarm stations, guard posts and guard ready rooms;

Engineering or drafting areas if visitors are escorted and information is not clearly visible;

Plant maintenance areas if access is restricted and information is not clearly visible; Administrative offices (e.g., central records or purchasing) if visitors are escorted and information is not clearly visible;

Protection While in Storage

While unattended, SGI–M shall be stored in a locked file drawer or container. Knowledge of lock combinations or access to keys protecting SGI–M shall be limited to a minimum number of personnel for operating purposes who have a ''need-to-know'' and are otherwise authorized access to SGI–M in accordance with these requirements. Access to lock combinations or keys shall be strictly controlled so as to prevent disclosure to an unauthorized individual.

Transportation of Documents and Other Matter

Documents containing SGI–M when transmitted outside an authorized place of use or storage shall be enclosed in two sealed envelopes or wrappers. The inner envelope or wrapper shall contain the name and address of the intended recipient, and be marked both sides, top and bottom with the words ''*Safeguards Information—Modified Handling.*'' The outer envelope or wrapper must be addressed to the intended recipient, must contain the address of the sender, and must not bear any markings or indication that the document contains SGI–M.

SGI–M may be transported by any commercial delivery company that provides nation-wide overnight service with computer tracking features, U.S. first class, registered, express, or certified mail, or by any individual authorized access pursuant to these requirements.

Within a facility, SGI–M may be transmitted using a single opague envelope. It may also be transmitted within a facility without single or double wrapping, provided adequate measures are taken to protect the material against unauthorized disclosure. Individuals transporting SGI–M should retain the documents in their personal possession at all times or ensure that the information is appropriately wrapped and also secured to preclude compromise by an unauthorized individual.

Preparation and Marking of Documents

While the NRC is the sole authority for determining what specific information may be designated as ''SGI–M,'' originators of documents are responsible for determining whether those documents contain such information. Each document or other matter that contains SGI–M shall be marked *''Safeguards Information—Modified Handling''* in a conspicuous manner on the top and bottom of the first page to indicate the presence of protected information. The first page of the document must also contain (i) the name, title, and organization of the individual authorized to make a SGI–M determination, and who has determined that the document contains SGI–M, (ii) the date the document was originated or the determination made, (iii) an indication that the document contains SGI–M, and (iv) an indication that unauthorized disclosure would be subject to civil and criminal sanctions. Each additional page shall be marked in a conspicuous fashion at the top and bottom with letters denoting *''Safeguards Information—Modified Handling.''*

In additional to the *''Safeguards Information—Modified Handling''* markings at the top and bottom of each

page, transmittal letters or memoranda which do not in themselves contain SGI–M shall be marked to indicate that attachments or enclosures contain SGI–M but that the transmittal does not (e.g., ''When separated from SGI–M enclosure(s), this document is decontrolled'').

In addition to the information required on the face of the document, each item of correspondence that contains SGI–M shall, by marking or other means, clearly indicate which portions (e.g., paragraphs, pages, or appendices) contain SGI–M and which do not. Portion marking is not required for physical security and safeguards contingency plans.

All documents or other matter containing SGI–M in use or storage shall be marked in accordance with these requirements. A specific exception is provided for documents in the possession of contractors and agents of licensees that were produced more than one year prior to the effective date of the order. Such documents need not be marked unless they are removed from file drawers or containers. The same exception applies to old documents stored away from the facility in central files or corporation headquarters.

Since information protection procedures employed by state and local police forces are deemed to meet NRC requirements, documents in the possession of these agencies need not be marked as set forth in this document.

Removal From SGI–M Category

Documents containing SGI–M shall be removed from the SGI–M category (decontrolled) only after the NRC determines that the information no longer meets the criteria of SGI–M. Licensees have the authority to make determinations that specific documents *which they created* no longer contain SGI–M information and may be decontrolled. Consideration must be exercised to ensure that any document decontrolled shall not disclose SGI–M in some other form or be combined with other unprotected information to disclose SGI–M.

The authority to determine that a document may be decontrolled may be exercised only by, or with the permission of, the individual (or office) who made the original determination. The document shall indicate the name and organization of the individual removing the document from the SGI–M category and the date of the removal. Other persons who have the document in their possession should be notified of the decontrolling of the document.

Reproduction of Matter Containing SGI–M

SGI–M may be reproduced to the minimum extent necessary consistent with need without permission of the originator. Newer digital copiers which scan and retain images of documents represent a potential security concern. If the copier is retaining SGI–M information in memory, the copier cannot be connected to a network. It should also be placed in a location that is cleared and controlled for the authorized processing of SGI–M information. Different copiers have different capabilities, including some which come with features that allow the memory to be erased. Each copier would have to be examined from a physical security perspective.

Use of Automatic Data Processing (ADP) Systems

SGI–M may be processed or produced on an ADP system provided that the system is assigned to the licensee's or contractor's facility and requires the use of an entry code/password for access to stored information. Licensees are encouraged to process this information in a computing environment that has adequate computer security controls in place to prevent unauthorized access to the information. An ADP system is defined here as a data processing system having the capability of long term storage of SGI–M. Word processors such as typewriters are not subject to the requirements as long as they do not transmit information off-site. (Note: if SGI–M is produced on a typewriter, the ribbon must be removed and stored in the same manner as other SGI–M information or media.) The basic objective of these restrictions is to prevent access and retrieval of stored SGI–M by unauthorized individuals, particularly from remote terminals. Specific files containing SGI–M will be password protected to preclude access by an unauthorized individual. The National Institute of Standards and Technology (NIST) maintains a listing of all validated encryption systems at *http://csrc.nist.gov/cryptval/140–1/1401val.htm.* SGI–M files may be transmitted over a network if the file is encrypted. In such cases, the licensee will select a commercially available encryption system that NIST has validated as conforming to Federal Information Processing Standards (FIPS). SGI–M files shall be properly labeled as *''Safeguards Information—Modified Handling''* and saved to removable media and stored in a locked file drawer or cabinet.

Telecommunications

SGI–M may not be transmitted by unprotected telecommunications circuits except under emergency or extraordinary conditions. For the purpose of this requirement, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a security event (or an event that has potential security significance).

This restriction applies to telephone, telegraph, teletype, facsimile circuits, and to radio. Routine telephone or radio transmission between site security personnel, or between the site and local police, should be limited to message formats or codes that do not disclose facility security features or response procedures. Similarly, call-ins during transport should not disclose information useful to a potential adversary. Infrequent or non-repetitive telephone conversations regarding a physical security plan or program are permitted provided that the discussion is general in nature.

Individuals should use care when discussing SGI–M at meetings or in the presence of others to insure that the conversation is not overheard by persons not authorized access. Transcripts, tapes or minutes of meetings or hearings that contain SGI–M shall be marked and protected in accordance with these requirements.

Destruction

Documents containing SGI–M should be destroyed when no longer needed. They may be destroyed by tearing into small pieces, burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed would be considered completely destroyed.

Attachment 3: Trustworthy and Reliability Requirements for Individuals Handling Safeguards Information

Trustworthiness and Reliability Requirements for Individuals Handling Safeguards Information

In order to ensure the safe handling, use, and control of information designated as Safeguards Information, each licensee shall control and limit access to the information to only those individuals who have established the need-to-know the information, and are considered to be trustworthy and reliable. Licensees shall document the basis for concluding that there is

reasonable assurance that individuals granted access to Safeguards Information are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the information.

The Licensee shall comply with the requirements of this attachment:

1. The trustworthiness and reliability of an individual shall be determined based on a background investigation:

(a) The background investigation shall address at least the past three (3) years, and, at a minimum, include verification of employment, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual).

(b) If an individual's employment has been less than the required three (3) year period, educational references may be used in lieu of employment history.

The licensee's background investigation requirements may be satisfied for an individual that has an active Federal security clearance.

2. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

[FR Doc. E6–21044 Filed 12–11–06; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10746]

Hawaii Disaster #HI–00007

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Hawaii (FEMA–1664–DR), dated 10/23/2006.

Incident: Kiholo Bay Earthquake.

Incident Period: 10/15/2006 and continuing.

EFFECTIVE DATE: 10/23/2006.

Physical Loan Application Deadline Date: 12/22/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/23/2006, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Hawaii; City and County of Honolulu; Maui.

The Interest Rates are:

Other (Including Non-Profit Organizations) With Credit Available Elsewhere 5.000.

Businesses And Non-Profit Organizations Without Credit Available Elsewhere 4.000.

The number assigned to this disaster for physical damage is 10746.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. E6–21027 Filed 12–11–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5642]

Culturally Significant Objects Imported for Exhibition; eterminations: ''Modernism: Designing a New World 1914–1939''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Modernism: Designing a New World 1914–1939'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Corcoran Gallery of Art, Washington, DC, from on or about March 17, 2007 until on or about July 29, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 7, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–21176 Filed 12–11–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular No. 20–73A, Aircraft Ice Protection

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of Advisory Circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 20–73A, Aircraft Ice Protection. This AC tells type certificate and supplemental type certificate applicants how to comply with ice protection requirements of Title 14 of the Code of Federal Regulations (14 CFR) parts 23, 25, 29, 33, and 35.

DATES: The Federal Aviation Administration's, Aircraft Engineering Division, issued AC 20–73A on August 16, 2006.

FOR FURTHER INFORMATION CONTACT: The Federal Aviation Administration, Attn: George T. Soteropoulos, Aircraft Engineering Division's Technical Programs and Continued Airworthiness Branch, AIR–120, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9796; fax (202) 267–5340; E-mail *george.soteropoulos@faa.gov*.

SUPPLEMENTARY INFORMATION: We have filed in the docket all substantive comments received, and a report summarizing them. If you wish to review the docket in person, you may do so by going to the above address between 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. If you wish to contact the above named individual directly, you can use the above telephone number or e-mail address.

How To Obtain Copies

You may also obtain a copy of the AC via the Internet, by logging onto the FAA's Regulatory and Guidance Library (RGL) at: *http://www.airweb.faa.gov/rgl*. On the RGL Web site, click on ''Advisory Circular, then select Current ACs by number.'' Or, contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on December 1, 2006.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 06–9629 Filed 12–11–06; 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 August 8, 2006, vol. 71, no. 152, pages 45092–45093. The Administrator has determined based on evaluation of previous accidents and other incidents that certain events involving malfunctions and defects may be precursors to the recurrence of these accidents. As a result, operators and repair stations are required to report any malfunctions and defects to the Administrator.

DATES: Please submit comments by January 11, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Service Difficulty Report.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0663.

Forms(s): 8070–1.

Affected Public: An estimated 7,695 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 48 minutes per response.

Estimated Annual Burden Hours: An estimated 6,107 hours annually.

Abstract: The Administrator has determined based on evaluation of previous accidents and other incidents that certain events involving malfunctions and defects may be precursors to the recurrence of these accidents. As a result, operators and repair stations are required to report any malfunctions and defects to the Administrator.

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 *oira_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 December 5, 2006.

Carl Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 06–9628 Filed 12–11–06; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Cancellation of Preparation of Environmental Impact Statement for Sacramento International Airport, Sacramento, Sacramento County, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of cancellation of preparation of Environmental Impact Statement.

SUMMARY: The Federal Aviation Administration (FAA) announces that it has discontinued preparation of an Environmental Impact Statement (EIS) for a proposed runway extension project and other associated development at Sacramento International Airport, Sacramento, California. The FAA is doing this because Sacramento County, the owner and operator of the airport, is deferring its proposed runway extension project to a long-term planning horizon (2020). As a result, FAA has determined the runway extension proposal at Sacramento International airport is not ripe for decision at this time.

FOR FURTHER INFORMATION CONTACT: Camille Garibaldi, Environmental Protection Specialist, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010; telephone: 650/876–2778 extension 613.

SUPPLEMENTARY INFORMATION: On August 9, 2005, the Federal Aviation Administration (FAA) issued a Notice of Intent in the **Federal Register** (70 FR 46260–46261) to prepare an EIS for future development at Sacramento International Airport, Sacramento, California. The FAA based its decision to prepare the EIS on the procedures described in FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures.* FAA also based its decision to prepare a federal EIS primarily on Sacramento County's proposal to extend Runway 16L/34R to a total length of 11,000 feet. Sacramento County, owner and operator of Sacramento International Airport, notified the FAA, by letter dated September 5, 2006, of the County's decision to withdraw its request for FAA consideration of the proposed extension to Runway 16L/34R at this time. The County will provide FAA with a revised list of proposed improvements to Sacramento International Airport. When FAA receives the County's revised list of proposed improvements and a suggested implementation schedule, FAA will:

- Evaluate each of the proposed improvements:
- Decide if Sacramento County has completed sufficient planning to enable FAA to meaningfully evaluate the potential environmental effects of those improvements;
- Determine the NEPA document necessary to assess the environmental effects of those improvements pursuant to FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions;* and
- Suggest a schedule for completing the necessary NEPA process.

Issued in Hawthorne, California on December 1, 2006.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 06–9627 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Cancellation of Preparation of Environmental Impact Statement for Ontario International Airport, Ontario, San Bernardino County, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of cancellation of preparation of Environmental Impact Statement.

SUMMARY: The Federal Aviation Administration (FAA) announces that it has decided to discontinue preparation of an Environmental Impact Statement (EIS) for master plan improvements to Ontario International Airport, Ontario, California. The FAA's decision to discontinue preparation of the EIS is based upon the decision by Los Angeles World Airports, the owner of the airport, to discontinue pursuit of the master plan for Ontario International Airport at this time.

FOR FURTHER INFORMATION CONTACT: Victor Globa, Environmental Protection Specialist, Federal Aviation Administration, Los Angeles Airports District Office, P.O. Box 92007, Los Angeles, California 90009–2007, Telephone: (310) 725–3637.

SUPPLEMENTARY INFORMATION: On June 9, 2004, the Federal Aviation Administration (FAA) issued a Notice of intent to prepare an Environmental Impact Statement for future development at Ontario International Airport, Ontario, California in the **Federal Register** (69 FR 32394–32396). The need to prepare an Environmental Impact Statement (EIS) was based on the procedures described in FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures.* The need to prepare a federal EIS was primarily based on Los Angeles World Airports Draft Master Plan for Ontario that included the proposed relocation and increased separation of the runways, new taxiway, additional terminals, aircraft gates, and expansion and/or relocation of parking lots, access roads, ground transportation center, airport maintenance area, administrative facility and aircraft rescue and firefighting facility. Los Angeles World Airports, as the owner and operator of Ontario international Airport has notified the FAA of their decision to discontinue pursuit of the draft master plan at this time. If and when Los Angeles World Airports decides to resume preparation of a Master Plan, the FAA will evaluate the proposed improvements to ensure compliance with the National Environmental Policy Act of 1969, as amended.

Issued in Hawthorne, California on December 1, 2006.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 06–9626 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Information Collection Activities

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice of OMB approvals.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.5(b), this notice announces that new information collections requirements (ICRs) listed below have been approved by the Office of Management and Budget (OMB). These new ICRs pertain to 49 CFR parts 227 and 229. Additionally, FRA hereby announces that other ICRs listed below have been re-approved by the Office of Management and Budget (OMB). These ICRs pertain to parts 207, 209, 210, 214, 215, 217, 218, 223, 228, 232, 233, 234, 235, and 236. The OMB approval numbers, titles, and expiration dates are included herein under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or 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 No. 104–13, § 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 display OMB control numbers and inform respondents of their legal significance once OMB approval is obtained. The following new FRA information collection was approved in the last two months: OMB No. 2130–0560, Use of Locomotive Horns at Highway Grade Crossings (49 CFR parts 227 and 229) (Amendments to Final Rule). The expiration date for this collection of information is October 31, 2009.

The following information collections were re-approved: (1) OMB No. 2130–0017, U.S. DOT Crossing Inventory Form (Form FRA F 6180.71). The new expiration date for this information collection is August 31, 2009. (2) OMB No. 2130–0506, Identification of Cars Moved in Accordance with Order 13528 (49 CFR part 232). The new expiration date for this information collection is March 31, 2009. (3) OMB No. 2130–0035, Railroad Operating Rules (49 CFR part 217). The new expiration date for this information collection is September 30, 2009. (4) OMB No. 2130–0502, Filing of Dedicated Cars (49 CFR 215). The new expiration date for this information collection is September 30, 2009. (5) OMB No. 2130–0519, Bad Order and Home Shop Card (49 CFR part 215). The new expiration date for this information collection is September 30, 2009. (6) OMB No. 2130–0520, Stenciling Reporting Mark on Freight Cars (49 CFR part 215). The new expiration date for this information collection is September 30, 2009. (7) OMB No. 2130–0523, Rear End Marking Devices (49 CFR part 223). The new expiration date for this information collection is September 30, 2009. (8) OMB No. 2130–0527, Locomotive Certification (Noise Compliance Regulations) (49 CFR part 210). The new expiration date for this information collection is September 30, 2009. (9) OMB No. 2130–0534, Grade Crossing Signal System Safety (49 CFR part 234) (Form FRA F 6180.83). The new expiration date for this information collection is September 30, 2009. (10) OMB No. 2130–0535, Bridge Worker Safety Rules (49 CFR 214). The new expiration date for this information collection is September 30, 2009. (11) OMB No. 2130–0537, Railroad Police Officers (49 CFR part 207). The new expiration date for this information collection is September 30, 2009. (12) OMB No. 2130–0568, FRA Emergency Order No. 24. The new expiration date for this information collection is August 31, 2009. (13) OMB No. 2130–0006, Railroad Signal System Requirements (49 CFR 233/235/236) (Forms FRA F

6180.14 and FRA F 6180.47). The new expiration date for this information collection is August 31, 2009. (14) OMB No. 2130–0516, Remotely Controlled Switch Operations (49 CFR part 218). The new expiration date for this information collection is September 30, 2009. (15) OMB No. 2130–0509, State Safety Participation Regulations and Remedial Actions (49 CFR part 209) (Forms FRA F 6180.33/61/67/96/96A/109/110/111/112). The new expiration date for this information collection is September 30, 2009. (16) OMB No. 2130–0005, Hours of Service Regulations (49 CFR 228). The new expiration date for this information collection is November 30, 2009.

Persons affected by the above referenced information collections are not required to respond to any collection of information unless it displays a currently valid OMB control number. These approvals by the Office of Management and Budget (OMB) certify that FRA has complied with the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and with 5 CFR 1320.5(b) by informing the public about OMB's approval of the information collection requirements of the above cited forms and regulations.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on December 6, 2006.

D.J. Stadtler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E6–21014 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for Improvements To Enhance the Capacity and Improve the Operation of the Portal Bridge, a Rail Crossing Over the Hackensack River Along the Northeast Corridor Between Kearny, NJ and Secaucus, NJ

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: FRA is issuing this notice to advise the public that it will jointly prepare an environmental impact statement (EIS) with the New Jersey Transit Corporation (NJ TRANSIT) and in cooperation with the National Railroad Passenger Corporation (AMTRAK), to study improvements to enhance the capacity and improve the operation of the Portal Bridge, a two-track moveable swing-span bridge crossing over the Hackensack River along AMTRAK's Northeast Corridor rail line. AMTRAK and NJ TRANSIT are proposing to enhance the capacity and improve the operation of the Portal Bridge.

FRA is issuing this notice to solicit public and agency input into the development of the scope of the EIS and to advise the public that outreach activities conducted by NJ TRANSIT and its representatives will be considered in the preparation of the EIS. The Federal Transit Administration (FTA) is a cooperating agency for the environmental review. FTA will contribute information for which it has special expertise and ensure the EIS is prepared in compliance with its environmental regulations. The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) of 1969 and the applicable regulations implementing NEPA as set forth in 64 FR 28545 (May 26, 1999) and 23 CFR part 771. The EIS will also address as necessary Section 106 of the National Historic Preservation Act, Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 U.S.C. 303) (DOT Act) and other applicable Federal, and State laws and regulations.

The EIS will evaluate a ''No Action Alternative'' along with various build alternatives which could retain, replace, or modify the existing Portal Bridge. Alternatives proposing to retain the existing bridge would include the rehabilitation of the existing structure to a state of good repair, along with the construction of an additional bridge for added capacity. The new bridge could be either a moveable or a fixed bridge and its height above mean high water (MHW) would vary accordingly. The new structure may consist of a two- or three-track bridge. Alternatives proposing to replace the existing bridge would require the construction of two new bridges of varying heights, types, and number of tracks. The two new bridges could be built on new parallel alignments, or one new bridge could be built on the existing bridge alignment by use of a staged approach. Each of these new bridges would have two or three new tracks. Alternatives proposing to modify the existing bridge would entail rehabilitation and raising of the existing bridge to a new height. The existing bridge may be fixed in place or may remain moveable, depending on the proposed height above MHW. A new bridge could also be constructed on a different alignment.

DATES: A scoping meeting will be held on January 17, 2007 in the Newark Public Library, Centennial Hall, 2nd Floor, 5 Washington Street, Newark, NJ, 07101, (973) 733–7800, from 4 to 8 p.m. To ensure that all significant issues are identified and considered, a formal presentation will be made at 4:30 and 6 p.m. followed by the opportunity for the public to comment on the scope of the EIS. Those wishing to speak are required to register at the meeting location. At the meeting, comments may also be submitted in written form, or orally one-on-one to a stenographer.

Persons interested in providing written comments on the scope of the EIS should do so by January 31, 2007. Written comments sent should be sent by mail to persons identified below.

FOR FURTHER INFORMATION CONTACT: For further information regarding the environmental review, please contact: Mr. John Wilkins, Director, Capital Planning, The New Jersey Transit Corporation, One Penn Plaza East, Newark, NJ 07105–2246, telephone (973) 491–7846, or Mr. David Valenstein, Environmental Program Manager, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 20, Washington DC 20590, telephone (202) 493–6368. Information and documents regarding the environmental review process will be also made available through appropriate means, including the project Web site: *http://www.portalbridgenec.com.*

SUPPLEMENTARY INFORMATION:

I. Description of Project Area

AMTRAK owns and operates the Northeast Corridor rail line from Pennsylvania Station New York to Union Station in Washington DC, including the heavily used ''High Line'' portion connecting Newark, NJ and New York, NY across the Portal Bridge. NJ TRANSIT's Northeast Corridor Line operates over AMTRAK's Northeast Corridor in portions of Pennsylvania and in New Jersey from Trenton to New York's Pennsylvania Station. NJ TRANSIT's North Jersey Coast Line, certain Montclair-Boonton Line trains, and certain Morris & Essex Line trains join AMTRAK's Northeast Corridor west of the Hackensack River utilize the Portal Bridge and subsequently travel under the Hudson River to their terminus at New York's Pennsylvania Station.

NJ TRANSIT's commuter rail system ridership has been growing and will continue to grow due to population growth in communities throughout New Jersey, Orange and Rockland Counties

in New York, and portions of Pennsylvania. NJ TRANSIT operates 20 trains during the peak morning hour over the Portal Bridge that serve approximately 17,700 passengers. AMTRAK currently operates approximately 48 scheduled trains in each direction over this segment of the Northeast Corridor every weekday, including 15 time-sensitive premium Acela Express trains. While Portal Bridge is clearly a vital river crossing, the capacity constraints and problems caused by the existing Portal Bridge decrease schedule reliability for both AMTRAK and NJ TRANSIT customers.

Over the past few decades, improvements to the Northeast Corridor's infrastructure have greatly enhanced rail operations for AMTRAK and NJ TRANSIT. The Portal Bridge is an essential yet weak link along the Northeast Corridor. Planned projects intended to meet future transportation demands will place additional importance on a reliable and efficient Hackensack River crossing. The FTA and NJ TRANSIT, in partnership with the Port Authority of New York and New Jersey are currently preparing an EIS for the Access to the Region's Core (ARC) project. The ARC EIS will evaluate a new two-track tunnel under the Hudson River, a new rail terminal in Manhattan adjacent to the existing Penn Station, and new track capacity on the Northeast Corridor. While the proposed operating plan for ARC could be achieved using alternate routes, the locally preferred alternative results in a total of 37 NJ TRANSIT and AMTRAK trains operating over an enhanced Portal Bridge in the AM peak hour. Currently, 23 trains operate over Portal Bridge in the AM peak hour. The ARC as well as other planned projects would therefore increase the need for Portal Bridge improvements.

II. Problem Identification

The existing Portal Bridge was constructed in 1910 and is a two-track, moveable swing-span bridge that crosses the Hackensack River in New Jersey between the City of Kearny and the City of Secaucus. The Northeast Corridor has two tracks over the Portal Bridge and between Swift Interlocking and Secaucus Junction, which creates two bottlenecks. Trains must merge from four tracks to two tracks at Swift Interlocking, and from four tracks to two tracks at Secaucus Junction. Because multiple rail lines are merging onto a two-track crossing, the window of opportunity for each train is reduced. This operational inflexibility means that a delay on one rail line can cascade to other rail lines. Portal Bridge is a critical infrastructure element for both AMTRAK and NJ TRANSIT, enabling movement between east-of-Hudson and west-of-Hudson destinations, however the existing bridge, poses safety concerns, capacity constraints, and operational inflexibility.

The Portal Bridge was constructed nearly a century ago. Design standards for steel railroad bridges anticipate a typical lifespan of 100 years. Given the Portal Bridge's age, the structure is nearing the end of its useful life. Portal Bridge presents a considerable ongoing operation and maintenance expense for AMTRAK because the mechanical and structural components are prone to failure due to age and wear and because swing bridges are the most complicated movable rail bridge type. Special rail connections, known as miter rails, allow the rails to disengage and the bridge to swing open and closed. These connections are automatically controlled mechanical separations in the track that move apart for the swing span to open and then are realigned after it is closed. Mechanical wedges must lock the bridge when in the closed position and special mechanical electric power catenery joints must separate or rejoin the continuous contact wire on either end of the bridge for each movement. As a result of these features, while trains can operate at 90 miles per hour (mph) on adjacent portions of the Northeast Corridor, speeds over the Portal Bridge are restricted to 70 mph. The Hackensack River is a navigable waterway and marine traffic requires frequent bridge openings. These openings increase the likelihood of mechanical malfunctions, which have in the past caused the bridge to remain in the open position for long periods of time, resulting in train delays. Due to these types of issues, older swing span bridges are now being replaced by other types of moveable bridges such as vertical lift and single-span bascule bridges.

The Hackensack River is a navigable waterway governed by the U.S. Coast Guard. The existing Portal Bridge has only 23 feet of clearance between mean high water (MHW) and the lowest steel elevation of the bridge. As a result, marine traffic along this segment of the Hackensack River requires the frequent opening of the Portal Bridge and disruption of Northeast Corridor train traffic. This conflict is currently managed by restricting the times during which the bridge is permitted to open. Nonetheless, the lengthy time that is required to open and close the Portal Bridge for marine traffic continues to be disruptive to efficient rail operations.

To avoid disruption to passenger service, AMTRAK is forced to conduct bridge maintenance and inspection during increasingly limited time periods, such as at night and on weekends. As traffic along the Northeast Corridor increases, fewer suitable time periods for maintenance and inspection will be available.

III. Alternatives to be Considered

The EIS will consider a No Action Alternative and a number of different build alternatives to improve the existing Northeast Corridor rail crossing over the Hackensack River. These alternatives will consider retention or removal of the existing Portal Bridge and construction of one or two new bridges. Alternatives retaining the Portal Bridge will, in some cases, include the modification of certain characteristics of the existing bridge—such as height and operation (*e.g.*, a moveable structure versus a fixed structure). For a new bridge, alternatives proposed will vary in bridge height, type (moveable/fixed), and number of tracks to be constructed between Swift Interlocking and Secaucus Junction.

Alternatives Retaining the Existing Portal Bridge: These alternatives would retain the existing Portal Bridge and include construction of a new two-track or three-track bridge, either fixed or moveable.

Alternatives Modifying the Existing Portal Bridge: These alternatives would involve physically modifying the existing Portal Bridge (beyond normal maintenance), rehabilitating the structure, and raising it above its existing height. Some of these alternatives would raise the existing bridge so that it could be fixed in a closed position. Other alternatives would raise the bridge to a lesser height and retain its moveable nature. These alternatives would also include a new bridge, either fixed or moveable, with two or three tracks.

Alternatives Removing the Existing Portal Bridge: These alternatives would involve the construction of two new bridges and removal of the existing Portal Bridge. These alternatives would include a mix of bridge height, operation type (moveable or fixed), and alignment along the Hackensack River. Some of these alternatives would include the construction of a new two- or three-track movable bridge with a second new two-track fixed or moveable bridge. Other alternatives in this category would include a new two-track or three-track fixed bridge and a second new two-track fixed bridge.

IV. Probable Effects

The FRA, NJ TRANSIT, and AMTRAK will evaluate both project-specific and cumulative changes to the social, economic and physical environment—including land use and socioeconomic conditions, ecology, water resources, historic and archaeological resources, visual character and aesthetics, contaminated and hazardous materials, transportation, air quality, noise and vibration, environmental justice, and cumulative and secondary effects. The analysis will be undertaken consistent with NEPA, Council on Environmental Quality regulations, Section 106 of the National Historic Preservation Act, FRA guidance, FTA regulations, DOT guidance, and Section 4(f) of the DOT Act, along with other applicable Federal and State regulations.

V. Scoping Process

FRA invites all interested individuals, organizations, and Federal, State, and local agencies to comment on the scope of the EIS. Comments are encouraged on specific social, economic, or environmental issues to be evaluated, and on reasonable alternatives that may be less costly, more cost effective or have fewer environmental impacts while achieving similar transportation objectives.

NJ TRANSIT will be leading the outreach activities during the public scoping process, beginning with the scoping meeting identified under **DATES** above. Following the public scoping process, public outreach activities will include meetings with the Regional Citizens' Liaison Committee (RCLC) established for the study, as well as meetings with interested parties or small groups. Those wishing to participate in the RCLC may do so by registering on the project Web site at *http://www.portalbridgenec.com.* As part of the study process, the project Web site listed will be periodically updated to reflect the project's status. In addition, newsletters will be circulated to a broad constituency to ensure people are informed about the project. Additional opportunities for public participation will be announced through mailings, notices, advertisements and press releases.

Issued in Washington, DC, on December 5, 2006.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. E6–21015 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Railway Company

[Docket Number FRA–2006–26178]

The Canadian National Railway Company (CN) requests a waiver of compliance from certain provisions of Title 49 Code of Federal Regulations (CFR) Part 228.9(a)(1), Hours of Service of Railroad Employees, for CN to utilize a computerized system of recording hours of duty data. The CFR requires that records maintained under Part 228.9(a)(1) be signed by the employee whose time is being recorded, or in the case of train and engine crews, signed by the ranking crewmember. CN seeks to utilize a computerized system of recording hours of duty information which would not comply with the above requirements for a ''signature'' of the employee or ranking crewmember. CN proposes that each employee will have his or her own identification number (ID) and personal identification number (PIN). The PIN will remain confidential to the employee. The employee ID and PIN will be used to restrict access to jobs or train reporting screens to only the employee or ranking crew member of that specific job or train. When an employee accesses his or her reporting screens for input of the hours of service record required by CFR Part 228.11, the employee's PIN will not appear on the computer screen. After entering the appropriate data, the employee will be asked to ''certify'' his or her entries. When certified, the data entered by the employee will be date- and time-stamped by the computer. The employee's certified record will then be available through the FRA Inspection Screen and will display the employee's ID Number along with the date and time of certification. CN proposes to replace the current manually signed paper record with a printable copy of the employee's program-entered data showing the date, time and ID of entering employee.

CN warrants that FRA will be able to access each employee's certified records through agency-approved selection criteria. This criteria makes all CN employee hours of service records in the program available for review and printing by an inspector.

CN maintains that the change is in the best interests of all parties because it will reduce unnecessary paperwork and the costs associated therewith while providing the railroad, its employees, and the FRA with a superior level of information on a more timely basis than is currently available.

Interested parties are invited to participate in these proceedings by submitting written data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FR–2006–26178) and may be submitted by one of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001; or
- *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.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on December 6, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–21022 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Norfolk Southern Corporation

[Docket Number FRA–2006–25706]

The Norfolk Southern Corporation (NS) seeks a waiver of compliance from certain provisions of 49 CFR part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment. Specifically, it seeks a waiver from 49 CFR 232.205(a)(3), which requires a Class I air brake inspection whenever a train is ''off-air'' for a period of more than 4 hours on certain trains on NS's Pocahontas Division in West Virginia.

NS currently departs Gilbert Yard, West Virginia, and Weller Yard, Lee Town, West Virginia, with trains approximately 100 cars in length. These trains have a Class I brake test performed when assembled. The trains are moved to Buck main line siding where the locomotives are removed and the cars are left without means of charging air for a period of up to 24 hours. This practice also happens to trains from Weller Yard to Luke main line siding, and from Gilbert Yard to Lindsey main line siding. In each instance, another block of approximately 100 cars (previously Class I tested) are brought to the siding, where the two blocks are combined and a Class I brake inspection is performed on the first block of cars that have been sitting in the siding ''off-air'' for more than 4 hours. The train then departs to Portsmouth, Ohio.

NS requests relief from performing another Class I inspection on the block of cars that have been sitting in the siding ''off-air'' for more than 4 hours. The train travels less than 150 miles before being placed in the siding and NS contends that this waiver would reduce the exposure of their employees while performing a redundant walking inspection. NS would perform a Class III test on the cars in the sidings, when combined with the second train. NS also states that there have been no incidences of vandalism at these locations.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning this petition should identify the appropriate docket number (FRA–2006–25706) and may be submitted by one of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic site;
- Fax: 202–493–2251;
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001; or
- 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.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC on December 6, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–21013 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Santa Clara Valley Transportation Authority

[Docket Number FRA–1999–6254]

As a second supplement to Santa Clara Valley Transportation Authority's (VTA) existing Shared Use/Temporal Separation waiver for its Tasman West Line originally granted by the FRA on July 7, 2000 (a 5-year extension was granted on September 26 , 2005), VTA requests that the FRA consider reclassifying the 1.6-mile shared segment (called the Moffett Drill Track) as a ''Plant Railroad'' not part of the General Railroad System. VTA is also requesting a waiver from the FRA Locomotive Horn Rule, 49 CFR parts 222 and 229, at all highway grade crossings along the 1.6-mile Moffett Drill Track as long as this track is considered part of the General Railroad System. VTA seeks a permanent waiver of compliance from all sections of Title 49 of the CFR if the FRA agrees that the Moffett Drill Track should not be classified as part of the General Railroad System. (See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529. See also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General

Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42526.)

VTA Tasman West LRT Line is a two-track, 7.6-mile urban rapid transit light rail line owned and operated by VTA within the City of Mountain View, City of Sunnyvale, and County of Santa Clara, California. A 1.6-mile segment of this LRT Line, called the Moffett Drill Track, features 2 tracks and 11 grade crossings and is shared with freight service of the Union Pacific Railroad Company (UP). This Moffett Drill Track segment is nominally connected to the General Railroad System (connection exists at the westward terminus of the Tasman West LRT Line at the Downtown Mountain View Station with mainline tracks used by UPRR and Caltrain) by virtue of a contractual right of a single shipper for freight service to the NASA-Ames Research Center, a right that has not been exercised in the last 12 years.

VTA states that considering the total absence of freight service on this segment for the last 12 years, and the heavy restrictions which would be placed on any such movement, that the term ''shared'' is technical in name only and well below the level of activity which would justify application of FRA regulations to a light rail operation. Further, the character of the freight operation across the Moffett Drill Track is equivalent to providing service to a shipper facility that is not considered to be part of the General Railroad System, except when a UP freight train operating in interstate commerce actually enters the facility. In this case, unless and until the NASA-Ames Research Center actually requests and schedules the UP to enter its facility, then the FRA should waive jurisdiction over light rail operations on this 1.6-mile shared track segment. VTA states that it has received numerous noise complaints because its light rail vehicles (LRV) must blow their horns in the manner prescribed in the Locomotive Horn Rule as per 49 CFR parts 222 and 229. Its LRVs cross the 11 highway grade crossings 114 times per day from 0400 a.m. until 0100 a.m. daily, and utilize a horn with a decibel range from 85dB to 97dB. Given the history of nonexistent freight operations on this 1.6-mile segment, VTA contends a waiver of the Horn Rule requirements is more suitable and practical than establishing a quiet zone. In the event NASA-Ames Research Center does request freight service, UP remains subject to FRA regulations, and VTA will adhere to the terms and conditions of the current Shared Use Waiver with movement on the Moffett Drill Track heavily restricted, including full temporal separation.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–1999–6254) and may be submitted by one of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic site;
- Fax: 202–493–2251;
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001; or
- 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.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC on December 6, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–21012 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notification of Informational Filing To Test a Processor-Based Signal and Train Control System, and a Request for Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) Part 211, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

CSX Transportation, Inc.

[Docket Number FRA–2006–25057]

In association with continued development and implementation testing of the CSX Transportation, Inc. (CSXT) Communications Based Train Control (CBTM) System, CSXT of Jacksonville, Florida, has petitioned for a waiver of compliance from certain FRA regulatory safety requirements. CBTM is a non-vital safety-critical overlay designed to supplement the existing method of operation to protect against the consequences of human error.

CSXT is requesting a petition of regulatory relief from the following Federal regulations: 49 CFR 216.13 (Special Notice of Repairs—Locomotive), 49 CFR 217.9 (Program of Operational Tests and Inspections—Recordkeeping), 49 CFR 217.11 (Program of Instruction on Operating Rules—Recordkeeping, Electronic Recordkeeping), 49 CFR part 218 subpart D (Prohibition Against Tampering with Safety Devices), 49 CFR 229.7 (Prohibited Acts), 49 CFR 229.135 (Event Recorders), 49 CFR 233.9 (Reports), 49 CFR 235.5 (Changes Requiring Filing of Application), 49 CFR 240.127 (Criteria for Examining Skill Performance), and 49 CFR 240.129 (Criteria for Monitoring Operational Performance of Certified Engineers). CSXT is requesting regulatory relief for testing related to the CBTM on the CSXT Blue Ridge, Duke, Spartanburg, and McCormick Subdivisions, which consist of approximately 137 miles of Traffic Control System territory and 130 miles of Direct Traffic Control territory. The regulatory relief requested was previously granted; however, this relief was withdrawn by FRA in a letter dated April 8, 2005 (see docket FRA–2002–

12507). The regulatory relief requested in CSX's current petition is only for CBTM-related equipment and testing, and only through the conclusion of CBTM testing. Compliance with the rules for which relief is requested will not apply to non-CBTM-related equipment and operations. Details of the exact relief requested and CSXT's supporting rationale are detailed in FRA–2006–25057–4.

For informational purposes only, FRA is also providing notice that it has received an informational filing to test CBTM submitted pursuant to 49 CFR 236.913(j). FRA will accept comments only on those items requiring a waiver from regulatory requirements. All communications concerning the petition from regulatory relief under 49 CFR part 211 should identify the appropriate docket number (FRA–2006–25057) and must be submitted by one of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001; or
- *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.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on December 6, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–21016 Filed 12–11–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Covington & Burling on behalf of Union Pacific Corporation (WB468–8—12/1/06), for permission to use certain data from the Board's 2005 Carload Waybill Sample. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. E6–21045 Filed 12–11–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34969]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's lines between milepost 146.0, Hobart, CA, and milepost 9.8, Riverside, CA, a distance of approximately 55 miles.[1]

The transaction is scheduled to be consummated on January 2, 2007, and the temporary trackage rights will expire on or about April 5, 2007. The purpose of the temporary trackage rights is to facilitate maintenance work on UP lines.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34969, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Gabriel S. Meyer, Union Pacific Railroad Company, 1400 Douglas St., STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: December 5, 2006.

Vernon A. Williams,

Secretary.

[FR Doc. E6–21046 Filed 12–11–06; 8:45 am]

BILLING CODE 4915–01–P

[1] Total mileage does not correspond to the milepost designations of the endpoints because the trackage rights involve BNSF subdivisions with non-contiguous mileposts.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 6, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 11, 2007 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0107.

Type of Review: Revision.

Title: Monthly Report—Tobacco Products Importer.

Form: TTB 5220.6.

Description: Reports of the importation and disposition of tobacco products are necessary to determine whether those issued the permits required by 26 U.S.C. 5713 should be allowed to continue their operations or renew their permits. This report is used to accomplish this goal, which protects the revenue.

Respondents: Business and other for profits.

Estimated Total Burden Hours: 7,258 hours.

Clearance Officer: Frank Foote, (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–21112 Filed 12–11–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 06–14]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1248]

FEDERAL DEPOSIT INSURANCE CORPORATION

Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final guidance.

SUMMARY: The OCC, Board, and FDIC (the Agencies) are issuing final joint Guidance on Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices (Guidance). This Guidance has been developed to reinforce sound risk management practices for institutions with high and increasing concentrations of commercial real estate loans on their balance sheets. This Guidance applies to national banks and state chartered banks (institutions). Further, the Board believes that the Guidance is broadly applicable to bank holding companies.

DATES: *Effective Date:* The final Guidance is effective December 12, 2006.

FOR FURTHER INFORMATION CONTACT:

OCC: Dena G. Patel, Credit Risk Specialist, (202) 874–5170; or Vance Price, National Bank Examiner, (202) 874–5170.

Board: Denise Dittrich, Supervisory Financial Analyst, (202) 452–2783; Virginia Gibbs, Senior Supervisory Financial Analyst, (202) 452–2521; or Sabeth I. Siddique, Assistant Director, (202) 452–3861, Division of Banking Supervision and Regulation; or Mark Van Der Weide, Senior Counsel, Legal Division, (202) 452–2263. For users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

FDIC: Patricia A. Colohan, Senior Examination Specialist, (202) 898–7283; or Serena L. Owens, Chief, Planning and Program Development, (202) 898–8996, Division of Supervision and Consumer Protection; or Benjamin W. McDonough, Attorney, Legal Division, (202) 898–7411.

SUPPLEMENTARY INFORMATION:

I. Background

The Agencies have observed that commercial real estate (CRE) concentrations have been rising over the past several years and have reached levels that could create safety and soundness concerns in the event of a significant economic downturn. To some extent, the level of CRE lending reflects changes in the demand for credit within certain geographic areas and the movement by many financial institutions to specialize in a lending sector that is perceived to offer enhanced earnings. In particular, small to mid-size institutions have shown the most significant increase in CRE concentrations over the last decade. CRE concentration levels [1] at commercial and savings banks with assets between $100 million and $1 billion have doubled from approximately 156 percent of total risk-based capital in 1993 to 318 percent in third quarter 2006. This same trend has been observed at commercial and savings banks with assets of $1 billion to $10 billion with concentration levels rising from approximately 127 percent in 1993 to approximately 300 percent in third quarter 2006.

While current CRE market fundamentals remain generally strong, and supply and demand are generally in balance, past history has demonstrated that commercial real estate markets can experience fairly rapid changes. For institutions with significant concentrations, the ability to withstand difficult market conditions will depend heavily on the adequacy of their risk management practices and capital levels. In recent examinations, the Agencies' examiners have observed that some institutions have relaxed their underwriting standards as a result of strong competition for business. Further, examiners also have identified a number of institutions with high CRE concentrations that lack appropriate policies and procedures to manage the associated risk arising from a CRE concentration. For these reasons, the Agencies are concerned with institutions' CRE concentrations and the risks arising from such concentrations.

To address these concerns, the Agencies published for comment proposed Interagency Guidance on Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices, 71 FR 2302 (January 13,2006). The proposal set forth thresholds to identify institutions with CRE loan concentrations that would be subject to greater supervisory scrutiny. As provided in the proposal, an institution exceeding these thresholds would be deemed to have a CRE concentration and expected to have appropriate risk management practices as described in the proposed guidance.

After reviewing the public comment letters [2] on the proposal, the Agencies are now issuing final Guidance to remind institutions that there are substantial risks posed by CRE concentrations and that these risks should be recognized and appropriately addressed. The final Guidance describes sound risk management practices that are important for an institution that has strategically decided to concentrate in CRE lending. These risk management practices build upon existing real estate lending regulations and guidelines. The Agencies also have clarified that they are not establishing a limit on the amount of commercial real estate lending that an institution may conduct.

[1] CRE concentration levels for loans secured by real estate for (a) construction, land development, and other land loans; (b) multifamily residential properties; and (c) nonfarm nonresidential properties.

[2] The Agencies did receive a number of comment letters requesting a 30-day extension of the comment period, which the Agencies granted. *See* 71 FR 13215 (March 14, 2006).

In addition, the final Guidance includes supervisory criteria to help the Agencies' supervisory staff identify institutions that may have significant CRE concentration risk.

II. Proposed Guidance

The proposed guidance described the Agencies' expectations for heightened risk management practices for an institution with a concentration in CRE loans. Further, the proposal set forth two thresholds to identify institutions with CRE loan concentrations that would be subject to greater supervisory scrutiny. The proposal provided that such institutions should have in place the heightened risk management practices and capital levels set forth in the proposal.

The first proposed threshold stated that if loans for construction, land development, and other land were 100 percent or more of total capital, the institution would be considered to have a CRE concentration and should have heightened risk management practices. Secondly, if loans for construction, land development, and other land and loans secured by multifamily and nonfarm nonresidential property (excluding loans secured by owner-occupied properties) were 300 percent or more of total capital, the institution would also be considered to have a CRE concentration and should employ heightened risk management practices.

The proposal described the key risk management elements for an institution's CRE lending activity with an emphasis on those components of the risk management process that are particularly applicable to an institution with a CRE concentration, including: board and management oversight, strategic planning, underwriting, risk assessment and monitoring of CRE loans, portfolio risk management, management information systems, market analysis, and stress testing. The proposal also reminded institutions with CRE concentrations that they should hold capital exceeding regulatory minimums and commensurate with the level of risk in their CRE lending portfolios.

III. Overview of Public Comments

Collectively, the Agencies received over 4,400 comment letters on the proposed guidance. The OCC received approximately 1,700 comment letters, the Board had approximately 1,700 letters, and the FDIC had approximately 1,000 letters. The majority of comment letters were from regulated financial institutions and their trade groups.

Among the trade or other groups submitting comments were seven nationwide banking trade associations, 26 state banking trade associations, the Conference of State Bank Supervisors, three state financial institution regulatory agencies, the Appraisal Institute, the National Association of Home Builders, National Association of REITs, and Real Estate Roundtable. Additionally, during the comment period, the Agencies met with several industry groups.

The vast majority of commenters expressed strong opposition to the proposed guidance and believe that the Agencies should address the issue of CRE concentration risk on a case-by-case basis as part of the examination process. Many commenters contended that existing regulations and guidance are sufficient to address the Agencies' concerns regarding CRE concentration risk and the adequacy of an institution's risk management practices and capital.

Several commenters asserted that today's lending environment is significantly different than that of the late 1980s and early 1990s when regulated financial institutions suffered losses from their real estate lending activities due to weak underwriting standards and risk management practices. These commenters contended that regulated financial institutions learned their lessons from past economic cycles and that underwriting practices are now stronger.

Many community-based institutions, particularly Florida-based and Massachusetts-based institutions, opposed the proposed guidance and contended that the proposal would discourage community-based institutions from CRE lending and serving the needs of their communities. If community-based institutions were forced to reduce their CRE lending activity, these commenters asserted that there was the potential for a downturn in the economy, creating systemic problems beyond the risks in CRE loans.

While smaller institutions acknowledged that many community banks do concentrate in commercial real estate loans, they contended that there are few other lending opportunities in which community-based institutions can successfully compete against larger financial institutions. Community-based institutions commented that secured real estate lending has been their ''bread and butter'' business and, if required to reduce their commercial real estate lending activity, they would have to look to other types of lending, which have been historically more risky. Moreover, these commenters noted that community-based institutions are actively involved in their local communities and markets, which affords them a significant advantage when competing for CRE loan business. Community-based institutions also noted that their lending opportunities have dwindled as a result of competition from other types of financial institutions, such as finance companies, Farm Credit banks, and credit unions.

IV. Overview of Final Guidance

After carefully reviewing the comments on the proposed guidance, the Agencies have made significant changes to the proposal to clarify the purpose and scope of the Guidance. The Agencies continue to believe that it is important for institutions with CRE credit concentrations to assess the risk posed by the concentration and to maintain sound risk management practices and an adequate level of capital to address the risk. Therefore, while the final Guidance continues to emphasize these principles, the Agencies have revised the proposal to clarify that financial institutions play a vital role in providing credit for commercial real estate activity and to make clear that the Guidance does not establish a limit on an institution's CRE lending activity.

A discussion of the changes in the final Guidance from the proposal, major comments on the proposal, and the Agencies' responses follows.

A. Purpose

The final Guidance reminds institutions that sound risk management practices and appropriate capital levels are important when an institution has a CRE concentration. Like the proposal, the final Guidance reinforces and builds upon the Agencies' existing regulations and guidelines for real estate lending and loan portfolio management.

Commenters expressed concern that the proposal placed additional burden on institutions that already have sound practices in place to manage their CRE lending activity. Further, commenters contended that the Agencies have sufficient existing authority to address their concerns with an institution's CRE lending activity and that the Agencies' examination process affords the Agencies with ample opportunity to address weaknesses in an institution's lending practices.

The Agencies are issuing the final Guidance to remind institutions of the substantial potential risks posed by credit concentrations, especially in sectors such as CRE, which history has shown to have cycles that can, at much lower concentration levels, inflict large losses upon institutions. While most institutions are practicing sound credit

risk management on a transaction basis, the Agencies believe this Guidance is necessary to emphasize the importance of portfolio risk management practices to address CRE concentration risk.

B. Scope

The final Guidance, like the proposal, focuses on CRE loans that have risk profiles sensitive to the condition of the general CRE market. This includes loans for land development and construction (including 1- to 4-family residential and commercial properties), other land loans, and loans secured by multifamily and nonfarm nonresidential properties (where the primary source of repayment is cash flows from the real estate collateral). Loans to REITs and unsecured loans to developers also are considered CRE loans for purposes of this Guidance if their performance is closely linked to the performance of the general CRE market.

Commenters noted that the identification of CRE loans in the current Consolidated Reports of Condition and Income (Call Report) did not correspond to the proposed guidance's CRE definition and did not constitute an accurate measurement of the volume of an institution's CRE loans that would be vulnerable to cyclical CRE markets. Commenters did acknowledge that the revisions to the Call Reports, effective in 2007, would address this inconsistency.

In response to these comments, the Agencies have clarified that the focus of the Guidance is on those CRE loans where the cash flow from the real estate collateral is the primary source of repayment rather than on loans to a borrower where real estate is a secondary source of repayment or is taken as collateral through an abundance of caution. This is consistent with the 2007 revisions to the Call Report.

Many commenters found the proposal's definition of CRE loans overly broad and failed to recognize unique risks posed by loans with different risk characteristics. Further, commenters asked for clarification as to the types of properties included in the scope of the Guidance, such as loans secured by motels, hotels, mini-storage warehouse facilities, and apartment complexes where the primary source of repayment is rental or lease income. A number of commenters contended that loans on certain types of CRE properties should not be considered CRE loans, including: Presold 1- to 4-family residential construction loans, multifamily loans, and loans to REITs.

Commenters recommended that the proposal should not cover residential construction loans where a house has been sold to a qualified borrower prior to the start of the construction. These commenters argued that presold 1- to 4-family residential construction loans carry far less risk than speculative home construction loans because the future homeowners are known and contractually obligated to purchase the home, and have passed a credit review prior to the commencement of construction. Commenters noted that their rationale for excluding presold 1- to 4-family residential construction is consistent with the proposal's exclusion of CRE loans on owner-occupied properties.

Further, commenters recommended that multifamily construction loans with firm takeouts or loans on completed multifamily properties with established rent rolls be excluded from the scope of the guidance. Commenters contended that multifamily residential loans have much less risk than CRE loans that have no firm takeout or established cash flow history.[3] One commenter noted that over the last 20 years, institutions have incurred minimal losses on multifamily loans and attributed this performance to strong underwriting and stability in rental properties.

The Agencies note that because the Guidance does not impose lending limits, its scope is purposely broad so that it includes those CRE loans, including multifamily loans, with risk profiles sensitive to the condition of the general CRE markets, such as market demand, changes in capitalization rates, vacancy rates, and rents. However, the Agencies believe that institutions are in the best position to segment their CRE portfolios and group credit exposures by common risk characteristics or sensitivities to economic, financial, or business developments. As explained in the final Guidance, institutions should be able to identify potential concentrations in their CRE portfolios by common risk characteristics, which will differ by property type. The final Guidance notes that factors, such as portfolio diversification, geographic dispersion, levels of underwriting standards, level of presold buildings, and portfolio liquidity, would be considered in evaluating whether an institution has mitigated the risk posed by a concentration. Further, the Agencies acknowledge in the final guidance that consideration should be given to the lower risk profiles and historically superior performance of certain types of CRE such as well-structured multifamily housing loans, when compared to others, such as speculative office construction.

C. CRE Concentration Assessment

The final Guidance contains a new section referred to as ''CRE Concentration Assessment'' that provides that institutions should perform their own assessment of concentration risk in their CRE loan portfolios. While the final Guidance does not establish a CRE concentration limit, the Agencies have retained high-level indicators to assist examiners in identifying institutions potentially exposed to CRE concentration risk. These are described in section IV.E of this preamble.

Many commenters noted that the proposal did not recognize the different segments in an institution's CRE portfolio and treated all CRE loans as having equal risk. A commenter noted that a concentration test cannot reflect the distinct risk profile within an institution's loan portfolio and that the risk profile is a function of many factors, including the institution's risk tolerance, portfolio diversification, the prevalence of guarantees and secondary collateral, and the condition of the regional economy.

In response to such comments, the Agencies have added a section on CRE Concentration Assessments to the final Guidance. The Agencies recognize that risk characteristics vary by different property types of CRE loans and that institutions are in the best position to identify potential concentrations by stratifying their CRE portfolios into segments with common risk characteristics. The Agencies believe an institution's board of directors and management should identify and monitor credit concentrations and establish internal concentration limits. The final Guidance clarifies that an institution actively involved in CRE lending should be able to identify concentrations in its CRE portfolio and to monitor concentration risk on an ongoing basis.

Commenters raised concern that the proposed thresholds would be perceived by examiners as *de facto* limits on an institution's CRE lending activity. The Agencies believe that the

[3] Another commenter, representing REITs, sought clarification as to whether the proposed guidance would apply to both secured and unsecured loans to REITs. This commenter asserted that unsecured loans to REITs should not be considered a CRE loan for purposes of the proposed guidance as the commenter believes that the risk of an unsecured loan to a REIT is mitigated by well-diversified cash flow comprising the sources of repayment. The final Guidance, like the proposal, applies to both secured and unsecured loans to REITs where repayment capacity is sensitive to conditions of the general CRE market. The Agencies note that the structure of such loans would be considered a mitigating factor when an institution analyzes the risk posed by such a concentration.

final Guidance addresses the concerns of commenters by placing the emphasis on the institution's own assessment of its CRE concentration risk rather than on the proposed concentration thresholds. In the final Guidance, the Agencies have responded to these concerns by specifically stating that the Guidance does not establish any specific limits on institutions' CRE lending activity. Moreover, in implementing the Guidance, the Agencies will take the necessary steps to communicate the purpose of the Guidance to their supervisory staffs to prevent any unintended consequences.

The final Guidance does incorporate the proposed concentration thresholds as part of the Agencies' supervisory oversight criteria for examiners to use as a starting point for identifying institutions that are potentially exposed to significant CRE concentration risk. The Agencies believe that these numerical supervisory screens will serve to promote consistent application of this Guidance across the Agencies as well as within an agency. The supervisory oversight and evaluation of an institution's CRE concentration risk are discussed in more detail in section IV.E. of the preamble.

D. Risk Management

The final Guidance, like the proposal, builds upon the Agencies' existing regulations and guidance for real estate lending and loan portfolio management, emphasizing those risk management practices that will enable an institution to pursue CRE lending in a safe and sound manner.

Many commenters acknowledged that the risk management principles described in the proposal should be viewed as prudent industry standards for an institution engaged in CRE lending. However, some commenters alleged that the proposed guidance would create additional regulatory burden at a time when institutions are already faced with other compliance responsibilities. Further, commenters noted that the Agencies needed to consider an institution's size and complexity in assessing the adequacy of risk management practices. This particular concern was raised with regard to the expectations for management information systems and portfolio stress testing that commenters found to be burdensome for smaller institutions.

In response to these comments, the Agencies have revised the final Guidance's risk management section to make the discussion more principle-based and to focus on those aspects of existing regulations and guidelines that deserve greater attention when an institution has a CRE concentration or is pursuing a CRE lending strategy leading to a concentration. As a result, the risk management section in the final Guidance sets forth the key elements of an institution's risk management framework for managing concentration risk. Further, the final Guidance recognizes the sophistication of an institution's risk management processes will depend upon the size of the CRE portfolio and the level and nature of its CRE concentration risk.

The final Guidance describes the key elements that an institution should address in board and management oversight, portfolio management, management information systems, market analysis, credit underwriting standards, portfolio stress testing and sensitivity analysis, and credit risk review function. In general, an institution with a CRE concentration should manage not only the risk of the individual loans but also the portfolio risk. Recognizing that an institution's board of directors has ultimate responsibility for the level of risk assumed by the institution, the Agencies believe that appropriate board oversight should address the rationale for an institution's CRE lending levels in relation to its growth objectives, financial targets, and capital plan.

The Agencies believe that the final Guidance's discussion of management information systems (MIS), market analysis, and portfolio stress testing addresses the concerns of smaller institutions regarding regulatory burden. The Agencies recognize that the level of sophistication of an institution's MIS, market analysis and stress testing will depend upon the size and complexity of the institution. Therefore, the focus of the final Guidance is on the ability of the institution to provide its management and board of directors with the necessary information to assess its CRE lending strategy and policies in light of changes in CRE market conditions. Regardless of its size, an institution should be able to identify and monitor CRE concentrations and the potential effect that changes in market conditions may have on the institution.

Some commenters requested clarification on the Agencies' expectations for stress testing. These commenters expressed concern that, as a result of the proposal, management's time would be diverted to creating reports and statistics with not much value. These commenters represented that an institution's focus should be on a loan review program, portfolio monitoring procedures, and loan loss reserves.

The Agencies agree with these comments and have revised the discussion on market analysis and stress testing. The final Guidance acknowledges that an institution's market analysis will vary by its market share and exposure levels as well as the availability of market data. Further, the final Guidance notes that portfolio stress testing does not require the use of sophisticated portfolio models. Depending on the institution, stress testing may be as simple as analyzing the potential effect of stressed loss rates on the institution's CRE portfolio, capital, and earnings. The important objective is that an institution should have the information necessary to assess the potential effect of market changes on its CRE portfolio and lending strategy.

Commenters questioned the proposed guidance's suggestion that institutions should compare their underwriting standards to those of the secondary commercial mortgage market. Commenters noted that there is not a ready secondary market for CRE loans made by smaller institutions as the loans are smaller in dollar size and have characteristics that make them unsuitable for securitization.

The Agencies recognize that smaller institutions do not have ready access to the secondary market and had not intended that the proposal be viewed in this way. Therefore, in the final Guidance, the Agencies have clarified the situations when an institution should conduct secondary market comparisons. If an institution's portfolio management strategy includes selling or securitizing CRE loans as a contingency plan for managing concentration levels, an institution should evaluate its ability to do so and compare its underwriting standards to those of the secondary market.

E. Supervisory Oversight

In the final Guidance, the Agencies have retained the concept of concentration thresholds as a supervisory tool for examiners to screen institutions for potential CRE concentration risk. The intent of these indicators is to encourage a dialogue between the Agency supervisory staff and an institution's management about the level and nature of CRE concentration risk. While the final Guidance is effective immediately upon publication in the **Federal Register**, the Agencies will provide institutions with CRE concentrations a reasonable timeframe over which to demonstrate that their risk management practices are appropriate for the level and nature of the concentration risk.

Commenters encouraged the Agencies to evaluate institutions' CRE concentrations on a bank-by-bank basis and not to take a ''one-size-fits-all'' approach to evaluating concentrations. Commenters asserted that an assessment of concentration risk based on the Agencies' proposed thresholds did not consider the differing risk characteristics of the subcategories of CRE loans. Further, commenters noted that the proposed thresholds did not consider whether or not an institution had an established history of managing a high CRE concentration.

In the final Guidance, the Agencies addressed the commenters' concerns by stating that numeric indicators do not constitute limits; rather they will be used as a supervisory monitoring tool. These indicators will assist examiners in identifying institutions with CRE concentrations. These indicators will function similarly to other analytical screens that the Agencies use to evaluate an institution. By including these indicators in the final Guidance, institutions will have an understanding of the Agencies' supervisory monitoring criteria. The Agencies also have tried to strike a balanced tone in the final Guidance to promote an appropriate and consistent application of these indicators by their supervisory staffs.

As explained in the final Guidance, an institution that has experienced rapid growth in CRE lending, has notable exposure to a specific type of CRE, or is approaching or exceeds the following supervisory criteria may be identified for further supervisory analysis of the level and nature of its CRE concentration risk. The supervisory criteria are:

(1) Total reported loans for construction, land development, and other land [4] represent 100 percent or more of the institution's total capital; [5] or

(2) Total commercial real estate loans as defined in the Guidance [6] represent 300 percent or more of the institution's total capital and the outstanding balance of the institution's CRE loan portfolio has increased 50 percent or more during the prior 36 months.

While the criteria will serve as a screen for identifying institutions with potential CRE concentration risk, the final Guidance notes that institutions should not view the criteria as a ''safe harbor'' if other risk indicators are present, regardless of the measurements under criteria (1) and (2). Further, the final Guidance notes that institutions experiencing recent, significant growth in CRE lending will receive closer supervisory review than other institutions that have demonstrated a successful track record of managing the risks in CRE concentrations.

In response to comments that the proposal concentration thresholds did not consider an institution's track record for managing CRE concentrations, the Agencies have included an additional condition to the 300 percent screen. The Agencies also will consider whether the institution's CRE portfolio increased by 50 percent or more during the prior 36 months. This additional screen acknowledges that the Agencies will be focusing on those institutions that have recently experienced a significant growth in their CRE portfolio and may not have been subject to prior supervisory review.

While most commenters opposed the adoption of any concentration thresholds, several commenters did comment on the appropriateness of the proposed CRE concentration thresholds. These commenters asserted that the proposed 300 percent threshold was too low and suggested that a benchmark from 400 to 600 percent of capital would be more appropriate.

As previously discussed, the Agencies have retained the 300 percent screen with an additional screen (that is, an institution's CRE portfolio increased by 50 percent or more during the prior 36 months). In developing the supervisory criteria, the Agencies relied on historical trends in concentration levels over real estate cycles, the relationship of CRE concentration levels to bank failures, and supervisory experience. Further, the final Guidance clarifies that the Agencies' supervisory staffs will consider other factors, and not just these indicators, in evaluating the risk posed by an institution's CRE concentration.

F. Assessment of Capital Adequacy

In the final Guidance, the section on the ''Assessment of Capital Adequacy'' was significantly revised to address the commenters' concerns that the proposal was too restrictive and did not take into account the institution's lending and risk management practices. The proposal stated that institutions should hold capital commensurate with the level and nature of their CRE concentration risks and that an institution with high or inordinate levels of risk would be expected to operate well above minimum regulatory capital requirements. In the final Guidance, the discussion on the adequacy of an institution's capital has been incorporated into the Supervisory Oversight section to clarify that the assessment of an institution's capital will be performed in connection with the supervisory assessment of an institution's risk management.

Commenters asserted that many institutions already hold capital at levels above minimum standards and should not be required to raise additional capital simply because their CRE concentrations exceeded a threshold. There also was concern that the proposal would give examiners the ability to arbitrarily assess additional capital requirements solely due to a high concentration.

The Agencies agree with commenters that the majority of institutions with CRE concentrations presently have capital exceeding regulatory minimums and would generally not be expected to increase their capital levels. However, since an institution's capital serves as a buffer against unexpected losses from its CRE concentration, an institution with a CRE concentration and inadequate capital should develop a plan for reducing its concentration or maintaining capital appropriate for the level and nature of the concentration risk. To the extent an institution with a CRE concentration has effective risk management practices or is addressing the need for such practices, the Agencies' concerns regarding capital adequacy are reduced. However, an institution with a CRE concentration and with no prospects of enhancing its risk management practices should address the need for additional capital. Therefore, the final Guidance reminds institutions that they should hold capital commensurate with the level and nature of the risks to which they are exposed.

Commenters noted that the allowance for loan and lease losses (ALLL) is another means of protection for an institution and, therefore, should be considered in determining whether capital is adequate for the level and nature of concentration risk. The Agencies agree with this comment and have addressed ALLL within the context of the capital adequacy section.

V. Text of the Final Joint Guidance

The text of the final joint Guidance on Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices follows:

[4] For commercial banks, this total is reported in the Call Report FFIEC 031 and 041 schedule RC–C item 1a.

[5] For purposes of this Guidance, the term ''total capital'' means the total risk-based capital as reported for commercial banks in the Call Report FFIEC 031 and 041 schedule RC–R—Regulatory Capital, line 21.

[6] For commercial banks, this total is reported in the Call Report FFIEC 031 and 041 schedule RC–C items 1a, 1d, 1e, and Memorandum Item #3.

Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices

Purpose

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the Agencies), are jointly issuing this Guidance to address institutions' increased concentrations of commercial real estate (CRE) loans. Concentrations of credit exposures add a dimension of risk that compounds the risk inherent in individual loans.

The Guidance reminds institutions that strong risk management practices and appropriate levels of capital are important elements of a sound CRE lending program, particularly when an institution has a concentration in CRE loans. The Guidance reinforces and enhances the Agencies' existing regulations and guidelines for real estate lending [1] and loan portfolio management in light of material changes in institutions' lending activities. The Guidance does not establish specific CRE lending limits; rather, it promotes sound risk management practices and appropriate levels of capital that will enable institutions to continue to pursue CRE lending in a safe and sound manner.

Background

The Agencies recognize that regulated financial institutions play a vital role in providing credit for business and real estate development. However, concentrations in CRE lending coupled with weak loan underwriting and depressed CRE markets have contributed to significant credit losses in the past. While underwriting standards are generally stronger than during previous CRE cycles, the Agencies have observed an increasing trend in the number of institutions with concentrations in CRE loans. These concentrations may make such institutions more vulnerable to cyclical CRE markets. Moreover, the Agencies have observed that some institutions' risk management practices are not evolving with their increasing CRE concentrations. Therefore, institutions with concentrations in CRE loans are reminded that their risk management practices and capital levels should be commensurate with the level and nature of their CRE concentration risk.

Scope

In developing this guidance, the Agencies recognized that different types of CRE lending present different levels of risk, and that consideration should be given to the lower risk profiles and historically superior performance of certain types of CRE, such as well-structured multifamily housing finance, when compared to others, such as speculative office space construction. As discussed under ''CRE Concentration Assessments,'' institutions are encouraged to segment their CRE portfolios to acknowledge these distinctions for risk management purposes.

This Guidance focuses on those CRE loans for which the cash flow from the real estate is the primary source of repayment rather than loans to a borrower for which real estate collateral is taken as a secondary source of repayment or through an abundance of caution. Thus, for the purposes of this Guidance, CRE loans include those loans with risk profiles sensitive to the condition of the general CRE market (for example, market demand, changes in capitalization rates, vacancy rates, or rents). CRE loans are land development and construction loans (including 1 - to 4-family residential and commercial construction loans) and other land loans.

CRE loans also include loans secured by multifamily property, and nonfarm nonresidential property where the primary source of repayment is derived from rental income associated with the property (that is, loans for which 50 percent or more of the source of repayment comes from third party, nonaffiliated, rental income) or the proceeds of the sale, refinancing, or permanent financing of the property. Loans to real estate investment trusts (REITs) and unsecured loans to developers also should be considered CRE loans for purposes of this Guidance if their performance is closely linked to performance of the CRE markets. Excluded from the scope of this Guidance are loans secured by nonfarm nonresidential properties where the primary source of repayment is the cash flow from the ongoing operations and activities conducted by the party, or affiliate of the party, who owns the property.

Although the Guidance does not define a CRE concentration, the ''Supervisory Oversight'' section describes the criteria that the Agencies will use as high-level indicators to identify institutions potentially exposed to CRE concentration risk.

CRE Concentration Assessments

Institutions actively involved in CRE lending should perform ongoing risk assessments to identify CRE concentrations. The risk assessment should identify potential concentrations by stratifying the CRE portfolio into segments that have common risk characteristics or sensitivities to economic, financial or business developments. An institution's CRE portfolio stratification should be reasonable and supportable. The CRE portfolio should not be divided into multiple segments simply to avoid the appearance of concentration risk.

The Agencies recognize that risk characteristics vary among CRE loans secured by different property types. A manageable level of CRE concentration risk will vary by institution depending on the portfolio risk characteristics, the quality of risk management processes, and capital levels. Therefore, the Guidance does not establish a CRE concentration limit that applies to all institutions. Rather, the Guidance encourages institutions to identify and monitor credit concentrations, establish internal concentration limits, and report all concentrations to management and the board of directors on a periodic basis. Depending on the results of the risk assessment, the institution may need to enhance its risk management systems.

Risk Management

The sophistication of an institution's CRE risk management processes should be appropriate to the size of the portfolio, as well as the level and nature of concentrations and the associated risk to the institution. Institutions should address the following key elements in establishing a risk management framework that effectively identifies, monitors, and controls CRE concentration risk:

- Board and management oversight.
- Portfolio management.
- Management information systems.
- Market analysis.
- Credit underwriting standards.
- Portfolio stress testing and sensitivity analysis.
- Credit risk review function.

Board and Management Oversight. An institution's board of directors has ultimate responsibility for the level of risk assumed by the institution. If the institution has significant CRE concentration risk, its strategic plan should address the rationale for its CRE levels in relation to its overall growth objectives, financial targets, and capital

[1] Refer to the Agencies' regualtions on real estate lending standards and the Interagency Guidelines for Real Estate Lending Policies: 12 CFR part 34, subpart D and appendix A (OCC); 12 CFR part 208, subpart E and appendix C (FRB); and 12 CFR part 365 and appendix A (FDIC). Refer to the Interagency Guidelines Establishing Standards for Safety and Soundness: 12 CFR part 30, appendix A (OCC); 12 CFR part 208, Appendix D–1 (FRB); and 12 CFR part 364, appendix A (FDIC).

plan. In addition, the Agencies' real estate lending regulations require that each institution adopt and maintain a written policy that establishes appropriate limits and standards for all extensions of credit that are secured by liens on or interests in real estate, including CRE loans. Therefore, the board of directors or a designated committee thereof should:

- Establish policy guidelines and approve an overall CRE lending strategy regarding the level and nature of CRE exposures acceptable to the institution, including any specific commitments to particular borrowers or property types, such as multifamily housing.
- Ensure that management implements procedures and controls to effectively adhere to and monitor compliance with the institution's lending policies and strategies.
- Review information that identifies and quantifies the nature and level of risk presented by CRE concentrations, including reports that describe changes in CRE market conditions in which the institution lends.
- Periodically review and approve CRE risk exposure limits and appropriate sublimits (for example, by nature of concentration) to conform to any changes in the institution's strategies and to respond to changes in market conditions.

Portfolio Management. Institutions with CRE concentrations should manage not only the risk of individual loans but also portfolio risk. Even when individual CRE loans are prudently underwritten, concentrations of loans that are similarly affected by cyclical changes in the CRE market can expose an institution to an unacceptable level of risk if not properly managed. Management regularly should evaluate the degree of correlation between related real estate sectors and establish internal lending guidelines and concentration limits that control the institution's overall risk exposure.

Management should develop appropriate strategies for managing CRE concentration levels, including a contingency plan to reduce or mitigate concentrations in the event of adverse CRE market conditions. Loan participations, whole loan sales, and securitizations are a few examples of strategies for actively managing concentration levels without curtailing new originations. If the contingency plan includes selling or securitizing CRE loans, management should assess periodically the marketability of the portfolio. This should include an evaluation of the institution's ability to access the secondary market and a comparison of its underwriting standards with those that exist in the secondary market.

Management Information Systems. A strong management information system (MIS) is key to effective portfolio management. The sophistication of MIS will necessarily vary with the size and complexity of the CRE portfolio and level and nature of concentration risk. MIS should provide management with sufficient information to identify, measure, monitor, and manage CRE concentration risk. This includes meaningful information on CRE portfolio characteristics that is relevant to the institution's lending strategy, underwriting standards, and risk tolerances. An institution should assess periodically the adequacy of MIS in light of growth in CRE loans and changes in the CRE portfolio's size, risk profile, and complexity.

Institutions are encouraged to stratify the CRE portfolio by property type, geographic market, tenant concentrations, tenant industries, developer concentrations, and risk rating. Other useful stratifications may include loan structure (for example, fixed rate or adjustable), loan purpose (for example, construction, short-term, or permanent), loan-to-value limits, debt service coverage, policy exceptions on newly underwritten credit facilities, and affiliated loans (for example, loans to tenants). An institution should also be able to identify and aggregate exposures to a borrower, including its credit exposure relating to derivatives.

Management reporting should be timely and in a format that clearly indicates changes in the portfolio's risk profile, including risk-rating migrations. In addition, management reporting should include a well-defined process through which management reviews and evaluates concentration and risk management reports, as well as special ad hoc analyses in response to potential market events that could affect the CRE loan portfolio.

Market Analysis. Market analysis should provide the institution's management and board of directors with information to assess whether its CRE lending strategy and policies continue to be appropriate in light of changes in CRE market conditions. An institution should perform periodic market analyses for the various property types and geographic markets represented in its portfolio.

Market analysis is particularly important as an institution considers decisions about entering new markets, pursuing new lending activities, or expanding in existing markets. Market information also may be useful for developing sensitivity analysis or stress tests to assess portfolio risk.

Sources of market information may include published research data, real estate appraisers and agents, information maintained by the property taxing authority, local contractors, builders, investors, and community development groups. The sophistication of an institution's analysis will vary by its market share and exposure, as well as the availability of market data. While an institution operating in nonmetropolitan markets may have access to fewer sources of detailed market data than an institution operating in large, metropolitan markets, an institution should be able to demonstrate that it has an understanding of the economic and business factors influencing its lending markets.

Credit Underwriting Standards. An institution's lending policies should reflect the level of risk that is acceptable to its board of directors and should provide clear and measurable underwriting standards that enable the institution's lending staff to evaluate all relevant credit factors. When an institution has a CRE concentration, the establishment of sound lending policies becomes even more critical. In establishing its policies, an institution should consider both internal and external factors, such as its market position, historical experience, present and prospective trade area, probable future loan and funding trends, staff capabilities, and technology resources. Consistent with the Agencies' real estate lending guidelines, CRE lending policies should address the following underwriting standards:

- Maximum loan amount by type of property.
- Loan terms.
- Pricing structures.
- Collateral valuation.[2]
- Loan-to-Value (LTV) limits by property type.
- Requirements for feasibility studies and sensitivity analysis or stress testing.
- Minimum requirements for initial investment and maintenance of hard equity by the borrower.
- Minimum standards for borrower net worth, property cash flow, and debt service coverage for the property.

An institution's lending policies should permit exceptions to underwriting standards only on a limited basis. When an institution does permit an exception, it should

[2] Refer to the Agencies' appraisal regualtins: 12 CFR part 34, subpart C (OCC); 12 CFR part 208 subpart E and 12 CFR part 225, subpart G (FRB); and 12 CFR part 323 (FDIC).

document how the transaction does not conform to the institution's policy or underwriting standards, obtain appropriate management approvals, and provide reports to the board of directors or designated committee detailing the number, nature, justifications, and trends for exceptions. Exceptions to both the institution's internal lending standards and the Agencies' supervisory LTV limits [3] should be monitored and reported on a regular basis. Further, institutions should analyze trends in exceptions to ensure that risk remains within the institution's established risk tolerance limits.

Credit analysis should reflect both the borrower's overall creditworthiness and project-specific considerations as appropriate. In addition, for development and construction loans, the institution should have policies and procedures governing loan disbursements to ensure that the institution's minimum borrower equity requirements are maintained throughout the development and construction periods. Prudent controls should include an inspection process, documentation on construction progress, tracking pre-sold units, pre-leasing activity, and exception monitoring and reporting.

Portfolio Stress Testing and Sensitivity Analysis. An institution with CRE concentrations should perform portfolio-level stress tests or sensitivity analysis to quantify the impact of changing economic conditions on asset quality, earnings, and capital. Further, an institution should consider the sensitivity of portfolio segments with common risk characteristics to potential market conditions. The sophistication of stress testing practices and sensitivity analysis should be consistent with the size, complexity, and risk characteristics of its CRE loan portfolio. For example, well-margined and seasoned performing loans on multifamily housing normally would require significantly less robust stress testing than most acquisition, development, and construction loans.

Portfolio stress testing and sensitivity analysis may not necessarily require the use of a sophisticated portfolio model. Depending on the risk characteristics of the CRE portfolio, stress testing may be as simple as analyzing the potential effect of stressed loss rates on the CRE portfolio, capital, and earnings. The analysis should focus on the more vulnerable segments of an institution's CRE portfolio, taking into consideration the prevailing market environment and the institution's business strategy.

Credit Risk Review Function. A strong credit risk review function is critical for an institution's self-assessment of emerging risks. An effective, accurate, and timely risk-rating system provides a foundation for the institution's credit risk review function to assess credit quality and, ultimately, to identify problem loans. Risk ratings should be risk sensitive, objective, and appropriate for the types of CRE loans underwritten by the institution. Further, risk ratings should be reviewed regularly for appropriateness.

Supervisory Oversight

As part of their ongoing supervisory monitoring processes, the Agencies will use certain criteria to identify institutions that are potentially exposed to significant CRE concentration risk. An institution that has experienced rapid growth in CRE lending, has notable exposure to a specific type of CRE, or is approaching or exceeds the following supervisory criteria may be identified for further supervisory analysis of the level and nature of its CRE concentration risk:

(1) Total reported loans for construction, land development, and other land [4] represent 100 percent or more of the institution's total capital;[5] or

(2) Total commercial real estate loans as defined in this Guidance [6] represent 300 percent or more of the institution's total capital, and the outstanding balance of the institution's commercial real estate loan portfolio has increased by 50 percent or more during the prior 36 months.

The Agencies will use the criteria as a preliminary step to identify institutions that may have CRE concentration risk. Because regulatory reports capture a broad range of CRE loans with varying risk characteristics, the supervisory monitoring criteria do not constitute limits on an institution's lending activity but rather serve as high-level indicators to identify institutions potentially exposed to CRE concentration risk. Nor do the criteria constitute a ''safe harbor'' for institutions if other risk indicators are present, regardless of their measurements under (1) and (2).

Evaluation of CRE Concentrations. The effectiveness of an institution's risk management practices will be a key component of the supervisory evaluation of the institution's CRE concentrations. Examiners will engage in a dialogue with the institution's management to assess CRE exposure levels and risk management practices. Institutions that have experienced recent, significant growth in CRE lending will receive closer supervisory review than those that have demonstrated a successful track record of managing the risks in CRE concentrations.

In evaluating CRE concentrations, the Agencies will consider the institution's own analysis of its CRE portfolio, including consideration of factors such as:

- Portfolio diversification across property types.
- Geographic dispersion of CRE loans.
- Underwriting standards.
- Level of pre-sold units or other types of take-out commitments on construction loans.
- Portfolio liquidity (ability to sell or securitize exposures on the secondary market).

While consideration of these factors should not change the method of identifying a credit concentration, these factors may mitigate the risk posed by the concentration.

Assessment of Capital Adequacy. The Agencies' existing capital adequacy guidelines note that an institution should hold capital commensurate with the level and nature of the risks to which it is exposed. Accordingly, institutions with CRE concentrations are reminded that their capital levels should be commensurate with the risk profile of their CRE portfolios. In assessing the adequacy of an institution's capital, the Agencies will consider the level and nature of inherent risk in the CRE portfolio as well as management expertise, historical performance, underwriting standards, risk management practices, market conditions, and any loan loss reserves allocated for CRE concentration risk. An institution with inadequate capital to serve as a buffer against unexpected losses from a CRE concentration should develop a plan for reducing its CRE concentrations or for maintaining capital appropriate to the level and nature of its CRE concentration risk.

[3] The Interagency Guidelines for Real Estate Lending state that loans exceeding the supervisory LTV guidelines should be recorded in the institution's records and reported to the board at least quarterly.

[4] For commercial banks as reported in the Call Report FFIEC 031 and 041, schdule RC–C, item la.

[5] For purposes of this Guidance, the term ''total capital'' means the total risk-based capital as reported fro commercial banks in the Call Report FFIEC 031 and 041 schedule RC–R—Regulatory Capital, line 21.

[6] For commercial banks as reported in the Call Report FFIEC 031 and 041 schedule RC–C, items 1a, 1d, 1e, and Memorandum Item #3.

Dated: December 5, 2006.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, December 6, 2006.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 6th day of December 2006.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 06–9630 Filed 12–11–06; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Claim Against the United States for the Proceeds of a Government Check

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the Form FMS–1133 ''Claim Against the United States for the Proceeds of a Government Check.''

DATES: Written comments should be received on or before February 12, 2007.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dawn Johns, Manager, Check Claims Branch, Room 800D, 3700 East West Highway, Hyattsville, MD 20782, (202) 874–8445.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Claim Against the United States for the Proceeds of a Government Check.

OMB Number: 1510–0019.

Form Number: FMS–1133.

Abstract: This form is used to collect information needed to process an individual's claim for non-receipt of proceeds from a government check. Once the information is analyzed, a determination is made and a recommendation is submitted to the program agency to either settle or deny the claim.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 53,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 8,834.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 1, 2006.

Janice Lucas,

Assistant Commissioner, Financial Operations.

[FR Doc. 06–9639 Filed 12–11–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Individuals Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of nine newly-designated individuals and two newly-designated entities whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designation by the Secretary of the Treasury of nine individuals and two entities identified in this notice, pursuant to Executive Order 13224, is effective on December 6, 2006.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security,

foreign policy, or economy of the United States; (3) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security and the Attorney General, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security and the Attorney General, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On December 6, 2006, the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Department of Homeland Security, the Attorney General, and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, nine individuals and two entities whose property and interests in property are blocked pursuant to Executive Order 13224.

The list of additional designees follows:

Individuals

1. ABDALLAH, Mushammad Yusif, Avenue Presidente Juscelino Kubistcheck 133, Apartment 102, Center, Foz do Iguacu, Brazil; Avenue Presidente Juscelino Kubistcheck 338, Apartment 1802, Center, Foz do Iguacu, Brazil; DOB 15 Jun 1952; POB Khalia, Lebanon; citizen Lebanon; nationality Paraguay; Cedula Number 1110775 (Paraguay); Passport 670317 (Lebanon); alt. Passport 137532 (Paraguay)

2. BARAKAT, Hamzi Ahmad (a.k.a. BARAKAT, Hamza Ahmad; a.k.a. BARAKAT, Hamze Ahmad; a.k.a. BARAKAT, Hamzi Muhammad); DOB 10 Jan 1963; POB Rubtlatine, Lebanon; alt. POB Beirut, Lebanon; citizen Lebanon

3. BARAKAT, Hatim Ahmad (a.k.a. BARAKAT, Hatam Ahmad; a.k.a. BARAKAT, Hatem Ahmad; a.k.a. BARAKAT, Hattem Ahmad; a.k.a. BARAKAT, Hotem Ahmad); DOB 25 Sep 1961; POB Mousaitbe, Lebanon; citizen Lebanon; alt. citizen Paraguay; Identification Number 2.194.575 (Paraguay); Identification Number 2 2.194.975 (Paraguay); Passport 183319 (Paraguay); alt. Passport 148842 (Paraguay); alt. Passport 106318 (Paraguay)

4. BARAKAT, Mohammad Fayez; DOB 11 Mar 1969; POB Rubtlatine, Lebanon; citizen Lebanon; alt. citizen Paraguay; Identification Number 2.121.948 (Paraguay)

5. FAYAD, Saleh Mahmoud (a.k.a. FAYYAD, Saleh Mahmud); DOB 20 Oct 1972; POB Al-Taybe, Lebanon

6. FAYAD, Sobhi Mahmoud (a.k.a. FAYAD, Soubi Mamout; a.k.a. FAYADH, Sobhi Mahmoud; a.k.a. FAYYAD, Subhi Mahmud), 315, Piso 3, Galeria Page, Ciudad del Este, Paraguay; DOB 20 Aug 1965; POB Al-Taybe, Lebanon; citizen Lebanon; alt. citizen Paraguay; Passport 1035562 (Paraguay); alt. Passport 220705 (Paraguay); alt. Passport 189103 (Paraguay); alt. Passport 142517 (Paraguay); alt. Passport 002301585 (Paraguay)

7. KAZAN, Ali Muhammad (a.k.a. KASSAN, Ali Mohamad; a.k.a. QAZAN, Ali Mohamad), Avenue Taroba, 1005 Edificio Beatriz Mendes, Apt 1704, Foz do Iguacu, Brazil; DOB 19 Dec 1967; POB Taribe, Lebanon; citizen Lebanon; alt. citizen Paraguay; Passport 0089044 (Lebanon)

8. OMAIRI, Farouk (a.k.a. AL-OMAIRI, Faruk; a.k.a. AL-UMAYRI, Faruz; a.k.a. OMAIRI, Farouk Abdul Haj; a.k.a. UMAIRI, Faruq), 605 Avenida Brasil, Apt No. 48, Foz do Iguacu, Brazil; DOB 6 Dec 1945; POB Hermel, Lebanon; citizen Brazil

9. TARABAIN CHAMAS, Mohamad (a.k.a. CHAMS, Mohamad; a.k.a. TARABAY, Muhammad; a.k.a. TARABAYN SHAMAS, Muhammad), Avenida Jose Maria De Brito 606, Apartment 51, Foz do Iguacu, Brazil; Cecilia Meirelles 849, Bloco B, Apartment 09, Foz do Iguacu, Brazil; DOB 11 Jan 1967; POB Asunción, Paraguay; citizen Lebanon; alt. citizen Brazil; alt. citizen Paraguay; National Foreign ID Number RNE: W031645–8

Entities

1. CASA HAMZE, Number 313, Fourth Floor, Galeria Page, Regimiento Piribebuy Avenue, Ciudad del Este, Paraguay; Paraguayan tax identification number BAHA 6301000

2. GALERIA PAGE (a.k.a. GALERIA PAGE I), 899 Calle Regimento Pirebebuy, Ciudad del Este, Paraguay.

Dated: December 6, 2006.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E6–21113 Filed 12–11–06; 8:45 am]

BILLING CODE 4811–42–P

Federal Register

Tuesday,
December 12, 2006

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Laguna Mountains Skipper (*Pyrgus ruralis lagunae*); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU50

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Laguna Mountains Skipper (*Pyrgus ruralis lagunae*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the Laguna Mountains skipper (*Pyrgus ruralis lagunae*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 6,242 acres (ac) (2,525 hectares (ha)) fall within the boundaries of the critical habitat designation. The critical habitat is located in San Diego County, California, on lands under Federal (3,516 ac (1,423 ha)), State (381 ac (154 ha)), and private (2,345 ac (948 ha)) ownership.

DATES: This rule becomes effective on January 11, 2007.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011 (telephone 760/431–9440). The final rule, economic analysis, and maps are available via the Internet at *http://www.fws.gov/carlsbad/.*

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, telephone, 760/431–9440; facsimile, 760/431–9624.

SUPPLEMENTARY INFORMATION:

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under ESA section 4(b)(2), there are significant limitations on the regulatory effect of designation under ESA section 7(a)(2). In brief, (1) designation provides additional protection to habitat only where there is a federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decisionmaking would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 475 species or 36 percent of the 1,310 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,310 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas originally proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service.* In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a timeframe that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the

economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

It is our intent in this document to reiterate and discuss only those topics directly relevant to the development and designation of critical habitat or relevant information obtained since the final listing. For more information on the biology and ecology of the Laguna Mountains skipper, refer to the final rule listing this species as endangered published in the **Federal Register** on January 16, 1997 (62 FR 2313), and the proposed critical habitat rule for the Laguna Mountains skipper published in the **Federal Register** on December 13, 2005 (70 FR 73699).

Previous Federal Actions

Previous Federal actions for the Laguna Mountains skipper can be found in the proposed critical habitat rule published in the **Federal Register** on December 13, 2005 (70 FR 73699).

On January 10, 2003, the Center for Biological Diversity (Center) filed a lawsuit against the Service for violations under the Act and the Administrative Procedure Act (5 U.S.C. Subchapter II) for the Service's failure to designate critical habitat for the species (*CBD* v. *USFWS Civ. No. 03–0058-BTM (NLS)*). In a stipulated settlement agreement dated July 29, 2003, the Service agreed to reconsider its ''not prudent'' finding and propose critical habitat, if prudent, on or before November 30, 2005, and to publish a final critical habitat rule, if prudent, on or before November 30, 2006. This final rule complies with the settlement agreement.

Summary of Comments and Recommendations

We requested comments from the public on the proposed designation of critical habitat for the Laguna Mountains skipper during three comment periods. The first comment period opened on December 13, 2006, associated with the publication of the proposed rule (70 FR 73699) and closed on February 13, 2006. The second comment period opened on April 13, 2006, associated with the announcement of a public hearing held on April 22, 2006, in Carlsbad, CA (71 FR 19157), and closed on May 15, 2006. We also requested comments on the proposed rule and draft economic analysis (DEA) during a comment period that opened July 7, 2006 (71 FR 38593) and closed on August 7, 2006. We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule during these three comment periods.

During the first comment period, we received 8 comment letters directly addressing the proposed critical habitat designation: 4 from peer reviewers, 1 from a Federal agency, and 3 from organizations or individuals. During the second comment period, we received 1 comment letter from a Federal agency and 1 transcribed statement from an organization during the public hearing directly addressing the proposed critical habitat designation. During the final comment period associated with the DEA, we received 1 comment letter from a Federal agency and 1 comment from an organization directly addressing the proposed critical habitat designation and the draft economic analysis.

In total, seven commenters supported designation (2 comments were from the same commenter) of critical habitat for the Laguna Mountains skipper, two opposed designation (2 comments were from the same commenter), and one commenter expressed neither support nor opposition to the proposed critical habitat designation. Comments received are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from six knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from four of the peer reviewers. Peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the Laguna Mountains skipper, and addressed them in the following summary.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer stated that the PCEs appear appropriate; however use of the alternate hostplant *Potentilla glandulosa* may not be necessary or essential because its use may be limited to special circumstances.

Our Response: We agree *P. glandulosa* use appears to be limited to special circumstances, but we believe the scientific information available (Pratt 2006, p. 4) indicates it increases population survival probability in circumstances where this alternate hostplant co-occurs with the most commonly utilized hostplant, *Horkelia clevelandii.* Under special circumstances (e.g. dry environmental conditions), the Laguna Mountains skipper is likely to use this alternate hostplant that grows more commonly in shaded areas, and have a higher survival rate as compared to use of *H. clevelandii* under the same special circumstances.

(2) *Comment:* One peer reviewer commented that we should use presence of the hostplant, *Potentilla glandulosa,* as a criterion to identify critical habitat in addition to *Horkelia clevelandii.*

Our Response: As stated in our response to Comment 1, we believe *P. glandulosa* may only be a necessary or essential hostplant for population survival in circumstances where it co-occurs with *H. clevelandii.* Also, while the use by the Laguna Mountains skipper of *P. glandulosa* as a hostplant has been documented (Pratt 1999, p. 10; Osborne 2005), we have no occurrence data for *P. glandulosa.* Therefore, we are unable to map areas occupied by this hostplant species as critical habitat.

(3) *Comment:* Two peer reviewers suggested subunits should be connected because areas between subunits are essential for Laguna Mountains skipper movement. Both reviewers stated Laguna Mountains skippers disperse farther than 20 meters, and cautioned reliance on mark-release-recapture studies because they tend to underestimate dispersal ability. One reviewer stated he has observed a male Laguna Mountains skipper flying over trees; another stated he has seen Laguna Mountains skippers fly over 50 meters in seconds, and into forested areas without returning.

Our Response: We appreciate the information and agree that connectivity between subunits should be maintained to provide for species' movement. However, we based the delineation of critical habitat on the presence of the species or the presence of the primary constituent elements (PCEs) (e.g. hostplants within forest openings). Most areas between subunits are not known

to contain either the species or the PCEs. Movement areas cannot be identified as a PCE because, as reviewer comments indicated, areas that allow butterfly flight are relatively all-inclusive and thus cannot be specifically described in a relevant way that differentiates essential habitat from non-essential habitat. Also, as a result of movement areas being relatively all-inclusive, we do not know what specific geographic areas between subunits are essential for movement. Although a greater ability to disperse than commonly hypothesized would mean more frequent movement among habitat patches than indicated in the proposed critical habitat rule, it would not change how we identified critical habitat. See the Criteria Used To Identify Critical Habitat section below for more information.

(4) *Comment:* One peer reviewer noted compatibility of grazing with Laguna Mountains skipper occupancy depends not only on cattle density, but also environmental conditions. He stated that while cattle do not normally eat hostplants during larval butterfly development, he has observed heavy grazing on hostplants during drought years on Laguna Mountain.

Our Response: We appreciate this information and have incorporated it into the Special Management Considerations or Protection section of this final rule. We will also consider this information in future management recommendations.

(5) *Comment:* One peer-reviewer stated that the Laguna Mountains skipper may be extirpated on Laguna Mountain, and captive breeding is the only way to ensure long-term survival of the species.

Our Response: We acknowledge individuals have not been detected in this unit since 1999 (Pratt 1999, p. 7), and any remaining populations are not likely to be resilient enough to survive into the foreseeable future under current conditions. However, because insufficient evidence exists to conclude Laguna Mountain no longer supports an extant population in Unit 1, a presumption of extirpation would be premature. Even more detectable and highly surveyed butterfly populations that appeared to have been extirpated have been rediscovered, at least temporarily (e.g. Basu 1997, p.1, Essig Museum 2006). Surveys of varying intensity and duration were conducted in 8 of the 10 years between 1994 and 2003. During this 10-year period, only four adult skippers were found: A single individual in 1995 (Levy 1997, pp. i–xxvi); one adult in 1996 (Levy 1997, pp. i–xxvi); and at least two adults in 1999 (Pratt 1999, p. 7). All observations of adult skippers have been at the El Prado/Laguna Campground. A single skipper larval shelter was found in 1997 at the Meadow Kiosk, along Sunrise Highway (Pratt 1999, p. 27). Despite recent intensive survey efforts at historical locations and select areas considered to be suitable skipper habitat (Faulkner 2000, p. 2; 2001, p. 2; 2002, p. 1; 2003, p. 2; 2004, p. 2; Osborne 2002, p. 2; 2003, p. 2), such as Agua Dulce campground, adult skippers have not been seen on Laguna Mountain since 1999. However, not all suitable habitat has been intensively surveyed and low density populations are difficult to detect. We agree captive breeding may be necessary to ensure long-term survival of the species on Laguna Mountain.

(6) *Comment:* One peer reviewer commented that the proposed critical habitat rule alluded to the Laguna Mountains skipper fitting a metapopulation distribution, while such distribution has not been established through research. He also stated the critical habitat designation was based on the species representing a metapopulation behavior.

Our Response: We do not know what type of population dynamics the species exhibits and did not intend to imply that we did understand such dynamics. Under the Species Status and Distribution section of the proposed rule, our statement, ''If the Laguna Mountains skipper populations are characterized by metapopulation dynamics, habitat patches within the population distribution not occupied at any given time are still required for population viability,'' was intended to convey that not all suitable habitat is occupied at the same time and habitat that does not appear to be occupied at a given time is still important for population viability. We delineated critical habitat on Palomar and Laguna Mountains based on the following criteria (and not on metapopulation behavior): (1) Meadow complexes occupied by the Laguna Mountains skipper at the time of listing; (2) meadow complexes known to be currently occupied; and (3) meadow complexes historically, but not known to be currently, occupied but considered essential to the conservation of the species. For more information see the Criteria Used To Identify Critical Habitat section below.

(7) *Comment:* One peer reviewer stated that he agreed meadows are essential for survival of the species, and dependable water sources must be available. He expressed concern that loss of water in Laguna Mountain's ''upper Boiling Springs survey site'' has greatly reduced the abundance and diversity of skipper species in the past 3 to 4 years. He expressed the opinion that water loss has resulted in extirpation of the ''Hilda blue butterfly'' from Palomar Mountain and stated that ground water monitoring is crucial for maintaining populations of the Laguna Mountains skipper.

Our Response: We appreciate this information and concurrence with our PCEs and criteria used to identify critical habitat. We agree that water availability is important for the species' conservation which is why it was included as a primary constituent element in the proposed and this final critical habitat rule.

(8) *Comment:* One peer reviewer disagreed with our statement ''few, incomplete or no recent surveys have been conducted at sites not known to be occupied [Subunits 1B & 1C].'' He stated that most sites on Laguna Mountain have been surveyed during the past 3 to 4 years, with negative results. He further stated that this does not mean the Laguna Mountains skipper is absent from those areas, but ''rather has not been encountered during first generation protocol surveys.''

Our Response: We appreciate the correction. To clarify, the majority of high-quality habitat sites on Laguna Mountain have been regularly surveyed for the past 3 to 4 years; however, some areas remain unsurveyed or only sporadically surveyed. We also agree this does not mean the Laguna Mountains skipper is absent from those areas which are adjacent to occupied habitat or were historically occupied.

(9) *Comment:* One peer reviewer questioned why subunits 1B and 1C were proposed for designation, because no Laguna Mountains skippers have been recorded from these units. She questioned why these specific areas were selected rather than other sites on Laguna Mountain where the hostplant grows.

Our Response: As stated in our response to Comment 5 we acknowledge populations on Laguna Mountain appear to be small; however, insufficient evidence exists to conclude Laguna Mountain no longer supports an extant population. Subunits 1B and 1C were included in the designation because: (1) These areas were considered to be historically occupied by the species; (2) they are the nearest to the occupied unit 1C where our data indicates they contain high densities of hostplant; and (3) they are likely to be important future species reintroduction sites on Laguna Mountain.

(10) *Comment:* One peer reviewer stated it was not known if all areas proposed as critical habitat were essential to conservation of the species. However, she also stated it seemed appropriate to designate patches of meadow habitat with hostplants between, and adjacent to, recent sightings of the Laguna Mountains skipper.

Our Response: As described in the Criteria Used to Identify Critical Habitat section of the proposed rule and this final rule, we delineated critical habitat to include patches of meadow habitat with hostplants between and adjacent to recent sightings of Laguna Mountains skippers. We cannot determine what geographic scale the peer reviewer was referring to.

(11) *Comment:* One peer reviewer stated she agreed that no areas outside of our proposed designation should have been proposed for designation. However, she also stated that of the areas not proposed for critical habitat designation, the area most likely to be essential is Dyche Valley on Palomar Mountain, south of Mendenhall Valley.

Our Response: We appreciate this information and concurrence with our proposed designation. We included a discussion in the proposed rule of unoccupied areas that may contain suitable habitat for the species as part of a discussion of the species' current status and distribution (*see* Status and Distribution section of the proposed rule). We did not include Dyche Valley because we had no hostplant or species occurrence information for this area, and therefore could not conclude it was essential to the species' conservation.

(12) *Comment:* Two peer reviewers stated Laguna Mountains skippers use more diverse nectar sources than indicated in the proposed critical habitat rule. One peer reviewer suggested the list of nectar sources should include *Taraxacum vulgare* (common dandelion) and the hostplant *Horkelia clevelandii*.

Our Response: We appreciate this information, and will consider it in future management recommendations. We believe the PCEs are sufficiently broad with regard to use of diverse nectar sources, and already include the hostplant *H. clevelandii*, therefore we did not revise our PCEs.

(13) *Comment:* One peer reviewer expressed concern that population size estimates and comparisons given in the proposed critical habitat rule were not reliable. He expressed particular concern that due to disease, parasitism, and predation, these kind of estimates extrapolated from immature life stages greatly overestimate population size.

Our Response: We agree that there is a high amount of uncertainty inherent in the population estimates and the effect of factors such as disease, parasitism, and predation on the population may not be accurately reflected. However, even with these limitations, the population estimates outlined in the proposed rule are currently the best available information. We appreciate this information and will consider it in future management recommendations.

Public Comments

(14) *Comment:* Two commenters stated that U.S. Forest Service (Forest Service or USFS) actions to date, and land management plans addressing conservation of Laguna Mountains skipper habitat, should result in exclusion of Cleveland National Forest lands from critical habitat designation.

Our Response: We acknowledge the Cleveland National Forest has implemented measures to minimize impacts to the Laguna Mountains skipper. We also acknowledge two existing Forest Service management plans contain general provisions for conservation of the Laguna Mountains skipper: the Land Management Plan for the Cleveland National Forest (LMP, Forest Service 2005, pp. 1–57) and a habitat management guide for four sensitive plant species in mountain meadows (Cleveland National Forest 1991, pp. 1–36). The habitat management guide, while providing more specific conservation measures than the land management plan, is still specific to ''discrete [montane] meadow communities'' and the four sensitive plant species. While these mapped community areas (Cleveland National Forest 1991, pp. 5–7) do include some areas identified as essential for Laguna Mountains skipper *(e.g.* southern Mendenhall Valley; *see* unit descriptions below), many smaller forest openings and adjacent open-canopy woodland areas are not included, such as Observatory Campground and Trail. Also, habitat management guides and plans do not mandate conservation measures, and therefore do not provide adequate protection of essential habitat. For example, the 1993 scheduled management action for *Delphinium hesparium* (Cleveland National Forest 1991 p.17), a grazing exclosure in the Garnet Kiosk area (southern Laguna Meadow area, also identified as essential to the Laguna Mountains skipper), has not yet been implemented. Existing Forest Service measures and management plans do not provide specific or sufficient enough conservation measures for Laguna Mountains skipper habitat, and the benefits of including these areas within critical habitat are not outweighed by any potential benefits of excluding the areas (*see* Exclusions Under Section 4(b)(2) of the Act section of this final rule for a detailed discussion). Therefore, we did not exclude Forest Service lands from the final designation under section 4(b)(2) of the Act.

(15) *Comment:* One commenter stated that lands managed by the Cleveland National Forest should not be excluded from critical habitat designation based on their Land Management Plan because the plan provides few specific benefits to the species.

Our Response: For reasons discussed in the response to Comment 14 above, we did not exclude Forest Service lands from the final designation under section 4(b)(2) of the Act.

(16) *Comment:* Two commenters asserted that the Laguna Mountains skipper may be extirpated on Laguna Mountain; therefore designation of critical habitat at that location is not appropriate.

Our Response: As discussed in our response to Comment 5 above, insufficient information exists to conclude Laguna Mountain no longer supports an extant population in Unit 1. Therefore, we cannot agree at this time with the commenter's assertion. Also, if the Laguna Mountains skipper has been extirpated from Laguna Mountain, reintroduction will likely to be necessary to promote the conservation of the subspecies, and unoccupied habitat would still be considered essential. Current occupancy is not required for the designation of critical habitat if the area is essential to the conservation of the species.

(17) *Comment:* One commenter stated that if critical habitat is designated, a greater conservation value could be achieved by further limiting critical habitat designation to a ''more refined boundary'' within proposed critical habitat. Specific recommended refined boundaries, primarily following the U.S. Forest Service's habitat model for Laguna Mountains skipper, were delineated on maps provided with these comments.

Our Response: We re-evaluated the methodology used to delineate the proposed critical habitat unit boundaries and have revised the final critical habitat unit boundaries based on information provided by this commenter. In total, these revisions have resulted in the removal of approximately 420 ac (169 ha) from final critical habitat (see Summary of Changes from the Proposed Rule section below for a detailed discussion).

(18) *Comment:* One commenter stated that designation of critical habitat will ''further hinder or destroy all economic activity'' and ''terminate or curtail recreational use'' on Forest Service land on Laguna Mountain.

Our Response: Although designation of critical habitat may increase the number of Forest Service consultations on projects in essential habitat, and should increase conservation measures for the species at a few key locations, the designation should not significantly increase restrictions on economic activities or restrict recreational activities relative to current levels. As stated below (under Special Management Considerations or Protection), economic activities, such as relatively low density grazing, should not adversely modify habitat if carefully managed to minimize or avoid destruction of hostplants. The total estimated future costs (loss of economic gain due to critical habitat designation) in the Draft Economic Analysis over the next 20 years to grazing on Laguna Mountain range from $42,000 to $76,000 (Industrial Economics, Incorporated, p. ES–10). Total estimated future cost for recreational activities is $3,305,000 (Industrial Economics, Incorporated, p. ES–10). Total future costs to grazing and recreation on Laguna Mountain average from $167,350 to $169,050 per year, a relatively low estimate. The Draft Economic Analysis states, ''While changes in [livestock production and recreational camping] could affect the regional economy, the magnitude of the expected change is insignificant (i.e., less than one percent for grazing and less than 0.01 percent for camping) in light of the total size of the regional economy.'' (Industrial Economics, Incorporated, p. ES–13). Future cost value estimates will also be reduced by the reduction in area designated as critical habitat relative to what was proposed (see Summary of Changes from Proposed Rule below).

(19) *Comment:* One commenter stated that subunits 1B and 1C on Laguna Mountain should not be designated as critical habitat because: (1) Subunit 1A provides substantial habitat already; (2) subunits 1B and 1C are not contiguous with Laguna Meadow as stated in the proposed critical habitat rule; and (3) designation based on potential reintroduction is not justified.

Our Response: As stated in the proposed rule, Subunits 1B and 1C were proposed as critical habitat because they are connected to occupied habitat, were historically occupied, and contain physical and biological features essential to the conservation of the species. To clarify, while not physically connected, these subunits are ecologically connected to occupied habitat (Laguna Meadow) by relatively undisturbed forested habitat that allows for species movement between Laguna Meadow and Subunits 1B and 1C. We have clarified this in the Critical Habitat Designation section of this final rule. We also stated in the proposed rule that we believe that given the species' small population size and very limited range, reintroduction may be necessary for long-term persistence of the species. Since critical habitat identifies areas essential to species conservation, we believe inclusion of these unoccupied areas in final critical habitat is justified.

(20) *Comment:* One commenter stated the designation of independent, non-connected subunits within each mountain contradicts the statement in the proposed rule that connectivity areas among meadows are required for species' survival. The commenter stated that Laguna Mountains skippers are ''highly mobile'' and known to fly through forested environments, and failure to designate critical habitat connecting subunits could reduce the likelihood of species survival.

Our Response: See response to Comment 3 above.

(21) *Comment:* One commenter stated because hostplant mapping and knowledge of habitat use by Laguna Mountains skippers is incomplete, all areas within hostplant elevation limits on Laguna Mountain should be designated as critical habitat.

Our Response: We acknowledge that hostplant mapping and knowledge of habitat use by Laguna Mountains skippers is incomplete; however, we are required to use the best available information to designate habitat that contains the primary constituent elements required by the species and is essential to the conservation of the species. In the absence of more complete hostplant mapping information, we limited the designation to those areas that the available information indicates contain the PCEs and are essential to the conservation of the species.

(22) *Comment:* One commenter wanted to make sure that critical habitat designation would not affect the fire safety of human and natural communities on Laguna Mountain.

Our Response: The designation of critical habitat will not affect fire safety of human communities on Laguna Mountain. Public safety is always the first priority in the event of a fire. Also, the local Service field office has several biologists trained as resource advisors who work cooperatively with firefighters to ensure that impacts to natural communities are minimized to the maximum extent practicable during fire fighting activities. As stated below (under Special Management Considerations or Protection), fire management activities, such as tree and brush removal for fuel modification, should not adversely modify habitat if carefully managed to minimize or avoid destruction of hostplants.

(23) Comment: One commenter objected to our assertion that critical habitat provides little benefit above that provided by other provisions of the Act.

Our Response: As discussed in the sections ''Designation of Critical Habitat Provides Little Additional Protection to Species,'' ''Role of Critical Habitat in Actual Practice of Administering and Implementing the Act,'' and ''Procedural and Resource Difficulties in Designating Critical Habitat'' and other sections of this and other critical habitat designations, we believe that, in most cases, other conservation mechanisms provide greater incentives and conservation benefits than does the designation of critical habitat. These other mechanisms include the section 4 recovery planning process, section 6 funding to the States, section 7 consultations, the section 9 protective prohibitions of unauthorized take, the section 10 incidental take permit process, and cooperative programs with private and public landholders and tribal nations.

Comments Related to the Draft Economic Analysis (DEA)

(24) *Comment:* One comment stated that the DEA fails to evaluate benefits associated with protecting critical habitat for the Laguna Mountains skipper. The same commenter noted that cost savings associated with protecting the hydrological function of meadows and conducting fire abatement around proposed new utility structures throughout critical habitat should be included in the DEA.

Our Response: Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Service's approach for estimating economic impacts includes both economic efficiency and distributional effects. The measurement of economic efficiency is based on the concept of opportunity costs, which reflect the value of goods and services foregone in order to comply with the effects of the designation (e.g., lost economic opportunity associated with restrictions

on land use). Where data are available, the economic analyses do attempt to measure the net economic impact. However, no data was found that would allow for the measurement of such an impact, nor was such information submitted during the public comment period.

While the Secretary must consider economic and other relevant impacts as part of the final decision-making process under section 4(b)(2) of the Act, the Act explicitly states that it is the government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. Thus, we believe that explicit consideration of broader social values for the subspecies and its habitat, beyond the more traditionally defined economic impacts, is not necessary as Congress has already clarified the social importance.

We note, as a practical matter, it is difficult to develop credible estimates of such values, as they are not readily observed through typical market transactions and can only be inferred through advanced, tailor-made studies that are time consuming and expensive to conduct. We currently lack both the budget and time needed to conduct such research before meeting our court-ordered final rule deadline. In summary, we believe that society places significant value on conserving any and all threatened and endangered species and the habitats upon which they depend and thus needs only to consider whether the economic impacts (both positive and negative) are significant enough to merit exclusion of any particular area without causing the species to go extinct.

(25) *Comment:* One comment stated that the DEA overestimates costs associated with conserving the Laguna Mountains skipper, because it includes economic impacts attributable to listing under the ESA. The comment further stated that the costs associated with listing of a species are separate from critical habitat designation and therefore should not be included in the economic impacts analysis for critical habitat designation.

Our Response: The economic analysis is intended to assist the Secretary in determining whether the benefits of excluding particular areas from the designation outweigh the biological benefits of including those areas in the designation. Also, this information allows us to comply with direction from the U.S. 10th Circuit Court of Appeals that ''co-extensive'' effects should be included in the economic analysis to inform decision-makers regarding which areas to designate as critical habitat (New Mexico Cattle Growers Association v. U.S. Fish and Wildlife Service (248 F.3d 1277)).

This analysis identifies those potential activities believed to be most likely to threaten the Laguna Mountains skipper and its habitat and, where possible, quantifies the economic impact to avoid, mitigate, or compensate for such threats within the boundaries of the critical habitat designation. Where critical habitat is being proposed after a species is listed, some future impacts may be unavoidable, regardless of the final designation and exclusions under section 4(b)(2) of the Act. However, due to the difficulty in making a credible distinction between listing and critical habitat effects within critical habitat boundaries, this analysis considers all future conservation-related impacts to be co-extensive with the designation.

(26) *Comment:* One comment stated the costs for fuel management projects are underestimated because they do not include increased costs associated with additional planning and analysis as well as higher treatment costs that might be associated with avoiding certain areas within proposed critical habitat areas.

Our Response: We revised the DEA to include the costs associated with additional planning, analysis, and treatment required to ensure that Laguna Mountains skipper habitat is avoided. Cleveland National Forest staff estimate these costs to be approximately $2,000 per fuels management project and three fuels management projects per year in proposed critical habitat areas, or approximately $6,000 per year.

(27) *Comment:* One comment stated the administrative costs associated with section 7 consultations for the Cleveland National Forest are ''very much underestimated.''

Our Response: Based on information provided by the Cleveland National Forest, we revised the DEA's estimate of future administrative costs associated with section 7 consultations. As shown in Exhibit 8–8 of the DEA, administrative costs are forecasted to be $1.4 million (undiscounted dollars) over the next 20 years. In present value terms, costs are $1.1 million, assuming a three percent discount rate; and $828,000, assuming a seven percent discount rate.

Summary of Changes From Proposed Rule

Based on information received from Terrell (2006a, p. 3 and 4) during the public comment periods, we re-evaluated the proposed critical habitat boundaries. Terrell (2006a, p. 3 and 4) suggested we limit critical habitat designation to Cleveland National Forest's Laguna Mountains skipper modeled habitat (Winter 2000, pg. 1) within proposed critical habitat units. Methodology in Winter (2000, pg. 1) was described as follows:

> ''Elevation between 4000 and 6100 feet. Vegetation type is grassland that is within 100 meters of contact with oak woodland/conifer forest vegetation type and conifer/woodland type that is within 100 meters of contact with grassland. As of 3/6 [2000], heb (herbaceous in veg cover was limited by 3 soil types, crouch, reiff, loamy alluvial). Additional work included incorporating entire meadows in addition to the edges based on the 100m contact above, and excluding the most southern (Corta Madera) portions of screen due to vegetation surveys indicating no presence of *Horkelia* [on] private lands.''

This qualitative method of delineating meadows in many areas on Laguna Mountain is similar to the information we used in our critical habitat proposal (see Criteria Used to Identify Critical Habitat section below). Terrell (2006a, pp. 5, 6) provided a map using Winter's (2000) methods to map habitat within proposed critical habitat units, and recommended limiting critical habitat designation to those areas. We considered this information and agreed that using the modeled habitat constituted the best available scientific information, thus justifying some unit boundary adjustments; however additional data on habitat type use (e.g., open oak woodland at Pine Hill (Osborne 2002)) and host plant distribution since 2000 justify including some areas not mapped by Winter (2000, pg.1).

We overlaid the Cleveland National Forest's Laguna Mountains skipper modeled habitat (Winter 2000, pg. 1) boundaries on the proposed critical habitat boundaries for Unit 1 (Laguna Mountain) and removed those areas from proposed critical habitat which fell outside of the modeled habitat and for which we did not have main hostplant (*Horkelia clevelandii*) occurrence data (see the Criteria Used To Identify Critical Habitat section below for a detailed discussion). This re-evaluation resulted in the removal of approximately 420 ac (169 ha) from Unit 1 (Laguna Mountain). The areas removed were primarily located in the northeastern portion of Subunit 1B, the southwestern portion of Subunit 1C, and the southeastern portion of Subunit 1A, as well as open woodland north of Boiling Springs Ravine in Subunit 1A. This re-evaluation of proposed critical habitat boundaries did not result in any changes to lands designated in Unit 2.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management considerations or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2)). Areas outside of the geographic area occupied by the species at the time of listing may only be included in critical habitat if they are essential for the conservation of the species. Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, therefore, typically included in the critical habitat designation.

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, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of 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.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat within areas occupied by the species at the time of listing, we consider those physical and biological features (PCEs) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

The specific primary constituent elements required for the Laguna Mountains skipper are derived from the biological needs of the Laguna Mountains skipper as described in the Background section of the proposed rule (70 FR 73699).

Food, Water, or Other Nutritional or Physiological Requirements

Laguna Mountains skippers require sunlight provided in the open meadows, open woodlands, or other forest openings. Butterflies are exothermic (*i.e.*, they remain at the same temperature as their environment) and, like most insects, body temperature is of overriding importance in limiting flight (Chapman 1982, p. 217–272). Butterfly flight activity is limited by light intensity. Therefore, they require areas for basking in the sun in order to raise their body temperature for flight (Chapman 1982, p. 217–272). Additionally, surface moisture such as puddles and seeps (not flowing water) provide water and minerals for adults. Adult Laguna Mountains skippers need annual or perennial nectar sources including meadow and woodland-associated herbaceous annual wildflowers, and perennial herbs (e.g. *Horkelia clevelandii, Lasthenia* spp. (goldfields), *Pentachaeta aurea* (golden-rayed pentachaeta), *Ranunculus* spp. (buttercups), and *Sidalcea* spp. (checkerbloom)).

Sites for Breeding and Reproduction

Laguna Mountains skippers require *Horkelia clevelandii* to lay eggs on and for the caterpillars to eat and construct their pupal shelters. The species has also been documented on *Potentilla glandulosa* (Pratt 1999, p. 10; Osborne 2005). However, *P. glandulosa* may only be used as a hostplant for population survival in special circumstances (*e.g.*, dry environmental conditions) where it occurs near *H. clevelandii.* Hostplant patches must be dense enough to support breeding (provide multiple and diverse sites for depositing eggs), although the exact host-plant patch size and density required for breeding is not known. A ''patch'' of hostplants may consist of one to several clumps of *H. clevelandii* or *P. glandulosa* growing together, as well as numerous individual plants that are growing in close proximity to each other.

Space for Individual and Population Growth, and for Normal Behavior

The species' current geographic range is fragmented and small, population densities are relatively low, and the quality of most breeding habitat has been compromised to some degree by grazing, recreation impacts, or alien plants. Therefore, all landscape connectivity areas among occupied meadows and forest openings that adult Laguna Mountains skippers can move through are required for the conservation of the species. To facilitate the use of connectivity areas for adult movement between breeding sites, maintenance of populations of hostplants and adult nectar sources is important, even if they are not likely to be used for breeding.

Historical and Geographic Distribution of the Species

The occupied areas designated as critical habitat are representative of the historical and geographical distribution of the species. Areas included in the final designation that are not known to be occupied were all historically occupied and will restore a portion of the historical geographic distribution of the Laguna Mountains skipper. Connectivity is required for recolonization of habitat to occur (*e.g.*, after extirpation by fire) and for genetic diversity to be maintained.

Primary Constituents for the Laguna Mountains Skipper

Pursuant to our regulations, we are required to identify the known physical and biological features (PCEs) essential to the conservation of the Laguna Mountains skipper. All areas designated as critical habitat for the Laguna Mountains skipper are within the species' historical geographic range and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the Laguna Mountains skipper's PCEs are:

(1) The hostplants, *Horkelia clevelandii* or *Potentilla glandulosa,* in meadows or forest openings needed for reproduction.

(2) Nectar sources suitable for feeding by adult Laguna Mountains skippers, including *Lasthenia* spp., *Pentachaeta aurea, Ranunculus* spp., and *Sidalcea* spp. found in woodlands or meadows.

(3) Wet soil or standing water associated with features such as seeps, springs, or creeks where water and minerals are obtained during the adult flight season.

This designation is designed for the conservation of areas supporting PCEs necessary to support the life history functions which were the basis for the proposal. In general, critical habitat units are designated based on sufficient PCEs being present to support one or more of the species' life history functions. In this instance, all units contain all PCEs and support multiple life processes. Because not all life history functions require all the PCEs, not all critical habitat will uniformly contain all the PCEs.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of the Laguna Mountains skipper. We have also reviewed available information that pertains to the habitat requirements of this species. Information sources include data from field surveys for *Horkelia clevelandii,* regional Geographic Information System (GIS) vegetation and species coverages, data compiled in the California Natural Diversity Database (CNDDB), and survey data for the Laguna Mountains skipper from reports submitted by biologists holding section 10(a)(1)(A) recovery permits. We identified critical habitat based on the assessment of those physical and biological components identified above, the known and historical occurrences of Laguna Mountains skipper, and available information on the distribution of *H. clevelandii.* We designated no areas outside the individual mountains presently occupied by the species.

To delineate critical habitat, we identified meadow complexes (meadows and forest openings connected by open forest canopy) on Palomar and Laguna Mountains occupied by the Laguna Mountains skipper at the time of listing and known to be currently occupied. The species was known to occupy only one meadow complex (Laguna Meadow) on Laguna Mountain at the time of listing, but we also identified two meadow complexes on Laguna Mountain that contain habitat with features essential to the conservation of the species. These meadow complexes were not known to be occupied at the time of listing, however, they have not been extensively surveyed, and Laguna Mountain as a whole was historically considered to be occupied by the skipper. These areas are important for expansion and enhancement of populations in Laguna Meadow and are therefore considered essential to the conservation of the species.

Using infrared satellite imagery, we visually outlined meadows and forest openings that contained species or hostplant occurrence data. Maps were produced by overlaying a 328 square ft (100 square m) grid on the initial hand-drawn polygons and selecting those grid cells that fell within the hand drawn polygons. Specifically, on Palomar Mountain (Unit 2) we defined subunits

based on the selected grid cells because meadows were more clearly defined and species occupancy and distribution information was more clearly defined. On Laguna Mountain (Unit 1), where meadows were not as clearly defined and species distribution information and occupancy was less certain, we then overlaid the Cleveland National Forest's Laguna Mountains skipper modeled habitat boundaries and removed areas outside of the modeled habitat for which we did not have occurrence data for the species or its main hostplant (*Horkelia clevelandii*). Specifically, we removed: (1) All grid cells more than 328 ft (100 m) distant from species occurrence locations, hostplant occurrence locations, or Forest Service modeled habitat; (2) remaining grids cells not connected to the three subunits of Unit 1; and (3) all grid cells with over 97 percent of their area more than 328 ft (100 m) distant from species occurrence locations, hostplant occurrence locations habitat.

When determining critical habitat boundaries, we made every effort to avoid including within the boundaries of the map contained within this final rule developed areas such as buildings, paved areas, and other structures that lack PCEs for the Laguna Mountains skipper. The scale of the maps prepared under the parameters for publication within the *Code of Federal Regulations* may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the final rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

We are designating critical habitat on lands that we have determined were occupied at the time of listing and contain sufficient primary constituent elements to support life history functions essential for the conservation of the species. We are also designating lands that were not known to be occupied at the time of listing but have been determined to be essential for the conservation of the Laguna Mountains skipper.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing support the primary constituent elements that may require special management considerations or protection. Threats to those essential features that define critical habitat (PCEs) for the Laguna Mountains skipper include the direct and indirect impacts of human development and recreation, surface and groundwater management practices, and grazing intensity.

Areas identified as critical habitat are composed of 38 percent private land holdings, where habitat is subject to rural development and overgrazing, potential stream and groundwater diversions, and recreational activities. State and Federal landholdings (6 and 56 percent, respectively) are also subject to grazing and recreational activities. While designation of critical habitat does not impose any management requirements, particularly on State or private land, the following are measures that could be undertaken to benefit the species.

Grazing can cause direct mortality of larvae and eggs by trampling and consumption. The density of cattle grazed in meadow habitat should be monitored and managed as well as levels of habitat degradation resulting from existing levels of grazing. Environmental conditions should also be considered when determining appropriate cattle density in meadow habitat occupied by the Laguna Mountains skipper. While cattle do not normally eat hostplants while larvae are developing, they have been observed grazing on hostplants during drought years on Laguna Mountain (Pratt 2006, p. 4). Adaptive management may be needed to adjust cattle grazing intensity, and protection measures may include exclosures to prevent grazing of hostplants. Monitoring of potential changes in hydrology caused by stream and groundwater diversions should be undertaken and any necessary management to prevent habitat conversion from wet to dry meadows, or open woody canopy to closed.

On Palomar Mountain, commercial drinking water projects and stream alterations on private lands are currently diverting stream and groundwater to an unknown extent. Drying of meadows results in vegetation changes (for a general discussion see Naumburg *et al.* 2005) that could eliminate primary constituent elements within Laguna Mountains skipper habitat (*e.g.* hostplants and surface moisture, PCEs 1 and 3). Recreational activities such as camping and horseback riding can cause direct mortality of Laguna Mountains skipper larvae by trampling, and may increase encroachment of exotic vegetation affecting the availability of hostplants (PCE 1) and nectar sources (PCE 2). Changes in surface and groundwater availability due to disturbance by cattle and humans can also result in meadow habitat conversion (PCE 1).

The provisions within two Forest Service management documents promote the conservation of the Laguna Mountains skipper. The Land Management Plan provides long-term management direction for National Forest Service lands (Terrell 2006a, pg. 1; and b, pp. 1–2). In addition, the Cleveland National Forest has a habitat management guide for four sensitive plant species in mountain meadows habitat (Cleveland National Forest 1991, pp.1–36). While the USFS has completed some conservation actions for the species, the avoidance and mitigation standards in both management plans are general and do not specify what actions are needed, or what is considered essential habitat. Therefore, habitat essential to the Laguna Mountains skipper where special management actions may be needed to minimize impacts resulting from recreation, grazing, and exotic plant invasion needs to be identified.

Areas designated as critical habitat contain physical and biological features essential for the conservation of the Laguna Mountains skipper that may require some level of management or protection to address current and future threats to the Laguna Mountains skipper. Subunits 2A, 2B, and 2C may require special management due to all threats described above. All subunits in Unit 1 may require special management due to all threats described above except diverting stream and groundwater. Subunit 2D may require management primarily of recreation impacts. Fire management activities, such as logging, fuel modification, or relatively low density grazing, should not adversely modify habitat if carefully and adaptively managed to minimize or avoid destruction of hostplants.

Critical Habitat Designation

We are designating 2 units, further divided into 7 subunits, as critical habitat for the Laguna Mountains skipper. Unit 1, Laguna Mountain, consists of subunits 1A, 1B, and 1C. Unit 2, Palomar Mountain, consists of subunits 2A, 2B, 2C, and 2D. Lands being designated are under Federal (3,516 ac (1,423 ha)), private (2,361 ac (954 ha)), and State (381 ac (154 ha)) ownership. Table 1 outlines the acreage and landownership of the areas designated as critical habitat for the Laguna Mountains skipper. The critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time

of listing, containing the primary constituent elements essential for the conservation of the species that may require special management considerations or protection, and those additional areas found to be essential to the conservation of the Laguna Mountains skipper. All three PCEs are generally distributed throughout all the subunits: Nectar sources are the most evenly distributed PCE (PCE 2); host plants (PCE 1) are generally concentrated near the edges of larger meadows, streams, and in forest openings; wet areas are the most localized (PCE 3), found in association with natural seeps, cattle troughs, streams, and ponds or lakes.

TABLE 1.—AREA, IN ACRES (AC) AND HECTARES (HA), AND LANDOWNERSHIP OF THE AREAS DESIGNATED AS CRITICAL HABITAT FOR THE LAGUNA MOUNTAINS SKIPPER

Critical habitat unit/subunit	Total area ac (ha)	Federal [1] ac (ha)	Private ac (ha)	State [2] ac (ha)
Unit 1—Laguna Mountain				
Subunit 1A (Laguna Meadow)	2,610 (1,056)	2,531 (1,024)	79 (32)	0
Subunit 1B (Filaree Flat)	233 (94)	233 (94)	0	0
Subunit 1C (Agua Dulce Campground and Horse Meadow)	500 (202)	374 (151)	126 (51)	0
Unit 1 Total	3,343 (1,352)	3,138 (1,269)	205 (83)	0
Unit 2—Palomar Mountain				
Subunit 2A (Mendenhall Valley and Observatory Campground)	1,092 (442)	231 (94)	861 (348)	0
Subunit 2B (Upper French Valley, Observatory Trail, and Palomar Observatory Meadows)	998 (404)	93 (38)	905 (366)	0
Subunit 2C (Upper Doane Valley and Girl Scout Camp)	547 (221)	40 (16)	316 (128)	191 (77)
Subunit 2D (Lower French Valley and Lower Doane Valley)	262 (106)	14 (6)	58 (23)	190 (77)
Unit 2 Total	2,899 (1,173)	378 (154)	2,140 (865)	381 (154)
Total of Units 1 and 2	6,242 (2,525)	3,516 (1,423)	2,345 (948)	381 (154)

[1] Federal lands = U.S. Forest Service.
[2] State Lands = California State Parks.

Unit 1: Laguna Mountain

Unit 1 encompasses approximately 3,343 ac (1,352 ha) (Table 1), and is approximately centered on Laguna Mountain peak located in south-central San Diego County, east of the community of Alpine, California. This unit is divided into three subunits which each contain all of the primary constituent elements. This unit is crucial to the species primarily because the species was first described from this unit and represents the southernmost portion of the species'' range. Maintaining two widely separate units (i.e., Laguna and Palomar Mountains), and multiple subunits limits the potential for a catastrophic event to extirpate all remaining populations. Because the number of known occupied sites and low population densities are not sufficient to overcome the threat of extirpation, connectivity and expansion into unoccupied meadow complexes is necessary for the conservation of the Laguna Mountains skipper. Connectivity is important for recolonization of habitat to occur (e.g., after extirpation by fire) and genetic diversity to be maintained among local populations.

Unit 1A: Laguna Meadow

Unit 1A (2,610 ac (1,056 ha)) is currently occupied and was known to be occupied at the time of listing. This subunit contains habitat features essential to the conservation of the species and is the site where the species was first described (i.e., northern Laguna Meadow, near Little Laguna Lake). Until 2000, adult skippers were consistently found in this area. The Cleveland National Forest lands in this unit are subject to grazing and recreational activities, and special management considerations such as grazing density adjustments or exclosures to protect hostplants may be required to maintain the PCEs. This subunit contains 2,531 (1,024 ha) of Forest Service managed lands and 79 ac (32 ha) of privately owned land (Table 1).

Unit 1B: Filaree Flat

Subunit 1B (233 ac (94 ha)) is not currently known to be occupied, and was not known to be occupied at the time of listing, but was historically occupied. This subunit is essential because: (1) It contains habitat features essential to the conservation of any populations occupying Subunit 1A (2) provides for population expansion and enhancement; (3) minimizes habitat fragmentation; and (4) is representative of the historical geographical and ecological distribution of the species. This subunit contains 233 ac (94 ha) of Forest Service managed lands (Table 1).

Unit 1C: Agua Dulce Campground and Horse Meadow

Subunit 1C (500 ac (202 ha)) is not currently known to be occupied and was not known to be occupied at the time of listing. This subunit is essential because: (1) It contains habitat features essential to the conservation of any populations occupying Subunit 1A; (2) provides for population expansion and enhancement; (3) minimizes habitat fragmentation; and (4) is representative of the historical geographical and ecological distribution of the species. This subunit contains 374 ac (151 ha) of Forest Service managed lands and 126 ac (51 ha) of privately owned land (Table 1).

Unit 2: Palomar Mountain

Unit 2 encompasses approximately 2,899 ac (1,173 ha) (Table 1), and is approximately centered on Palomar Mountain peak located in north-central San Diego County near the border of Riverside County. Unit 2 consists of four subunits which each contain all of the primary constituent elements. Unit 2 includes the most densely populated area in the species'' range and encompasses the northernmost portion of the range. Maintaining two widely

separate units (*i.e.*, Laguna and Palomar Mountains) and multiple subunits limits the potential for a catastrophic event to extirpate all remaining populations.

Unit 2A: Mendenhall Valley and Observatory Campground

Subunit 2A (1,092 ac (442 ha)) is known to be currently occupied and was occupied at the time of listing. Subunit 2A supports the largest known population of Laguna Mountains skipper and represents the best opportunity for the conservation of this species. This unit is composed of a large amount of private land holdings with habitat potentially subject to future rural development and other land use changes, overgrazing, stream diversion, and private recreational use. This subunit is the only meadow complex (*i.e.*, Mendenhall Valley and associated forest openings) where multiple adults have been consistently detected since the time of listing. Lands in this subunit are subject to grazing activities, and special management considerations such as hostplant distribution monitoring, exclosure maintenance, and grazing density adjustments may be required to maintain the PCEs. This subunit contains 231 ac (94 ha) of Forest Service managed lands and 861 ac (348 ha) of privately owned land (Table 1).

Unit 2B: Upper French Valley, Observatory Trail, and Palomar Observatory Meadows

Subunit 2B (998 ac (404 ha)) is known to be currently occupied and was occupied at the time of listing. The distribution of small forest openings and meadows, and the five occurrence records along the Observatory Trail, indicate historical occupancy of Laguna Mountains skipper populations in unsurveyed portions of Upper French Valley. Lands in this subunit are subject to grazing and recreational activities, and special management considerations such as hostplant distribution monitoring, grazing and recreation exclosure maintenance, and grazing density adjustments may be required to maintain the PCEs. This subunit contains 93 ac (38 ha) of Forest Service managed lands and 905 ac (366 ha) of privately owned land (Table 1).

Unit 2C: Upper Doane Valley and Girl Scout Camp

Subunit 2C (547 ac (221 ha)) is known to be currently occupied, but was not known to be occupied at the time of listing. Subunit 2C is essential because: (1) It contains habitat features essential to the conservation of the species; (2) allows for population expansion and enhancement; and (3) minimizes habitat fragmentation. This subunit contains 40 ac (16 ha) of Forest Service managed lands, 316 ac (128 ha) of privately owned land, and 191 ac (77 ha) of State-owned land (*i.e.*, California State Parks) (Table 1).

Unit 2D: Lower French Valley and Lower Doane Valley

Subunit 2D (262 ac (106 ha)) is known to be currently occupied and was occupied at the time of listing. Reports of multiple Laguna Mountains skipper observations in this subunit in 2005 (Walker 2006) indicate relatively high current densities in these valleys, and has confirmed the importance of this subunit for species conservation. Lands in this subunit are subject to grazing activities, and special management considerations such as hostplant distribution monitoring, exclosure maintenance, and grazing density adjustments may be required to maintain the PCEs. This subunit contains 14 (6 ha) of Federal land (*i.e.*, Forest Service), 58 ac (23 ha) of privately owned land, and 190 ac (77 ha) of State-owned land (*i.e.*, California State Parks) (Table 1).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated; if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

Once a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. Recent decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''adverse modification'' at 50 CFR 402.02 (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir. 2001)). Pursuant to current national policy and the statutory provisions of the Act, we determine destruction or adverse modification based on whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A

concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding a project is likely to result in jeopardy to a listed species or destruction or adverse modification of critical habitat, we also provide reasonable and prudent project alternatives, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in certain instances, including where a new species is listed or critical habitat is subsequently designated that may be affected by the Federal action, where the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the Laguna Mountains skipper or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally-funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Laguna Mountains Skipper and Its Critical Habitat

Jeopardy Standard

When performing jeopardy analyses for the Laguna Mountains skipper, the Service applies an analytical framework that relies heavily on the importance of core area populations to the survival and recovery of the Laguna Mountains skipper. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the Laguna Mountains skipper in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting Laguna Mountains skipper critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species. Generally, the conservation role of Laguna Mountains skipper critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for the Laguna Mountains skipper is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the Laguna Mountains skipper include, but are not limited to:

(1) Actions that destroy Laguna Mountains skipper hostplants and immature life stages of the species. Such activities could include, but are not limited to overgrazing by livestock, vegetation removal, and recreational activities. These activities could eliminate breeding and nectaring resources for the adults, and directly destroy eggs, pupae, or larvae.

(2) Actions that would, over the long-term or permanently destroy habitat containing primary constituent elements. Such activities could include, but are not limited to: removal or destruction of hostplants and nectar sources by paving or piling logs; erection of permanent structures or cultivation of large shrubs or trees that impede adult movement; manipulation of seeps, springs, or creeks that eliminates surface moisture; paved road construction in occupied habitat; and rural development that eliminates or fragments habitat. These activities reduce the amount of available habitat and directly and indirectly increase the extirpation probability of associated Laguna Mountains skipper populations.

(3) Actions that would alter the vegetation of meadow habitat, for example invasion of exotic species or forest encroachment. Such activities could include, but are not limited to, stream or groundwater diversion. These activities could decrease the area of open meadow and soil moisture content and eliminate suitable Laguna Mountains skipper oviposition sites.

Fire management activities, such as tree and brush removal for fuel modification, or relatively low density grazing should not adversely modify habitat if carefully managed to minimize or avoid destruction of hostplants.

All of the units identified as critical habitat contain features essential to the conservation of the Laguna Mountains skipper. All units are within the geographic range of the species. Federal agencies already consult with us on activities in areas currently occupied by the Laguna Mountains skipper, or if the species may be affected by the action, to

ensure that their actions do not jeopardize the continued existence of the Laguna Mountains skipper.

Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if [s]he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless [s]he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species.

Forest Service actions, completed and ongoing, contribute to the conservation of the Laguna Mountains skipper and its habitat. The Cleveland National Forest has implemented measures to minimize impacts to the Laguna Mountains skipper, pursuant to consultation with the Service under section 7 of the Act (Service Biological Opinions 1–6–05–F–773.9, 1–6–99–F–22, and 1–6–01–F–1694). Implemented post-listing impact minimization measures include: (1) An exclosure to reduce recreation impacts and tree thinning to enhance habitat in 1997 at Observatory Campground; (2) grazing exclosures to study grazing effects in 1996, 1999, and 2000, at Mendenhall Valley, Little Laguna Meadow, and Laguna Meadow; (3) visitor impact monitoring and visitor capacity reduction to minimize recreation impacts at Laguna Campground; and (4) habitat studies and surveys from 2000 to 2006 to increase biological knowledge of the species.

Provisions within two Forest Service management documents also promote conservation of the Laguna Mountains skipper. The Cleveland National Forest has a habitat management guide for four sensitive plant species in mountain meadows habitat (Cleveland National Forest 1991, pp. 1–36). While the habitat management guide is designed to facilitate conservation of meadow habitat and protection of sensitive plant species affected by grazing and recreation, it does not specifically provide for conservation of the Laguna Mountains skipper. In addition, the 2005 Land Management Plan for the Cleveland National Forest (LMP) provides long-term strategic management direction for Forest Service lands (Terrell 2006a, pp. 1; 2006b, pp. 1–2). According to the Forest Service Land Management Plan Part 1: Southern California National Forests Vision (Forest Service 2005, p. 3):

> The purpose of the [LMP] is to articulate the long-term vision and strategic management direction for each southern California national forest and to facilitate the development of management activities . . . It is important to emphasize that the revised forest plans are completely strategic. They do not make project level decisions nor do they compel managers to implement specific actions or activities. Current uses are carried forward. Any changes made to existing uses or new proposals will be determined at the project level according to the requirements of the National Environmental Policy Act.

New hostplant and Laguna Mountains skipper locations have been recorded since the Cleveland National Forest developed a model (map) of Laguna Mountains skipper habitat (Winter 2000, pg. 1). Although Forest Service modeled habitat (Winter 2000, pg. 1) comprised 67 percent (4,464 of 6,662 acres (1,807 of 2,696 ha)) of Laguna Mountains skipper proposed critical habitat, some areas of proposed critical habitat where hostplant occurrence data were concentrated fell outside of Forest Service modeled habitat (e.g., at the southern end of subunit 1A).

The Forest Service LMP provides some species-specific directions for protecting the Laguna Mountains skipper, including the standard, ''[a]void or mitigate, following consultation, activities resulting in direct trampling or erosion problems to Laguna Mountains Skipper suitable and occupied habitat and adjacent areas.'' Because there are relatively large areas of habitat not known to be occupied on Laguna and Palomar Mountains, designation of critical habitat will help identify where consultation and conservation is needed for the Laguna Mountains skipper. Because the benefits of exclusion of the areas identified as critical habitat within the Cleveland National Forest do not outweigh the benefits of inclusion of these areas, we did not exclude Forest Service lands from the final designation under section 4(b)(2) of the Act.

Based on the best available information including the prepared economic analysis, we believe that all of the units known to occupied at the time of listing contain the features essential for conservation of the species and that the units not known to be currently occupied are essential for the conservation of the species. Our economic analysis indicates an overall low cost resulting from the designation. Therefore, we have found no areas for which the benefits of exclusion outweigh the benefits of inclusion, and have not excluded any areas from this designation of critical habitat for the Laguna Mountains skipper based on economic impacts.

Pursuant to section 4(b)(2) of the Act, we must consider other relevant impacts in addition to economic ones. We are not aware of any habitat conservation plans currently being developed for Laguna Mountains skipper on any lands included in this final designation. Also, this designation does not include any Tribal lands or trust resources. Therefore, we anticipate no impact to national security, Tribal lands, partnerships, or habitat conservation plans from this critical habitat designation. As such, we have considered these potential impacts but are not excluding any lands from this designation under section 4(b)(2).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on July 7, 2006 (71 FR 38593). We accepted comments on the draft analysis until August 7, 2006. We respond to the comments we received on the draft

analysis in the Summary of Comments and Recommendations section above.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the Laguna Mountains skipper. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

Laguna Mountains skipper conservation activities are likely to primarily impact recreational camping and utility maintenance activities. The draft economic analysis estimates the potential total future impacts to range from $6.5 million to $8.9 million (undiscounted) over 20 years. Discounted future costs are estimated to be $3.7 million to $5.1 million over this same time period ($351,000 to $480,000 annually) using a real rate of 7 percent, or $5.0 million to $6.9 million ($337,000 to $461,000 annually) using a real rate of 3 percent. Differences in the low and high impact estimates result primarily from uncertainty regarding the potential impacts to utility companies conducting maintenance activities and making repairs in proposed critical habitat. The low-end estimate of costs assumes grazing on private lands is not affected and biologists' time on site during utility repairs and maintenance is limited to one day per project. Costs under this estimate are dominated (88 percent) by welfare losses to campers in Subunits 1A and 1C. The high-end estimate of costs assumes grazing activities on private lands in proposed critical habitat will be restricted and that utility projects will last longer than a single day. Costs under this estimate are dominated by lost camping opportunities (64 percent) and to a lesser extent costs to utilities (22 percent). In the low-end estimate, 95 percent of the costs are associated with Subunits 1A and 1C. In the high-end estimate, Subunits 1A and 1C again dominate total costs, accounting for 83 percent of total estimated impacts.

A copy of the final economic analysis with supporting documents is included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (see **ADDRESSES** section) or for downloading from the Internet at *http://www.fws.gov/carlsbad/*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider

whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the Laguna Mountains skipper. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

Our economic analysis determined that costs involving conservation measures for the Laguna Mountains skipper would be incurred for activities involving: (1) Grazing activities; (2) recreational camping activities; (3) recreational hiking activities; (4) utility activities; (5) rural development; (6) other activities on Federal lands; and, (7) Laguna Mountains skipper management activities on State lands. As explained in our draft economic analysis, impacts of skipper conservation are not anticipated to affect small entities in five of these seven categories: hiking; utilities; rural development; other activities on Federal lands; and management activities on State lands. Since neither Federal nor State governments are defined as small entities by the Small Business Administration (SBA), the economic impacts borne by the Forest Service and the California Department of Fish and Game (CDFG) resulting from implementation of skipper conservation activities or modifications to activities on Federal lands are not relevant to this analysis. Likewise, neither of the major utility companies involved (SDG&E and AT&T) would fit the SBA definition of small entities. Accordingly, the small business analysis focuses on economic impacts to grazing and recreational camping activities.

The designation includes areas of USFS and private lands that are used for livestock grazing. On some Federal allotments that contain Laguna Mountains skipper habitat, meadow areas have been excluded from grazing, thus reducing the carrying capacity, or permitted Animal Unit Months (AUMs), on those allotments. Historically, returns to cattle operations have been low throughout the West. In recent years, these returns have been lower due to the recent wildfires and droughts in California. As a result, any reductions in grazing effort for the Laguna Mountains skipper may affect the sustainability of ranching operations in these areas. The analysis assumes that in the future, grazing efforts on proposed critical habitat areas will be reduced, or in the high-end estimate, eliminated on private land due to skipper concerns. Private ranchers could be affected either by reductions in federally permitted AUMs that they hold permits to, or by reductions on grazing efforts on private property to avoid adverse impacts on Laguna Mountains skipper habitat. The expected reduction in AUMs is based on an examination of historical grazing levels, section 7 consultations, and discussions with range managers, wildlife biologist, and permittees. Based on this analysis, the high-end impact on grazing activities is estimated at an annual reduction of 1,979 AUMs, of which 1,363 are federally permitted and 618 are private. The majority of these AUM reductions fall on two ranchers: one operating in Subunit 1A and another operating in Subunit 2A. Therefore, cumulatively over 20 years, two ranchers could be affected by total reductions in AUMs due to Laguna Mountains skipper conservation activities.

The economic analysis considers lower- and upper-bounds of potential economic impact on recreational camping activities. The lower-bound equals no economic impact. In the upper-bound, economic impacts are estimated for recreational campers whose activities may be interrupted by Laguna Mountains skipper conservation activities resulting in a decrease in the number of camping trips. Scenario 2 concludes that camping trips may decrease by as many as 5,352 trips per year. If fewer camping trips were to occur within proposed critical habitat areas, local establishments providing services to campers may be indirectly affected by Laguna Mountains skipper conservation activities. Decreased visitation may reduce the amount of money spent in the region across a variety of industries, including food and beverage stores, food service and drinking places, accommodations, transportation and rental services.

The economic analysis uses regional economic modeling—in particular a software package called IMPLAN—to estimate the total economic effects of the reduction in economic activity in camping-related industries in the one county (San Diego County) associated with Laguna Mountains skipper conservation activities. Commonly used by State and Federal agencies for policy planning and evaluation purposes, IMPLAN translates estimates of initial trip expenditures (*e.g.*, food, lodging, and gas) into changes in demand for inputs to affected industries. Changes in output and employment are calculated for all industries and then aggregated to determine the regional economic impact of reduced recreational camping-related expenditures potentially associated with Laguna Mountains skipper conservation activities.

This analysis uses the average expenditures reported by the 2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation for California for fishing, hunting and wildlife-associated recreation, or approximately $26.23 per trip. This per-trip estimate of expenditures is then combined with the number of camping trips potentially lost due to Laguna Mountains skipper conservation activities (a 1-year loss of 5,352 trips per year) to estimate the regional economic impacts. When compared to the $192 billion dollar regional economy of San Diego County, the potential loss generated by a decrease in camping trips is a relatively small impact (*i.e.*, less than 0.01 percent). Therefore based on these results, this analysis determines no significant effect on camping-related industries due to Laguna Mountains skipper conservation activities in San Diego County.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on Laguna Mountains skipper and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing

the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the final critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Regulation of timber harvest, grazing, mining, and recreation by the USFS and BLM;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(5) Hazard mitigation and post-disaster repairs funded by the FEMA; and

(6) Activities funded by the EPA, U.S. Department of Energy, or any other Federal agency.

It is likely that a developer or other project proponent could modify a project or take measures to protect the Laguna Mountains skipper. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and proposed critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this would result in a significant economic effect on a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. Only two potential small entities engaged in grazing may be impacted by the designation of critical habitat for the Laguna Mountains skipper, and the potential economic loss attributable to impacts to recreational activities is small (*i.e.*, less than 0.01 percent). Therefore, for the above reasons and based on currently available information, we certify that the rule will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designated critical habitat for the Laguna Mountains skipper is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or

otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat for the Laguna Mountains skipper may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have an incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Laguna Mountains skipper.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F. 3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).)

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands supporting Laguna Mountains skipper habitat that meets the definition of critical habitat. Therefore, critical habitat for the Laguna Mountains skipper has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary authors of this package are staff from the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for ''Laguna Mountains skipper'' under ''INSECTS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Skipper, Laguna Mountains.	*Pyrgus ruralis lagunae*.	U.S.A. (CA)	Entire	E	604	17.95(i)	NA
*	*	*	*	*	*		*

3. In § 17.95(i), add an entry for Laguna Mountains Skipper (*Pyrgus ruralis lagunae*) under ''INSECTS'' in the same alphabetical order as this species appears in the table in § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Laguna Mountains Skipper (*Pyrgus ruralis lagunae*)

(1) Critical habitat units are depicted for San Diego County, California, on the maps below.

(2) The primary constituent elements of critical habitat for the Laguna Mountains skipper are the habitat components that provide:

(i) The hostplants, *Horkelia clevelandii* or *Potentilla glandulosa*, which are needed for reproduction, in meadows or forest openings.

(ii) Nectar sources suitable for feeding by adult Laguna Mountains skipper, including *Lasthenia* spp., *Pentachaeta aurea*, *Ranunculus* spp., and *Sidalcea* spp., found in woodlands or meadows.

(iii) Wet soil or standing water associated with features such as seeps, springs, or creeks where water and minerals are obtained during the adult flight season.

(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Data layers defining map units were created on a base of USGS 1:24,000 quadrangle maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Note: Map 1 (index map) follows:

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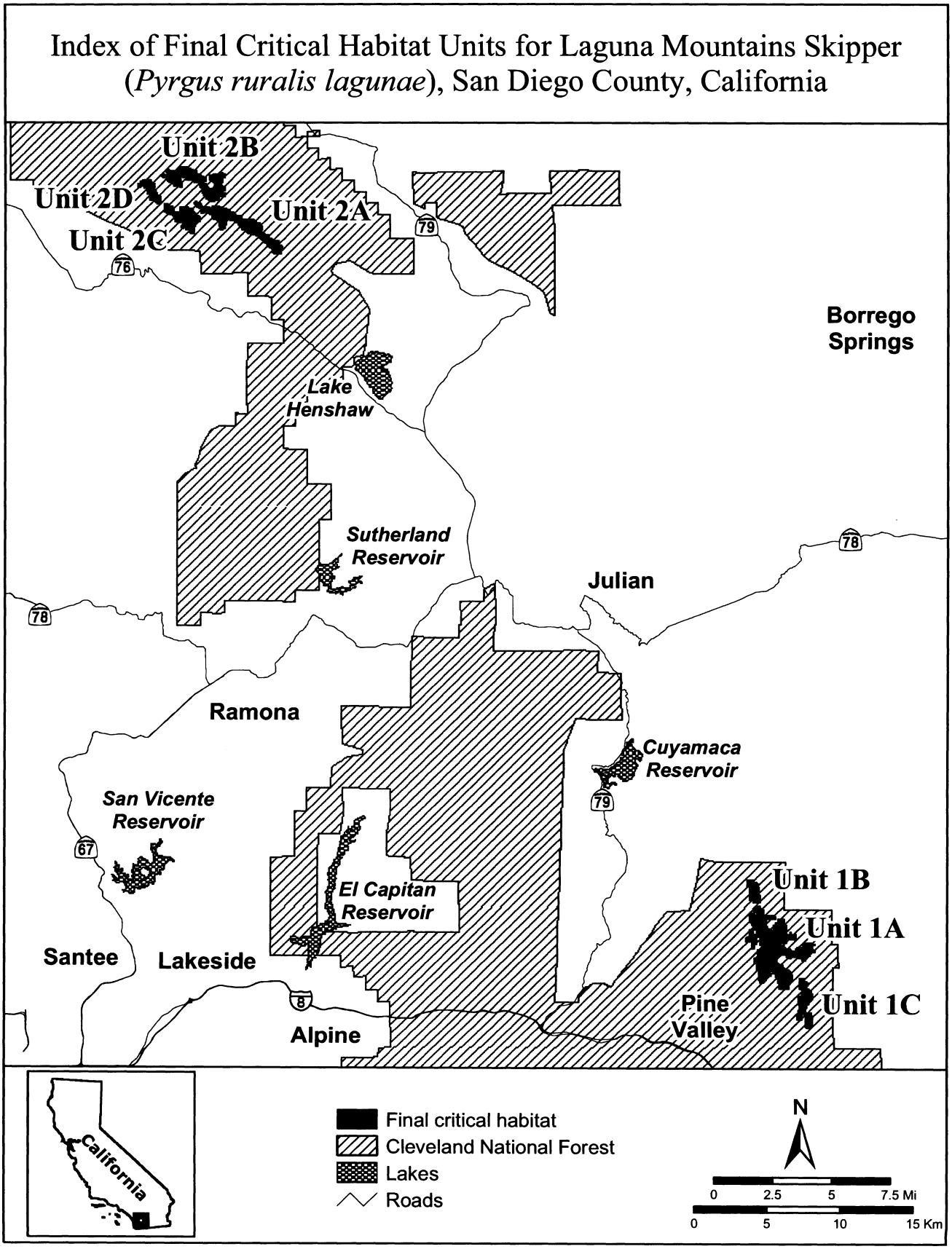


BILLING CODE 4310–55–C

(6) Unit 1: Laguna Mountain, San Diego County, California. From USGS 1:24,000 quadrangle maps Monument Peak and Mount Laguna.

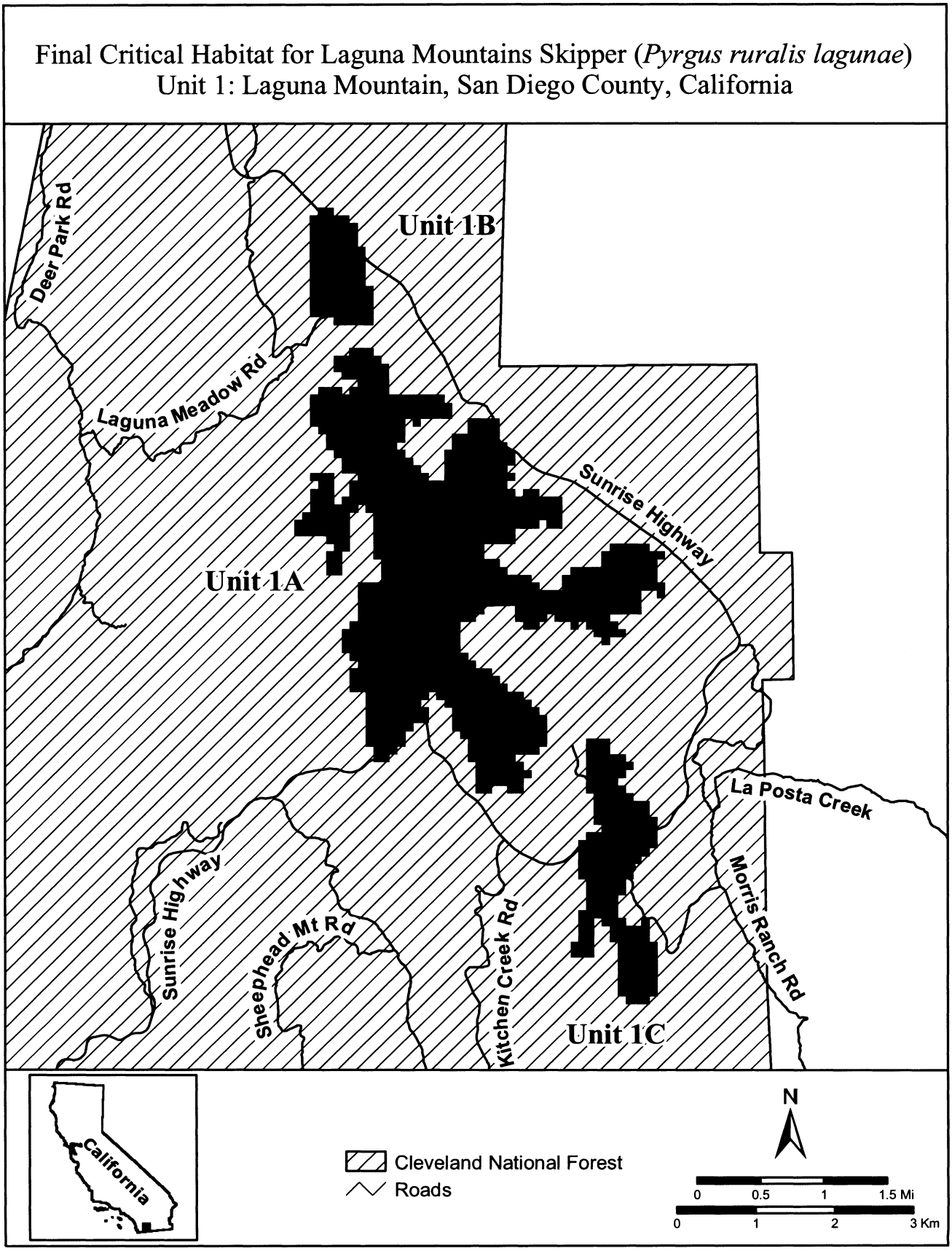
(i) Subunit 1A: lands bounded by the following UTM NAD27 coordinates (E,N): 551900, 3635400; 551900, 3635600; 551800, 3635600; 551800, 3635300; 552000, 3635300; 552000, 3634900; 551800, 3634900; 551800, 3635000; 551600, 3635000; 551600, 3634900; 551400, 3634900; 551400, 3635300; 551300, 3635300; 551300, 3635600; 551200, 3635600; 551200, 3635700; 551100, 3635700; 551100, 3636000; 551000, 3636000; 551000, 3636100; 550900, 3636100; 550900, 3636200; 550800, 3636200; 550800, 3636100; 550700, 3636100; 550700, 3636000; 550800, 3636000; 550800, 3635800; 550600, 3635800; 550600, 3635700; 550500, 3635700; 550500, 3635500; 550400, 3635500; 550400, 3635400; 550300, 3635400; 550300, 3635300; 550100, 3635300; 550100, 3635500; 550000, 3635500; 550000, 3636200; 549800, 3636200; 549800, 3636500; 549900, 3636500; 549900, 3636600; 549800, 3636600; 549800, 3636700; 549700, 3636700; 549700, 3637000; 549800, 3637000; 549800, 3637100; 549900, 3637100; 549900, 3637600; 550200, 3637600; 550200, 3637900; 550100, 3637900; 550100, 3638500; 550000, 3638500; 550000, 3638600; 549900, 3638600; 549900, 3638500; 549800, 3638500; 549800, 3638000; 549700, 3638000; 549700, 3637700; 549500, 3637700; 549500, 3638000; 549600, 3638000; 549600, 3638100; 549500, 3638100; 549500, 3638200; 549100, 3638200; 549100, 3638400; 549200, 3638400; 549200, 3638500; 549300, 3638500; 549300, 3638800; 549400, 3638800; 549400, 3638900; 549300, 3638900; 549300, 3639000; 549600, 3639000; 549600, 3638600; 549700, 3638600; 549700, 3638700; 549800, 3638700; 549800, 3638900; 549900, 3638900; 549900, 3639000; 549700, 3639000; 549700, 3639200; 549600, 3639200; 549600, 3639300; 549500, 3639300; 549500, 3639500; 549400, 3639500; 549400, 3639600; 549300, 3639600; 549300, 3640000; 549400, 3640000; 549400, 3640100; 549700, 3640100; 549700, 3640000; 549800, 3640000; 549800, 3640100; 549900, 3640100; 549900, 3640200; 549700, 3640200; 549700, 3640300; 549600, 3640300; 549600, 3640500; 549800, 3640500; 549800, 3640600; 550100, 3640600; 550100, 3640500; 550200, 3640500; 550200, 3640400; 550300, 3640400; 550300, 3640000; 551000, 3640000; 551000, 3639900; 551100, 3639900; 551100, 3639700; 550500, 3639700; 550500, 3639400; 550400, 3639400; 550400, 3639300; 550500, 3639300; 550500, 3639200; 550600, 3639200; 550600, 3639100; 550700, 3639100; 550700, 3639000; 550800, 3639000; 550800, 3638900; 551000, 3638900; 551000, 3639300; 551100, 3639300; 551100, 3639500; 551300, 3639500; 551300, 3639700; 551700, 3639700; 551700, 3639400; 551800, 3639400; 551800, 3639300; 551900, 3639300; 551900, 3639100; 551800, 3639100; 551800, 3639000; 551900, 3639000; 551900, 3638900; 551800, 3638900; 551800, 3638800; 551900, 3638800; 551900, 3638700; 552100, 3638700; 552100, 3638800; 552200, 3638800; 552200, 3638700; 552500, 3638700; 552500, 3638300; 552300, 3638300; 552300, 3638400; 552200, 3638400; 552200, 3638300; 551900, 3638300; 551900, 3638100; 551500, 3638100; 551500, 3637900; 551700, 3637900; 551700, 3637800; 551800, 3637800; 551800, 3637700; 552100, 3637700; 552100, 3637600; 552200, 3637600; 552200, 3637500; 552500, 3637500; 552500, 3637700; 552600, 3637700; 552600, 3637800; 553000, 3637800; 553000, 3638000; 553100, 3638000; 553100, 3638100; 553600, 3638100; 553600, 3638000; 553800, 3638000; 553800, 3637900; 553700, 3637900; 553700, 3637600; 553800, 3637600; 553800, 3637400; 553700, 3637400; 553700, 3637500; 553500, 3637500; 553500, 3637200; 553100, 3637200; 553100, 3637100; 553200, 3637100; 553200, 3636900; 552900, 3636900; 552900, 3637000; 552800, 3637000; 552800, 3637100; 552700, 3637100; 552700, 3637000; 552600, 3637000; 552600, 3637100; 552400, 3637100; 552400, 3637200; 552300, 3637200; 552300, 3637100; 552200, 3637100; 552200, 3637000; 552000, 3637000; 552000, 3637100; 551900, 3637100; 551900, 3637300; 551500, 3637300; 551500, 3637200; 551400, 3637200; 551400, 3637100; 551200, 3637100; 551200, 3636700; 551300, 3636700; 551300, 3636600; 551400, 3636600; 551400, 3636500; 551600, 3636500; 551600, 3636400; 551700, 3636400; 551700, 3636300; 551800, 3636300; 551800, 3636200; 552000, 3636200; 552000, 3636100; 552100, 3636100; 552100, 3636000; 552200, 3636000; 552200, 3635900; 552300, 3635900; 552300, 3635500; 552200, 3635500; 552200, 3635400; 551900, 3635400.

(ii) Subunit 1B: lands bounded by the following UTM NAD27 coordinates (E,N): 549300, 3642300; 549400, 3642300; 549400, 3642400; 549600, 3642400; 549600, 3642300; 549800, 3642300; 549800, 3642200; 549900, 3642200; 549900, 3641900; 550000, 3641900; 550000, 3641400; 550100, 3641400; 550100, 3640900; 549600, 3640900; 549600, 3641000; 549300, 3641000; 549300, 3642300.

(iii) Subunit 1C: lands bounded by the following UTM NAD27 coordinates (E,N): 553000, 3634400; 553000, 3634500; 552900, 3634500; 552900, 3634900; 552800, 3634900; 552800, 3635600; 553100, 3635600; 553100, 3635400; 553300, 3635400; 553300, 3635300; 553400, 3635300; 553400, 3635200; 553300, 3635200; 553300, 3635100; 553200, 3635100; 553200, 3635000; 553300, 3635000; 553300, 3634900; 553400, 3634900; 553400, 3634800; 553600, 3634800; 553600, 3634600; 553700, 3634600; 553700, 3634200; 553600, 3634200; 553600, 3634100; 553500, 3634100; 553500, 3634000; 553400, 3634000; 553400, 3633800; 553300, 3633800; 553300, 3633600; 553200, 3633600; 553200, 3633300; 553300, 3633300; 553300, 3633200; 553500, 3633200; 553500, 3633300; 553600, 3633300; 553600, 3633000; 553700, 3633000; 553700, 3632300; 553600, 3632300; 553600, 3632200; 553300, 3632200; 553300, 3632300; 553200, 3632300; 553200, 3633000; 553100, 3633000; 553100, 3633200; 553000, 3633200; 553000, 3633300; 552900, 3633300; 552900, 3632800; 552600, 3632800; 552600, 3633000; 552700, 3633000; 552700, 3633400; 552800, 3633400; 552800, 3633800; 552700, 3633800; 552700, 3634300; 552800, 3634300; 552800, 3634400; 553000, 3634400.

(iv) Note: Map of Unit 1 (Map 2, Subunits 1A, 1B, and 1C) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(7) Unit 2: Palomar Mountain, San Diego County, California. From USGS 1:24,000 quadrangle maps Boucher Hill and Palomar Observatory.

(i) Subunit 2A: lands bounded by the following UTM NAD27 coordinates (E, N): 511300, 3689300; 511400, 3689300; 511400, 3689200; 511600, 3689200; 511600, 3689100; 511700, 3689100; 511700, 3689000; 511800, 3689000; 511800, 3688900; 512300, 3688900; 512300, 3688800; 512400, 3688800; 512400, 3689000; 512900, 3689000; 512900, 3688900; 513200, 3688900; 513200, 3688800; 513400, 3688800; 513400, 3688700; 513700, 3688700; 513700, 3688600; 513900, 3688600; 513900, 3688500; 514000, 3688500; 514000, 3688400; 514100, 3688400; 514100, 3688300; 514400, 3688300; 514400, 3688200; 514500, 3688200; 514500, 3688100; 515300, 3688100; 515300, 3688000; 515400, 3688000; 515400, 3687900; 515500, 3687900; 515500, 3687800; 515700, 3687800; 515700, 3687600; 515900, 3687600; 515900, 3687300; 515800, 3687300; 515800, 3687200; 515900, 3687200; 515900, 3687100; 516000, 3687100; 516000, 3687000; 516300, 3687000; 516300, 3686900; 516400, 3686900; 516400, 3686800; 516500, 3686800; 516500, 3686700; 516600, 3686700; 516600, 3686600; 517000, 3686600; 517000, 3686300; 517200, 3686300; 517200, 3686200; 517300, 3686200; 517300, 3686000; 517100, 3686000; 517100, 3685800; 517200, 3685800; 517200, 3685700; 516700, 3685700; 516700, 3685800; 516600, 3685800; 516600, 3686000; 516500, 3686000; 516500, 3686100; 516400, 3686100; 516400, 3686200; 516300, 3686200; 516300, 3686300; 516200, 3686300; 516200, 3686400; 516000, 3686400; 516000, 3686600; 515900, 3686600; 515900, 3686700; 515800, 3686700; 515800, 3686800; 515700, 3686800; 515700, 3686900; 515500, 3686900; 515500, 3687000; 515200, 3687000; 515200, 3687100; 514900, 3687100; 514900, 3687200; 514800, 3687200; 514800, 3687300; 514500, 3687300; 514500, 3687500; 514400, 3687500; 514400, 3687600; 514300, 3687600; 514300, 3687700; 514200, 3687700; 514200, 3687800; 514100, 3687800; 514100, 3687900; 514000, 3687900; 514000, 3688000; 513700, 3688000; 513700, 3688100; 513500, 3688100; 513500, 3688000; 513400, 3688000; 513400, 3687700; 513300, 3687700; 513300, 3687400; 513200, 3687400; 513200, 3687300; 513000, 3687300; 513000, 3687600; 512900, 3687600; 512900, 3688000; 512800, 3688000; 512800, 3688100; 512500, 3688100; 512500, 3688200; 512400, 3688200; 512400, 3688400; 512300, 3688400; 512300, 3688500; 512000, 3688500; 512000, 3688600; 511900, 3688600; 511900, 3688500; 511700, 3688500; 511700, 3688800; 511500, 3688800; 511500, 3688900; 511400, 3688900; 511400, 3689000; 511300, 3689000; 511300, 3689100; 511200, 3689100; 511200, 3689200; 511300, 3689200; 511300, 3689300.

(ii) Subunit 2B: lands bounded by the following UTM NAD27 coordinates (E,N): 513000, 3690900; 513000, 3690800; 513200, 3690800; 513200, 3690600; 513100, 3690600; 513100, 3690400; 513200, 3690400; 513200, 3690300; 513300, 3690300; 513300, 3690000; 513200, 3690000; 513200, 3689900; 513300, 3689900; 513300, 3689600; 512900, 3689600; 512900, 3689400; 512700, 3689400; 512700, 3689500; 512600, 3689500; 512600, 3689300; 512300, 3689300; 512300, 3689400; 512200, 3689400; 512200, 3689500; 512000, 3689500; 512000, 3689700; 511900, 3689700; 511900, 3689900; 511800, 3689900; 511800, 3690200; 511700, 3690200; 511700, 3690300; 511600, 3690300; 511600, 3690500; 511500, 3690500; 511500, 3690600; 511200, 3690600; 511200, 3690700; 511100, 3690700; 511100, 3690800; 510800, 3690800; 510800, 3690900; 510700, 3690900; 510700, 3690800; 510600, 3690800; 510600, 3690900; 510500, 3690900; 510500, 3691000; 510200, 3691000; 510200, 3690900; 510300, 3690900; 510300, 3690600; 510400, 3690600; 510400, 3690300; 510200, 3690300; 510200, 3690400; 509800, 3690400; 509800, 3690500; 509700, 3690500; 509700, 3690600; 509500, 3690600; 509500, 3690700; 509400, 3690700; 509400, 3690800; 509300, 3690800; 509300, 3690900; 509100, 3690900; 509100, 3691000; 509000, 3691000; 509000, 3691200; 509200, 3691200; 509200, 3691100; 509400, 3691100; 509400, 3691300; 509300, 3691300; 509300, 3691500; 509500, 3691500; 509500, 3691400; 510000, 3691400; 510000, 3691500; 510100, 3691500; 510100, 3691600; 510200, 3691600; 510200, 3691700; 510700, 3691700; 510700, 3691600; 511000, 3691600; 511000, 3691500; 511100, 3691500; 511100, 3691400; 511400, 3691400; 511400, 3691200; 511600, 3691200; 511600, 3691100; 511700, 3691100; 511700, 3691000; 511900, 3691000; 511900, 3690900; 512000, 3690900; 512000, 3690700; 511800, 3690700; 511800, 3690600; 511900, 3690600; 511900, 3690500; 512000, 3690500; 512000, 3690400; 512100, 3690400; 512100, 3690300; 512200, 3690300; 512200, 3690200; 512500, 3690200; 512500, 3690300; 512700, 3690300; 512700, 3690400; 512600, 3690400; 512600, 3690600; 512500, 3690600; 512500, 3690700; 512400, 3690700; 512400, 3690800; 512300, 3690800; 512300, 3691100; 512500, 3691100; 512500, 3691200; 513100, 3691200; 513100, 3691300; 513200, 3691300; 513200, 3691200; 513300, 3691200; 513300, 3690900; 513000, 3690900; excluding lands bounded by the following UTM NAD27 coordinates (E,N): 509900, 3691000; 510100, 3691000; 510100, 3690900; 510000, 3690900; 510000, 3690800; 509900, 3690800; 509900, 3691000; and 512800, 3691000; 513000, 3691000; 513000, 3690900; 512800, 3690900; 512800, 3691000.

(iii) Subunit 2C: lands bounded by the following UTM NAD27 coordinates (E, N): 509200, 3689100; 509400, 3689100; 509400, 3689000; 509700, 3689000; 509700, 3688700; 509800, 3688700; 509800, 3688600; 510200, 3688600; 510200, 3688900; 510800, 3688900; 510800, 3688800; 511100, 3688800; 511100, 3688600; 511200, 3688600; 511200, 3688500; 511300, 3688500; 511300, 3688400; 511200, 3688400; 511200, 3688300; 511500, 3688300; 511500, 3688200; 511600, 3688200; 511600, 3687900; 511300, 3687900; 511300, 3687600; 511200, 3687600; 511200, 3687500; 511100, 3687500; 511100, 3687400; 511200, 3687400; 511200, 3687100; 511000, 3687100; 511000, 3687200; 510900, 3687200; 510900, 3687300; 510600, 3687300; 510600, 3687500; 510500, 3687500; 510500, 3687400; 510400, 3687400; 510400, 3687500; 510300, 3687500; 510300, 3687600; 510400, 3687600; 510400, 3687700; 510500, 3687700; 510500, 3687800; 510400, 3687800; 510400, 3687900; 510300, 3687900; 510300, 3687800; 510100, 3687800; 510100, 3687900; 509900, 3687900; 509900, 3688200; 509800, 3688200; 509800, 3688300; 509700, 3688300; 509700, 3688400; 509500, 3688400; 509500, 3688500; 509300, 3688500; 509300, 3688600; 509200, 3688600; 509200, 3689100.

(iv) Subunit 2D: lands bounded by the following UTM NAD27 coordinates (E,N): 507700, 3690800; 508000, 3690800; 508000, 3690700; 508100, 3690700; 508100, 3690800; 508300, 3690800; 508300, 3690600; 508400, 3690600; 508400, 3690500; 508500, 3690500; 508500, 3690300; 508400, 3690300; 508400, 3690100; 508500, 3690100; 508500, 3690000; 508600, 3690000; 508600, 3689900; 508700, 3689900; 508700, 3689700; 508800, 3689700; 508800, 3689600; 508900, 3689600; 508900, 3689100; 508700, 3689100; 508700, 3689200; 508600, 3689200; 508600, 3689300; 508400,

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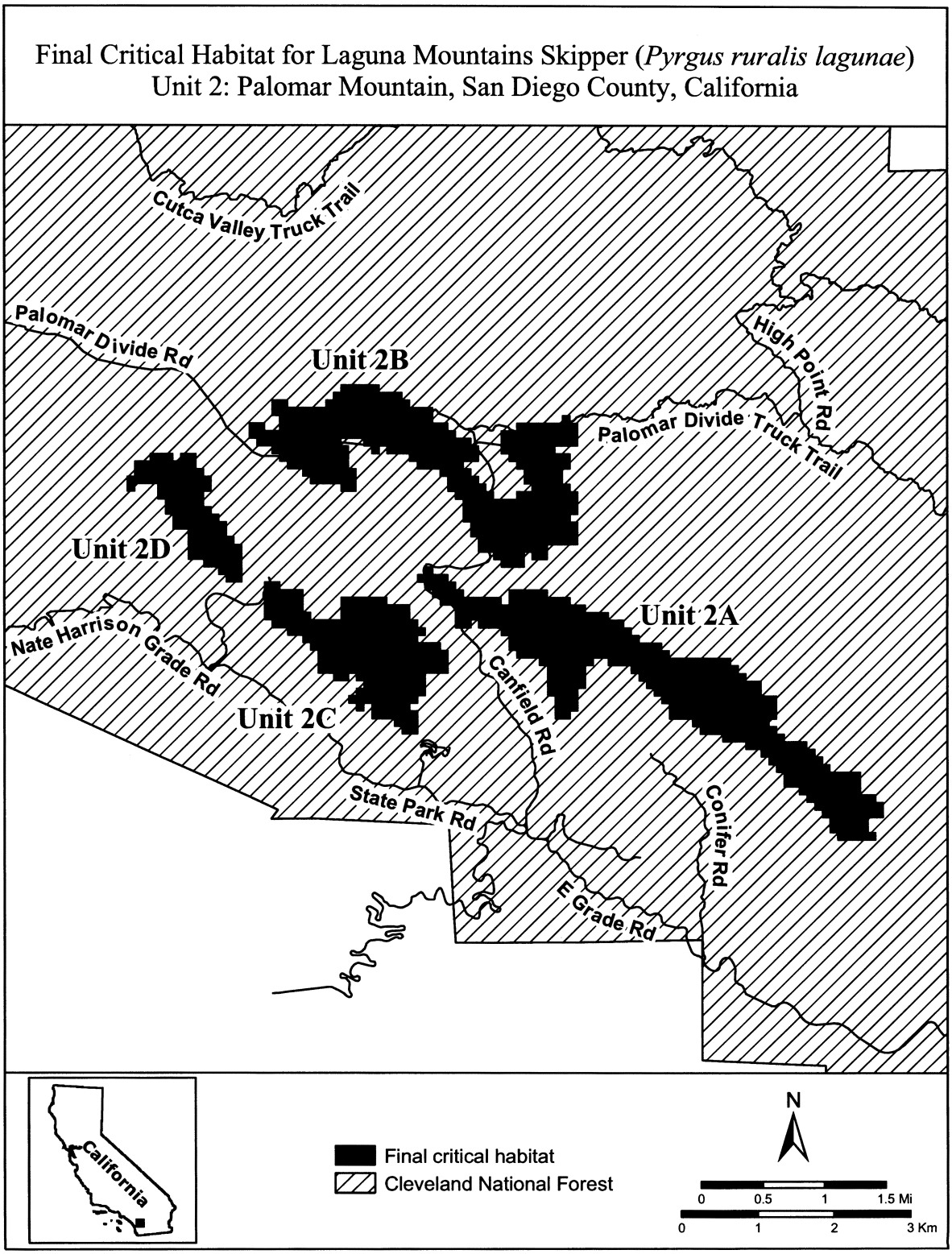
(v) Note: Map of Unit 2 (Map 3, Subunits 2A, 2B, 2C, and 2D) follows:

BILLING CODE 4310–55–P



* * * * *

Dated: November 21, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–9498 Filed 12–11–06; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
December 12, 2006

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 249

Senior Farmers' Market Nutrition Program Regulations; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 249

RIN 0584–AD35

Senior Farmers' Market Nutrition Program Regulations

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule implements the provision of the Farm Security and Rural Investment Act of 2002 that gives the Secretary of Agriculture the authority to promulgate regulations for the operation and administration of the Senior Farmers' Market Nutrition Program (SFMNP), thereby making it a permanent program rather than a competitive grant. The purposes of the SFMNP are to provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agriculture programs to low-income seniors; to increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and community supported agriculture programs; and to develop or aid in the development of new and additional farmers' markets, roadside stands, and community supported agriculture programs.

DATES: This rule becomes effective on January 11, 2007.

FOR FURTHER INFORMATION CONTACT: Debra Whitford or Donna Hines, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746, OR *Debbie.Whitford@fns.usda.gov*, or *Donna.Hines@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be Significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Impact Analysis was developed for this rule. It is attached as an appendix to this final rule.

Need for Action

Congress established the SFMNP in Section 4402 of Public Law 107–171 to provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agriculture programs (CSAs) to low-income seniors; increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and CSA programs; and develop or aid in the development of new and additional farmers' markets, roadside stands, and CSA programs. This final rule provides operating guidelines for the SFMNP, consistent with legislative intent.

The requirements of the final USDA rule for the SFMNP are similar to two USDA interventions: The WIC Farmers' Market Nutrition Program (FMNP), for individuals participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and those individuals on a waiting list for WIC benefits; and the Senior Farmers' Market Nutrition Pilot Program (SFMNPP), administered by USDA as a pilot program in 2001. The SFMNP has been administered by USDA as a competitive grant program since Fiscal Year (FY) 2001. Establishing rules for the SFMNP similar to the FMNP and SFMNP eases the administrative burden for USDA, State agencies, farmers, and program recipients.

Benefits

Benefits to Seniors

Low-income seniors will be afforded nutrition education as well as a coupon benefit ranging in value from $20 to $50 per annum, which will be used to purchase fresh, unprepared fruits, vegetables, and herbs intended to improve seniors' diets. Seniors, and ultimately participating farmers, in each State agency will benefit from the total Federal grant to the State agencies minus the amount that State agencies spend on administration—up to 10 percent of the total grant.

It is possible that seniors will not eat additional fresh fruits and vegetables, but rather will substitute the fruits and vegetables that they would have purchased with their own funds with fruits and vegetables purchased with SFMNP coupons. You, *et al.*, ''Consumer Demand for Fresh Fruits and Vegetables in the United States'' (1998) found that the demand for fresh fruits and vegetables in the United States was responsive to price changes, but not changes in income.

Benefits to Farmers

Farmers will collect revenue from redeemed coupons up to the total Federal grants to State agencies for food costs (the total amount of revenue collected will depend also on the amount of the grant State agencies use to cover administrative costs). Additional revenue may be reaped as seniors might spend their own money (and in some States, food stamps) to purchase additional goods at the farmers' markets. Farmers will also benefit from the exposure of new populations to farmers' markets, roadside stands and CSAs, which could lead to increased revenues.

In FY 2005, the SFMNP operated at 2,663 farmers' markets, 2,001 roadside stands and 237 CSAs. USDA's Economic Research Service (ERS) reported in 2001, that the SFMNP has not been as effective [as envisioned] in developing new farmers' markets, produce stands, and community supported agricultural programs or in expanding existing ones. Nevertheless, ERS suggests that given evidence from the WIC FMNP, the SFMNP could increase the number of farmers' markets, roadside stands, and CSAs in the long run.

Costs

The costs associated with the SFMNP are based on the following assumptions:

- Funding for FY 2007–FY 2011 is maintained at the current authorized level of $15 million annually (assumes no carryover funds are available in 2007-2011);
- State agencies use 10 percent of the Federal grant for administration in FY 2007–FY 2011;
- State agencies provide an average benefit level of $17.50 to recipients (as shown in Table 4 on page 25); and
- The poverty rate among seniors remains constant over the period of analysis.

FNS also assumes for the purpose of this analysis that total funding and benefit levels will not be indexed for inflation; therefore, their value has been deflated using projections of the Consumer Price Index—Urban index for fresh fruits and vegetables (1989 baseline). Based on these assumptions, we estimate there will be little change in the percent of SFMNP eligibles served in the analysis period, due to the large number of eligibles nationally.

Because the resources devoted to the SFMNP are likely to be small in comparison to the size of the eligible population, the permanent Program will not enable State agencies to reach the majority of those eligible. However, the minimum and maximum benefit levels

put forth in this final rule will help enable State agencies to serve as many eligible individuals as possible. The final rule allows for future growth, should additional funds be made available. Further, State agencies are allowed to contribute their own funds to enhance their Federal SFMNP grants. There were five State agency grantees that added State funds to their SFMNP food benefits in FY 2005.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. The provisions of this rulemaking are applicable to all State and local agencies, farmers, farmers' markets, roadside stands, and community supported agriculture programs, regardless of their size or of the volume of SFMNP business they conduct.

Public Law 104–4, Unfunded Mandate Reform Act of 1995 (UMRA)

Title II of the UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12372

The Senior Farmers' Market Nutrition Program is listed in the Catalog of Federal Domestic Assistance under No. 10.576. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Dates paragraph of the preamble of the final rule. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

In the Senior Farmers' Market Nutrition Program, the administrative procedures are as follows:

- Local agencies, farmers, farmers' markets, roadside stands, and community supported agriculture programs—State agency hearing procedures issued pursuant to 7 CFR 249.16;
- Applicants and participants—State agency hearing procedures pursuant to 7 CFR 249.16;
- Sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 249.17—administrative appeal in accordance with 7 CFR 249.16; and
- Procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section 6(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with FNS Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of SFMNP participants, FNS has determined that none of the provisions in this rule have a discernible impact on minorities, women, or persons with disabilities that are likely to result in inequitable treatment. FNS specifically prohibits the State agencies, and their cooperators, that administer the SFMNP from engaging in actions that discriminate against any individual in any of the protected classes (see 7 CFR 249.7 for the nondiscrimination policy in the SFMNP). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the SFMNP regulations set forth at § 249.7.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The information collections in this rule are being reviewed by OMB and will not be effective until they have received OMB approval. Once they have received OMB approval, FNS will publish a notice in the **Federal Register**.

E-Government Act Compliance

FNS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Background

History of the SFMNP—FY 2001 Through FY 2004

USDA's Commodity Credit Corporation (CCC) established the Senior Farmers' Market Nutrition Program (SFMNP) in November 2000 as a pilot program (65 FR 65825, Nov. 2, 2000). A brief history of the program from FY 2001–FY 2004 was included in the preamble to the proposed rule. A total of $15 million was made available for the pilot SFMNP, in which grant awards ranging from $9,000 to $1.2 million were made to 30 States, 5 Indian tribal governments, and the District of Columbia. Nearly 420,000 low-income seniors participated in the

SFMNP that first year. In FY 2002, Public Law 107–78 (the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act) provided $10 million from FNS' Commodity Assistance Program account to continue the SFMNP for a second year.

An additional $5 million was provided from CCC funds by Section 4402 of the Farm Security and Rural Investment Act of 2002 (the Farm Bill), Public Law 107–171 (7 U.S.C. 3007). The Farm Bill also authorized the SFMNP for FY 2003 through FY 2007, provided funding at $15 million for each of those years, and gave FNS the authority to develop regulations as deemed necessary for the SFMNP. The basic structure of the SFMNP has remained unchanged since its inception, with only slight modifications in the competitive grant process. By the end of FY 2004, 47 State agencies were participating in the program, and over 800,000 seniors had received SFMNP benefits during that year's market season.

The information below brings the history of the SFMNP up to date since the proposed rule was published.

SFMNP—FY 2005 Through FY 2006

Just prior to the beginning of FY 2005, OMB clarified to FNS that SFMNP funds that were not expended in the previous fiscal year could not be carried over for allocation in the current fiscal year, i.e., that only $15 million could be allocated to grantees. To accommodate this clarification, FNS reduced each participating SFMNP State agency's grant award for FY 2005 by 10.2 percent. No funds were available to support the expansion of any current grantee's existing program, or the addition of any new State agencies that might have been interested in initiating a new SFMNP. Additionally, one State agency discontinued its SFMNP operation due to the unavailability of State funds. The SFMNP funds that had been initially allocated to this grantee were then redistributed proportionally to the remaining 46 SFMNP State agencies. Despite the reduction in their grant awards, the 46 State agency grantees not only continued to operate the SFMNP, but many were also able to leverage State, local, or private funds to make up the difference.

Public Law 108–447 (Rural Development, Food and Drug Administration and Related Agencies Appropriations Act 2005) included a provision that allows FNS to allocate any unspent funds from FY 2005, as well as the $15 million appropriated for FY 2006, to eligible SFMNP grantees. The availability of these unspent funds is expected to restore the grant awards for the 46 current SFMNP State agencies to levels approaching the grants that were awarded in FY 2004, but there will still be insufficient funds to solicit grant applications from new State agencies.

Consistency With the WIC Farmers' Market Nutrition Program (FMNP)

USDA's FNS has administered the FMNP since its inception as a pilot program in 1988, through its transition to an authorized independent program when the WIC Farmers' Market Nutrition Act of 1992 (Pub. L. 102–314) amended Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)). The FMNP provides coupons to eligible WIC participants (or to individuals on WIC waiting lists) for the purchase of fresh, nutritious, unprepared fruits, vegetables and herbs at farmers' markets and, at the State agency's option, at roadside stands or farm stands. Many of the State agencies that have received SFMNP grant awards since FY 2001 were already established as administering agencies for the FMNP in that State. Based on the similar natures of the FMNP and the SFMNP, and in an effort to create consistency between the two programs, this final rule is constructed on the framework of the FMNP regulations, for which the final rule was published in the **Federal Register** on September 27, 1995 (60 FR 49739).

General Summary of Comments Received on the SFMNP Proposed Rule

The SFMNP Proposed Rule was published in the **Federal Register** on May 26, 2005 (70 FR 30558), with a 90-day comment period. A total of 415 comments were received on the Proposed Rule, over half of which were from program participants, and generally expressed support for the SFMNP's establishment as a permanent nutrition assistance program. One comment was opposed to the proposed rule in all of its provisions, and another commenter suggested that the SFMNP not be changed in any aspect beyond the addition of available funding.

The remaining comments were submitted from a variety of sources, including current SFMNP State agency grantees, State agencies not currently participating in the Program but interested in doing so, local agencies, farmers, professional organizations and associations, Congressional delegations, advocacy groups, nutritionists, and private citizens. The major comments are addressed by topic in further detail throughout this preamble.

What follows is a discussion of each section of the final SFMNP rule, including the major provisions set forth in each section; a brief summary of the comments received that addressed these issues; and FNS' rationale for either modifying each section in the final rule, or retaining its provisions as initially proposed. The section numbers referenced in the following discussion shall be sections of Title 7, Code of Federal Regulations, unless otherwise indicated.

1. General Purpose and Scope (§ 249.1)

While the essential purpose of the SFMNP is very similar to that of the FMNP, it differs from the FMNP purpose in one significant aspect—it includes community supported agriculture (CSA) programs (as defined in § 249.2) as allowable outlets for accepting SFMNP coupons or funds. CSA programs, while fairly familiar to the small farmer and sustainable agriculture communities, have not previously been associated with FNS programs.

A total of 220 comments were received in support of converting the SFMNP from a competitive grant program to permanent status, and of the stated purposes of the program. In fact, close to 200 form letters were sent in by participating seniors in a single county. The purposes and scope of the SFMNP are retained in this final rule unchanged from the proposal.

As directed by the provisions of Public Law 107–171 (7 U.S.C. 3007), the purpose and scope of the SFMNP are to improve/enhance the diets of low-income seniors by enabling them to obtain fresh fruits and vegetables from farmers' markets, roadside stands, and CSA programs, and to develop or expand these outlets by broadening their customer bases.

2. Definitions (§ 249.2)

Most of the definitions used in this rulemaking for the SFMNP are either the same as those used in the FMNP or are definitions used in the SFMNP competitive grant program. The majority of these definitions were either not addressed by commenters at all, or were supported by general comments to that effect. Therefore, with the exception of the definitions addressed below, all of the other definitions contained in § 249.2 of this final rule are retained as proposed.

''Bulk purchase.'' A number of SFMNP grantees have used a modified CSA program model in which bulk quantities of certain produce items, such as apples or sweet potatoes, were purchased directly from authorized

farmers by the State agency. These items were then equitably divided among SFMNP participants, and distributed directly to them, either at a central distribution point (such as a local senior center) or through some type of home delivery network. Such a program model was found to be very successful, but was not addressed in the proposed rule. Three commenters argued that the bulk purchase option should be retained in the permanent SFMNP, and FNS concurs with this position, as long as it is carefully managed to ensure that all other program requirements are met, e.g, only eligible foods are purchased in bulk for distribution, farmers from whom the produce is purchased are authorized by the State agency, and the value of the produce provided to SFMNP participants does not exceed the allowable maximum of $50 per participant. Therefore, a definition for ''bulk purchase'' is added to the list of regulatory definitions at § 249.2; additional information regarding the bulk purchase option is also provided in Section 10 of this preamble.

''Eligible foods.'' In the proposed rule, FNS defined ''eligible foods'' as fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs for human consumption. Three commenters suggested that the proposed definition of ''eligible foods'' be broadened to include fruits and vegetables that are not otherwise available through local production, as well as other nutritionally healthful items such as dried fruits and raw nuts. Another 6 commenters supported the addition of locally-produced honey to the list of eligible foods, and 2 comments supported allowing dried beans for purchase. One comment suggested the inclusion of any edible farm produce, with an emphasis on variety, while another proposed that State agencies be given the authority to determine what food items should be considered to be eligible for purchase under the SFMNP. Finally, one commenter suggested that FNS should provide a master list of eligible foods from which State agencies would select the items that could be purchased with SFMNP benefits or funds.

While FNS understands the motivation behind the suggested addition of such items as honey, dried fruits or beans, and raw nuts to the list of eligible SFMNP foods, it has no legislative authority to make such additions. The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, also known as the Farm Bill) specifically stipulates that SFMNP funds are to be used for the purchase of fresh, unprepared fruits and vegetables. State agencies do have a considerable amount of latitude in determining which fruits and vegetables are allowed for purchase within the Federal definition of eligible foods. It is not realistic to expect FNS to provide a master list of eligible foods beyond what is included in the current definition; FNS believes that individual State agencies are in the best position to know which fruits and vegetables are appropriate for sale within that State. Further, horticultural advances are constantly being made, and FNS would not want to exclude a potentially eligible fruit or vegetable from inclusion by establishing an exhaustive—and possibly inaccurate—list of eligible foods for the SFMNP.

Therefore, the definition of ''eligible foods'' for the SFMNP will be retained in this final rule as proposed.

''Locally grown.'' In the proposed rule, ''locally grown'' was defined as foods that are grown within the borders of the State that the project serves. State agencies also have the option to define ''locally grown'' to mean foods grown in areas of States adjacent to that State, as long as such areas are part of the United States, and/or to use a more stringent definition than the one established by FNS. Two comments were received that addressed the proposed definition of ''locally grown''. One commenter expressed concern that the definition as proposed is not sufficiently restrictive to ensure that the interests of local (i.e., within-State) farmers are protected, and suggested that the definition be strengthened to include a mandatory percentage of locally grown produce that must be offered for purchase through the SFMNP by authorized farmers, markets, and/or CSAs. The second commenter suggested that State agencies be allowed to define ''locally grown'' with no federally-imposed restrictions.

While FNS encourages all participating State agencies to promote the sale of locally-grown eligible foods to the greatest extent possible, we also realize that circumstances beyond the local farmers' control may occur to make it impossible to meet the demands of SFMNP participants entirely, at any given point in the market season. Once SFMNP coupons have been issued, or CSA shares assigned, a commitment has been made by the State agency to the participant that sufficient produce will be available to him or her in exchange for the full amount of benefits provided, should the participant want to use them. Thus it becomes incumbent upon the authorized farmer(s) to find a way to meet that demand. FNS believes that each individual State agency is in the best position to determine how much of the produce offered must actually be grown by the farmer who accepts the SFMNP coupons in a transaction. Consistent with the FMNP, SFMNP State agencies will be responsible for defining the percentage of produce that must be grown by an authorized farmer. However, as clearly stated in the proposed rule, FNS believes that it is important for an authorized farmer to produce at least some portion of the fruits and vegetables that she/he offers for sale. This requirement is intended to support small farmers.

Therefore, the definition of ''locally grown'' is retained in this final rule as set forth in the proposed rule.

''Participant.'' The term ''participant'' was suggested by a commenter as a replacement for the term ''recipient'' that was included in the proposed rule. As the commenter pointed out, ''participant'' is consistent with the term used in other FNS-administered nutrition assistance programs. FNS agrees; therefore, the definition of ''recipient'' that was initially set forth in the proposed rulemaking is now used to define ''participant'' for SFMNP purposes, the term ''recipient'' is removed from § 249.2, and the term ''participant'' replaces ''recipient''throughout this final rule.

3. Administration (§ 249.3)

This section of the rule delegates to FNS the responsibility within USDA for administering the SFMNP, and delegates the responsibility for direct administration of the program to State agencies. It also requires each State agency to submit an annual State Plan of Operations, and to execute written agreements between the administering (lead) State agency and any other State, local, or nonprofit agencies or entities involved in operating any aspect of the SFMNP. Finally, each State agency must ensure that sufficient staff is available to administer the SFMNP efficiently and effectively.

Three comments were received that addressed this section of the proposed rulemaking, and most of them were essentially supportive of the administrative structure set forth in the proposed rule. One commenter proposed that the final rule include a formal delegation of authority to operate and/or administer the SFMNP at the local level, but this provision is already included as a State agency option at § 249.3(d).

Therefore, § 249.3 is retained in this final rule as proposed.

4. State Plan Provisions (§ 249.4)

In establishing the SFMNP as a permanent program, Congress gave FNS the authority to set out basic standards and requirements for its operation. Consistent with other FNS nutrition assistance programs, as proposed, each State agency that desires to receive a SFMNP grant, including State agencies currently participating in the SFMNP, will need to submit a State Plan of Operation for approval by FNS. These State Plans will be due by November 15 of each year. Four commenters misunderstood this particular provision of the proposed rule, and wrote to suggest that submission of a SFMNP State Plan should not be required until the final SFMNP rule is published. It was never FNS' intent, nor was it suggested in the SFMNP proposed rule, that State Plans would be required prior to publication of the final rule. Therefore, the first SFMNP State Plans will be due to FNS Regional Offices by February 15, 2007, for the FY 2007 market season, and by November 15 of each year thereafter.

The State plan process replaces the grant application process that was used for the SFMNP since its inception in FY 2001. One commenter suggested that the SFMNP continue to be administered as a competitive grant program. This is not a feasible option for future oversight of the SFMNP; once the status of the SFMNP as a permanent program has been established, its administration at the Federal level is expected to be consistent with other FNS nutrition assistance programs, i.e., State plans are submitted by and approved for each participating State agency, and the direct oversight and day-to-day management of the program is provided through the seven FNS Regional Offices. Therefore, this final rule sets out at § 249.4(a) the specific elements that must be included in each State Plan submitted. A complete list of State Plan requirements is contained at § 249.4.

As indicated above, § 249.4(a) sets out specific requirements for information that must be included in the State Plan of Operation. Many of the requirements included in the SFMNP proposed rule were new to SFMNP operators, and reflected administrative requirements that generated a considerable number of comments in opposition to the requirements. Listed below are discussions of most of the proposed information to be included in SFMNP State Plans, the comments received, and FNS' decision regarding each proposed provision. Some of the larger administrative issues, such as income eligibility determination for SFMNP applicants, are addressed in greater detail under their respective Sections.

Number and addresses of authorized participating markets, roadside stands, and CSA programs (§ 249.4(a)(8)(i))—Two commenters pointed out that it is unreasonable to require the actual addresses of all authorized SFMNP outlets in November as part of the State Plan before the market season actually begins the following spring or summer. As noted, markets and roadside stands are not always permanent locations, and circumstances may change during the intervening months that cause these locations to change. Commenters noted that providing the number of outlets by type (market, roadside stand, CSA) that are expected to be authorized for the coming season, based on the prior year's authorizations and/or projected additions such as new markets that are being solicited for inclusion in the SFMNP, should be sufficient. FNS agrees with commenters that providing the addresses of market outlets for the prior year is sufficient. Therefore, this final is revised in § 249.4(a)(8)(i) to require a State agency to provide in its State Plan the number and addresses of authorized market outlets that participated in the SFMNP during the prior year.

A technical oversight in this paragraph of the proposed rule has also been corrected in this final rule by adding the number of individual farmers authorized to accept SFMNP coupons or CSA program funds to this requirement.

Listing of all SFMNP certification/issuance sites, including a map outlining the service area and proximity of markets, roadside stands, and/or CSA programs to certification/issuance or distribution sites (§ 249.4(a)(8)(ii))—Similar to the requirement for the addresses of all authorized outlets, 4 commenters pointed out that this provision is burdensome and unrealistic, given that reasonable access to the authorized outlets where participants will be able to use their program benefits is essential to the fundamental success of the SFMNP. Again, FNS agrees that providing a list of SFMNP certification and issuance sites, including a map, for the upcoming market season is not reasonable. Therefore, this final is revised in § 249.4(a)(8)(ii) to require a State agency to include in its State Plan the SFMNP certification and issuance sites, including a map outlining the service area and proximity of authorized market outlets that participated in the SFMNP during the prior year.

Determination of areas to be served (§ 249.4(a)(9)(i))—In the proposed rule, FNS included a provision to require the State agency to describe in its State Plan how it intended to select the area(s) within the State where SFMNP services would be offered. One commenter suggested that FNS should allow State agencies to exercise their own discretion in making such decisions. The limited amount of funding that is available for the SFMNP currently forces State agencies to make such determinations very carefully, and it has become evident over the past 5 years of operation that the considerations most important to FNS (higher concentrations of eligible persons and greater access to farmers' markets, roadside stands, and/or CSA programs) are already in use by the State agencies that received SFMNP grant awards. While we agree that State agencies have discretion to decide how to select the areas within the State to offer SFMNP benefits, FNS would like this information and believes State agencies should provide it information as part of the State Plan. Therefore, this requirement is retained in this final rule.

Method for preventing and identifying dual participation (§ 249.4(a)(9)(iv))—Six commenters opposed the dual participation requirement, pointing out that such a requirement is unnecessary in a program as small as the SFMNP. These commenters also stated that because the majority of SFMNP participants come into the program by virtue of their certification for or participation in another assistance program (such as Food Stamps or the Commodity Supplemental Food Program (CSFP)), the requirement designed to prevent dual participation in the SFMNP is redundant, because such programs already have mechanisms in place to detect and prevent dual participation. FNS believes that the commenters may have misunderstood the intention of this requirement, and would like to clarify that such mechanisms are not intended to prevent a senior from participating in two different programs for which she/he may be eligible, such as CSFP and SFMNP. State agencies are still required, however, to have in place a mechanism to assure that dual participation within the SFMNP, i.e., receipt of SFMNP benefits from more than one local agency or program model, can be detected and prevented. Such a mechanism does not have to be complicated or elaborate, and may be combined with a procedure already in place in a program for which participation or certification confers automatic SFMNP eligibility. Therefore, the requirement regarding dual

participation at § 249.4(a)(9)(iv) is retained in this final rule as proposed.

5. Selection of New State Agencies (§ 249.5)

This section of the proposed rule stated that only State agencies, as defined in § 249.2, would be eligible to receive grants for and administer the SFMNP. It also set forth FNS' intention to grandfather in as State agencies in the permanent SFMNP those State agencies that participated in the SFMNP during the previous fiscal year (i.e., FY 2006) of the competitive grant program. In regard to the determination of entities that should be eligible to serve as SFMNP State agencies, one commenter expressed concern that local Area Agencies on Aging (AAA) would not be allowed to continue to administer the SFMNP. This is not the case. Since its inception, only a bona fide State agency or a federally recognized Indian Tribal Government has been eligible to receive funds as a SFMNP grantee. However, State agency grantees have also, since the inception of the SFMNP, had the option to allow local agencies such as AAAs to take on the day-to-day administrative and operational functions of the SFMNP. That option was expressly described in the proposed rule, and is retained in this final rule at § 249.5.

Three comments were received that opposed the proposal to grandfather in those State agencies currently participating in the SFMNP. These commenters argued that everyone should be given a fair opportunity to apply for the Program, and that the grandfathering clause is unfair to State agencies that have been unable to join the SFMNP. While funding limitations have made it impossible to accept applications from prospective SFMNP State agencies for the past 2 years, we disagree with the concern of overall unfairness. The grandfather clause is designed to facilitate the continuation of existing programs. Therefore, the clause is retained as proposed. Any new State agency interested in participating in the SFMNP is welcome to submit a State Plan of Operations to the appropriate FNS Regional Office by the regulatory deadline. Such prospective State agencies should keep in mind, however, that FNS approval of a SFMNP State Plan does not guarantee the availability of Federal funds to support the program.

6. Participant Eligibility (§ 249.6)

a. Categorical Eligibility

In §§ 249.2 and 249.6(a)(1) of the proposed rule, FNS defined a person categorically eligible for the SFMNP (a ''senior'') as an individual 60 years of age or older. Indian tribal organizations administering the SFMNP could deem Native Americans who are 55 years of age or older as categorically eligible for SFMNP benefits. State agencies would have the option to establish a higher age limit, such as 62 or 65 years of age. Four commenters specifically stated their support for these minimum age requirements. One additional commenter opposed the requirement for proof of age as an eligibility determinant, but no such requirement was included in the proposed rulemaking, nor has one been added to this final rule. Although two comments were received opposing the option for State agencies to establish a higher age limit, FNS believes that this option is important to State agencies as a potential caseload management tool.

At § 249.6(a)(1), FNS also proposed to allow State agencies the option to deem disabled individuals under 60 years of age, who live in housing facilities occupied primarily by older individuals where congregate nutrition services are provided, as categorically eligible for SFMNP benefits. SFMNP State agencies opting to serve such disabled individuals would be responsible for weighing the relative benefits of serving those persons in certain housing facilities against serving additional elderly participants who are 60 years of age and older in the same, or possibly another, service delivery area. Four comments were received that addressed this provision, most of which were generally supportive. In fact, only one commenter opposed the ''mandate'' to serve persons less than 60 years old—a mandate that does not exist in either the proposed or this final rule.

The provisions at § 249.6(a)(1) regarding categorical eligibility for the SFMNP are therefore retained as set forth in the proposed rule.

b. Residency Requirement

Section 249.6(a)(2) of the proposed rule would have allowed State agencies to establish a residency requirement for SFMNP applicants, to determine a service area for any local agency, and to require an applicant to reside within that service area at the time of application. No durational or fixed residency requirement could be imposed. Only one comment was received related to the residency requirement for the SFMNP, and that comment reflected support for the provision. Therefore, this provision is retained as set forth in the proposed rule.

c. Income Eligibility

In developing the SFMNP proposed rule, FNS identified and considered three major aspects to the determination of income eligibility for the SFMNP:

1. What should be the maximum allowable household income?

2. Should FNS allow automatic income eligibility based on an individual's participation in other programs? If so, which programs should be included?

3. How much documentation or verification of income eligibility should be required for SFMNP applicants?

Five comments were received that generally opposed any and all income eligibility requirements. FNS does not support this view, because of the need for responsible stewardship and fundamental program accountability.

Income eligibility guidelines. As described in the preamble to the SFMNP proposed rule, most participating SFMNP State agencies use a maximum household income of 185 percent of the annual poverty income guidelines. In FY 2005, 36 of the 46 participating SFMNP State agencies used an income eligibility standard of 185 percent of the poverty guidelines, and another 7 State agencies linked SFMNP income eligibility to the maximum income limit used in the Commodity Supplemental Food Program (CSFP), i.e., 130 percent (7 CFR 247.7(a)(3)). A limited number of other variations existed, ranging from 150 to 200 percent of the poverty income guidelines. Therefore, in the proposed rule, FNS proposed a maximum household income of 185% of the poverty guidelines.

Although over twice as many of the comments received pertaining to this provision suggested the option of using an income eligibility standard higher than 185 percent as supported the 185 percent limit (15 and 7, respectively), FNS does not support the option of a higher standard, even on a case-by-case basis, because a fundamental principle of the SFMNP is to serve as many low-income seniors as possible. Therefore, in § 249.6(a)(3), FNS retains the maximum income limit of 185 percent for the SFMNP as set forth in the proposed rule.

Automatic income eligibility based on participation in other programs. Under the competitive grant model of the SFMNP, many grantees use participation in other means-tested programs, such as the Food Stamp Program, the CSFP, and the Food Distribution Program on Indian Reservations (FDPIR), to determine eligibility for the SFMNP. All of these programs use an income eligibility limit

that is at or below 130 percent of poverty.

FNS proposed to continue to allow State agencies to deem applicants automatically eligible for the SFMNP based on participation/certified eligibility to receive benefits in another means-tested assistance program, as determined by the State agency, as long as income eligibility is set at or below the SFMNP maximum income, i.e., 185 percent of the annual poverty income guidelines, and some form of documentation is required to establish income eligibility for that program.

All 3 of the comments received addressing this provision were supportive. One commenter went on to suggest that persons eligible for the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program also be deemed income eligible for the SFMNP. As long as the process for establishing eligibility for the PAAD is consistent with the requirements described above, and the individual is otherwise (categorically and residentially) eligible to participate in the SFMNP, FNS has no objection should a State agency wish to include the PAAD among its group of programs that confer automatic income eligibility for the SFMNP.

Documentation of income eligibility. Proposed § 249.6(b) would have required SFMNP applicants who are not automatically income eligible for the program based on participation in or certified eligibility for another means-tested program to provide documentation of family income at certification.

This requirement was strongly opposed in 123 comment letters, representing every commenter category. They expressed concern about imposing an administrative burden of this nature for such a relatively small annual benefit. One comment stated that the amount of time and effort anticipated to be necessary to obtain proof or documentation of income would be excessive given the value of the benefit offered—and the cost is unknown. This commenter went on to observe that the self-identification of need for food assistance, self-declaration of participation in another means-tested assistance program, or self-declaration of income should be the minimum requirement for accessing a $20 to $50 annual SFMNP benefit. FNS finds the arguments put forth in these comments to be compelling, and has not included in the final rule a requirement for income documentation from all SFMNP applicants who are not deemed otherwise income eligible. Instead, as set forth in this final rule, such applicants may be certified if they sign an affidavit affirming that their household income does not exceed the State agency's maximum income limit for their individual household size, except that State agencies offering a benefit greater than $50 per participant through a CSA program may not accept a signed affidavit of self-declared income eligibility, but must require documentation of household size and income for such participants. State and local agencies continue to have the option to verify reported income, in order to confirm an applicant's income eligibility for the SFMNP.

d. Certification Periods

FNS established in the proposed rule at § 249.6(c) a certification period for SFMNP participants. As proposed, recipients could be certified only for the current fiscal year's SFMNP period of operation. One commenter suggested that multiple-year SFMNP certification periods should be allowed, but FNS disagrees with this suggestion. Funds for the SFMNP are generally too limited, and turnover in the pool of potentially eligible senior SFMNP participants is too great, to justify such an option. Therefore, the provisions related to certification periods in the SFMNP are retained in this final rule as proposed.

e. Rights and Responsibilities

In § 249.6(d), FNS proposed to require State/local agencies to inform applicants or authorized representatives/proxies of their SFMNP rights and responsibilities. Several comments were received related to the Rights and Responsibilities notification—2 generally supported the provision, 3 specifically supported the provision of information on other services that may be available to SFMNP participants, and one suggested that a joint statement be allowed for seniors who are participating in both the SFMNP and the CSFP, when both programs are administered by the same State agency. FNS appreciates the principle behind such a suggestion, but does not agree. Even when one agency is responsible for administering multiple programs, such as the SFMNP and the CSFP, separate benefits are provided to participants under each program. Therefore, FNS believes that it is important to maintain separate statements of the participant's rights and responsibilities as they pertain to each individual program. This provision is retained in this final rule as proposed.

This section as proposed also required State/local agencies to notify applicants in writing if they were ineligible for SFMNP benefits (including the reasons for the determination of ineligibility), and of their right to a fair hearing. A total of 18 comments were received opposing this written notification requirement, arguing that such a requirement is excessively burdensome in a program that has such a short duration each year. While FNS is sincere in its stated intention not to impose any administrative burden on participating State and local agencies that is not absolutely necessary, it cannot in good conscience eliminate this requirement. Once an individual has applied for Program benefits and has been found to be ineligible to receive them, that individual is entitled to a formal notification of such a determination and of his/her right to a fair hearing to challenge that decision. However, FNS also believes that there may be some confusion between an actual determination of an individual participant's program ineligibility and a State or local agency's inability to provide benefits because there simply are not enough funds (in the form of coupons or CSA shares) to serve everyone who is interested in receiving SFMNP benefits. This provision applies specifically to the former instance. The proposed rule did not intend to require that written notification be provided to all potentially eligible seniors in the State or local service delivery area when funds are not available to provide SFMNP benefits.

The requirement for written notification of applicant ineligibility and the right to a fair hearing is therefore retained in this final rule as set forth in the proposed rule. However, State and local agencies are not expected to implement a complicated or time-consuming process in order to provide written notices of ineligibility and the right to a fair hearing; a form letter that has the pertinent information (date, name, basis of ineligibility, and signature of the certifying official) filled in as appropriate and handed to the applicant at the time of application is acceptable.

f. Certification Without Charge

The proposed provision at § 249.6(e), stipulating that no applicant or authorized representative may be charged to apply or be certified for the SFMNP, was not addressed by commenters. Therefore, the provision is retained in the final rule as proposed.

g. Use of Authorized Representatives/Proxies

The SFMNP proposed rule included a provision requiring any State agency electing to allow proxies or authorized representatives to obtain a signed statement from the eligible senior designating another person as his/her

authorized representative. This provision was characterized by 4 commenters as a positive addition; in fact, the use of proxies in the SFMNP has been an option for grantees since the program first began. However, another 5 comments were received that suggested that the requirement for a signed designation of a proxy by the eligible senior is too burdensome and should be deleted. FNS strongly disagrees, and finds this requirement to be essential in order to assure that SFMNP benefits are actually received by the eligible senior for whom they are intended. Therefore, in § 249.6(f) of this final rule, the provision is retained as proposed.

g. Processing Standards/Waiting Lists

SFMNP State agencies were required, at § 249.6(g) in the proposed rule, to notify applicants of their eligibility or ineligibility for benefits, or placement on a waiting list, within 10 days from the date of application. This provision was proposed to take into account the relatively short duration of the SFMNP's actual period of operation. Unlike other ongoing nutrition assistance programs, such as Food Stamps, FDPIR, or the CSFP, the SFMNP does not usually operate year-round. Therefore, it is important that the certification process for the SFMNP be expedited to some extent. Reaction to this provision was mixed—4 comment letters supported the 10-day standard, while 9 maintained that it is entirely too short. While FNS cannot agree to the 30-day processing standard suggested by 3 commenters, we can see some benefit to allowing State agencies a slightly longer period of time to complete the certification process. Therefore, in this final rule the processing standard for the SFMNP is increased at § 249.6(g) to 15 days. Although this is only 5 days longer than the 10 days initially proposed, the reduction of several significant administrative functions associated with the certification process (most notably the acceptance of a signed affidavit in the income eligibility determination process) makes the 15-day standard a reasonable one. State agencies would always have the option to establish a shorter processing standard for their local SFMNP agencies.

Further, FNS proposed to require State agencies to keep a waiting list of individuals who apply for benefits but cannot be served. This information would enable State/local agencies to certify individuals if funding within the State is reallocated based on need. The waiting list would include the name of the applicant, the date he/she was placed on the waiting list, and an address or phone number in order to contact the applicant. These requirements are consistent with the FNS-administered CSFP, which also serves seniors. However, as pointed out by 18 commenters, it is not reasonable to maintain a waiting list when there is no realistic expectation of additional benefits becoming available at some later date. SFMNP benefits are often exhausted very quickly, sometimes within a matter of days or even hours. FNS concurs with the commenters' position that in such cases, having to maintain a waiting list of eligible seniors who are interested in benefits is a futile and burdensome requirement. Therefore, this provision has been modified in this final rule to require a State agency to maintain a waiting list only when there is some reasonable expectation of being able to provide benefits at a later date to those additional unserved individuals.

7. Nondiscrimination (§ 249.7)

As indicated in § 249.7(a) of the proposed rule, Title VI of the Civil Rights Act of 1964 requires that racial and ethnic participation data be collected from all SFMNP benefit participants. Eight commenters suggested that the racial/ethnic data collection requirement be deleted, and another commenter proposed that the data collection at least be delayed until the new racial/ethnic categories stipulated by OMB are in place for the CSFP as well. FNS recognizes that this data collection requirement may duplicate data collections that have been performed for SFMNP participants when they applied for other nutrition assistance programs such as Food Stamps, FDPIR, and/or CSFP. Therefore, to avoid duplicate collection of racial/ethnic data, a separate SFMNP collection would not be required for those participants who come into the SFMNP as automatically eligible based on their participation in another assistance program. Racial/ethnic data must be collected for all other SFMNP participants. State agencies must be able to provide racial/ethnic data upon request by FNS for all participants, whether obtained via another assistance program or collected by the SFMNP State agency.

8. Eligible Foods and Level of Benefits (§ 249.8)

Note: In the interest of clarity, the heading for this section is modified from the proposed rule to reflect the order of the topics addressed.

A comprehensive discussion regarding eligible foods in the SFMNP is included in the preamble to the proposed rule. No other comments in addition to those discussed in section 2 of this preamble, regarding the definition of ''eligible foods'' for the SFMNP were received. Therefore, the provisions related to eligible foods set forth at § 249.8(a) are retained in this final rule as proposed.

In § 249.8(b), FNS proposed minimum and maximum annual benefit levels of $20 and $50, respectively, for all coupon issuance program models (farmers' markets, roadside stands and/or CSA programs). These levels were intended to accommodate the majority of State agencies that already use at least a $20 benefit level, and are consistent with the current average benefit level of SFMNP benefits issued nationwide.

The proposed minimum and maximum benefit levels resulted in comments both for and against the provision. All 11 of the State agencies with benefit levels lower than $20, along with several other interested State and local SFMNP agencies, wrote to protest the necessity of reducing the number of eligible seniors they were currently serving in order to raise the benefit level to the $20 minimum. A relatively small number of commenters (6) supported the principle of a regulatory minimum and maximum benefit level, but half of those commenters went on to suggest that State agencies be allowed to issue a smaller benefit when Federal funds are decreased, such as in FY 2005 when all SFMNP grantees experienced an across-the-board reduction in their SFMNP grant awards.

Anecdotal evidence over the past 6 years of SFMNP operation consistently indicates that certified participants are more likely to make use of their SFMNP benefits when the benefit level is high enough to justify one or more trips to a farmers' market, roadside stand, and/or CSA program for the purchase of eligible fresh fruits and vegetables. FNS believes establishing a minimum SFMNP benefit of $20 is not only appropriate, but will also be conducive to higher expenditure and redemption rates in future years of SFMNP operation. However, FNS also recognizes the difficulties that would be encountered by the 11 State agencies currently offering a seasonal benefit of less than $20.

The strongest objections to this provision were submitted in opposition to the $50 maximum benefit level. A variety of suggestions were put forth, including eliminating the benefit cap altogether, increasing the maximum benefit to $80 or to $100, and/or allowing State agencies the option of setting their own minimum and

maximum benefits, either for all program models or only for CSAs. Requests for a grandfather clause that would allow current State agencies to continue issuing the same level of SFMNP benefits came primarily from State agencies that expend the largest portion of their SFMNP grants on a CSA program model of operation. The basic structure of most CSAs is predicated upon shares of at least $100 each, and a total of 60 comments were received from State agencies, local agencies, participating farmers, and even participants to request that the maximum SFMNP benefit level be increased or at least allowed to remain at their FY 2004 levels. Nearly 30 farmers stated that if the maximum CSA benefit level were reduced to $50, they would no longer be willing or able to continue participating in the SFMNP.

Therefore, FNS has reconsidered the matter of minimum and maximum benefit levels in the SFMNP in this final rule, and has revised the requirements as follows:

- The minimum benefit level of $20 is retained as proposed, except that SFMNP State agencies being grandfathered into the permanent program (i.e., that participated in the SFMNP in FY 2006) may continue to issue benefits at their FY 2006 levels.
- Current SFMNP State agencies that are grandfathering a CSA program model into the permanent program may continue to issue benefits to senior participants in the CSA programs at their current (FY 2006) levels, except that any State agency whose annual CSA participant benefit level is greater than $50 will not be eligible to receive expansion funds until the $50 benefit cap in the CSA program model is implemented. While FNS is sympathetic to the concerns expressed through the public comment process, we also believe in the principle of serving as many eligible senior participants as possible with the limited funds available to the SFMNP.
- New State agencies who begin operating the SFMNP after FY 2006 must comply with the $20 benefit minimum as well as the $50 benefit cap.

SFMNP State agencies that do not use a CSA program model must comply with the $50 benefit cap as provided in the proposed rule.

As one commenter suggested, State agencies will continue to have the option of providing a higher benefit level out of funding sources other than the Federal SFMNP grant. Finally, FNS disagrees with the commenter who stated that longer growing seasons justify higher benefit levels, because it can also be argued that shorter growing seasons, with commensurately higher prices for fresh produce because it is only available for a short time, can also justify higher benefit levels.

In order to ensure equitable treatment in and access to the SFMNP, FNS proposed in § 249.8(c) that all SFMNP participants served by the State agency must be offered the same level of SFMNP benefits. Reaction to this provision was almost evenly divided in support and opposition, but FNS is still convinced that a consistent statewide benefit level is important to the integrity of the SFMNP. Therefore, the requirement is retained in this final rule as proposed.

Also as proposed, FNS has retained in this final rule the provision that the same statewide benefit level does not have to be applied for SFMNP participants who are receiving benefits through a CSA program. Such participants are eligible to receive $50 or more (if the State agency is exercising the grandfather clause set forth in § 249.8(b)) in SFMNP benefits, even if SFMNP participants in that same State are issued only $10 (if the State agency has been grandfathered in at the lower minimum benefit level) or $20 (for all other State agencies) in coupons to use at farmers' markets or roadside stands.

As proposed and as set forth in this final rule, SFMNP participants may also receive benefits through a bulk purchase program model, as described in § 249.2, as long as each participant receives an equitable value of fruits and vegetables. In addition, the total benefit provided to each participant (whether s/he receives a combination of coupons and bulk-purchased foods during the course of the season, or only bulk-purchased foods) must fall within the minimum and maximum levels set forth in this final rule.

Finally, § 249.8(c) of the proposed rule offered SFMNP State agencies the continued option to issue program benefits on either an individual or a household basis, as long as State agencies continue to report participant information to FNS on an individual basis. The household option, if SFMNP State agencies choose to implement it, allows more participants to be served with limited funds. The provisions contained in this section are retained in this final rule as proposed.

Section 249.8(c)(3) of the proposed rule prohibited sharing of food purchased through the SFMNP with non-participating household members. Seven commenters opposed this non-sharing provision, calling it unenforceable and therefore unnecessary. FNS recognizes the difficulty of enforcing such a provision, but maintains that it is nonetheless an extremely important one. SFMNP benefits are generally issued to individuals with particular nutritional needs with the intention of improving that individual's diet by increasing his/her consumption of fresh fruits and vegetables. Therefore, program administrators can discuss this issue when participants are certified and/or provided basic information about the SFMNP. It is critical that program administrators and participants alike understand the importance of the SFMNP benefits that are being provided to specific eligible individuals for specific dietary reasons. Therefore, this provision is retained in this final rule as proposed.

9. Nutrition Education (§ 249.9)

As proposed, this section of the rule defined the goal of nutrition education in the SFMNP, required the State agency to integrate nutrition education into its SFMNP operations, and provided guidance on coordinating the delivery of nutrition education through other agencies within the State. Thirteen comments were received regarding the nutrition education provisions of the SFMNP proposed rule, more than half of which were generally supportive. Two commenters suggested that there should be some level of flexibility for nutrition education at the local level. Although the proposed rule did not specifically address such flexibility, FNS supports such discretion as long as the State agency is aware of the content and quality of the nutrition education that is being provided, and monitors it regularly as required. Additional suggestions related to the nutrition education provisions that were not incorporated into this final SFMNP rule included stipulating that all nutrition education should be provided or overseen by a Registered Dietician or other qualified nutrition professional (2 comments), and that each local agency should bear the costs associated with providing nutrition education to SFMNP participants. Conversely, it was suggested in another comment letter that the State agency should be responsible for providing all nutrition education materials to the local agencies, in all languages necessary.

FNS' view is that issues related to nutrition education are matters best negotiated between the State and local agency, rather than addressed through Federal program regulations. FNS agrees that it is important to take into consideration those participants with limited English proficiency, but believes that this is sufficiently covered in the

Participant Rights and Responsibilities statement set forth at § 249.6(g).

FNS believes nutrition education to be an integral component of any effective nutrition assistance program. For this reason, SFMNP State agencies have been required, since the inception of the pilot program in FY 2001, to include nutrition education as part of their program design in order to receive a Federal SFMNP grant.

Nutrition education has also long been the hallmark of several other FNS-assisted nutrition assistance programs, particularly the WIC Program and the FMNP, upon which the SFMNP is closely modeled. While nutrition education is being made increasingly available in other FNS programs, such as the Food Stamp Program, FDPIR, and CSFP, there is still no guarantee that SFMNP participants are also participating in any of these programs, or that the focus of the nutrition education that is offered is appropriate for the SFMNP participant population.

As proposed, this final rule requires, at § 249.9, all participating State agencies to describe the nutrition education that will be provided to SFMNP participants, including the agencies that will be responsible for providing the nutrition education (e.g., Cooperative Extension Service or local Area Agencies on Aging), the format(s) in which the nutrition education will be provided (e.g., recipe cards or cooking demonstrations), and the locations where the nutrition education is likely to be offered (e.g., senior centers, farmers' markets, common rooms in assisted living facilities). The content of the nutrition education should be age- and circumstance-appropriate for SFMNP participants. FNS encourages State agencies to take advantage wherever possible of existing nutrition education opportunities for senior participants. Such opportunities may exist, for example, in nutrition education classes or events emphasizing the importance of fresh fruits and vegetables to a healthy diet that may be offered to Food Stamp Program participants who are also participating in the SFMNP, or through food demonstrations and tastings provided as part of a congregate nutrition program funded by the Older Americans Act at a local senior center or farmers' market.

10. Coupon, Market and CSA Program Management (§ 249.10)

This section of the proposed rule outlined the State agency requirements regarding all aspects of coupon, market, and CSA program management in the SFMNP, specifically general responsibilities, agreements, training, monitoring, coupon control and payment, coupon reconciliation, instructions to SFMNP participants, complaints and sanctions, and CSA program management.

The requirements set forth in § 249.10 regarding each of these areas were discussed at length in the preamble to the proposed rule. Five comments were received in general support of the market management and monitoring provisions, and another 2 commenters specifically cited their support for the proposed rule's efforts toward consistency between the SFMNP and the FMNP. Several commenters suggested that the SFMNP be allowed to operate year-round. Once the SFMNP is converted from a competitive grant program to a permanent, State Plan-based program, there is no reason that a SFMNP State agency cannot do so, as long as there are funds available to support the longer program period. Except as noted below, the provisions in this section are retained in this final as proposed.

a. Authorization

As proposed, the State agency would have been responsible for establishing criteria for the authorization of farmers, farmers' markets, and/or roadside stands, as well as the number of outlets that it plans to authorize, as provided in § 249.10. One commenter suggested that State agencies rank farmers, farmers' markets, roadside stands, and/or CSAs by risk factors as part of the authorization process. While FNS does not believe that this should be a regulatory requirement, there is nothing in either the proposed or the final SFMNP rule that would prohibit a State agency from doing so if it believes that such a process will result in a better group of authorized SFMNP outlets. Therefore, these provisions remain unchanged in this final rule.

One commenter expressed opposition to all of the requirements proposed at § 249.10(a) through (e), i.e., everything related to the authorization, training, monitoring, and payment of farmers, farmers' markets, roadside stands, and CSA programs in the SFMNP, and proposed that FNS should be responsible for authorizing all farmers, farmers' markets, roadside stands, and/or CSAs for the SFMNP, rather than individual SFMNP State agencies. The commenter cited as precedent for this proposal the fact that FNS is responsible for authorizing retailers in the Food Stamp Program. However, legislative authority would be necessary for such a provision to be implemented in the SFMNP. Furthermore, it would be extremely difficult for SFMNP State agencies to maintain the degree of individuality that has been a hallmark of this program from the very beginning if FNS were to take on such a responsibility.

b. Agreements

As proposed, Section 249.10(b) outlined the contents of the farmers' market/CSA program agreement. No comments were received in regard to the provisions in this section, so they are retained in this final rule as proposed, with the additional provision allowing bulk purchases as defined at § 249.2.

c. Training

Pursuant to § 249.10(d), as proposed, FNS State agencies must conduct annual training for farmers, farmers' market managers, and (as appropriate) CSA program managers. State agencies have discretion in determining the method used for training purposes. Four commenters suggested that the final rule allow face-to-face training to include phone, videoconference, and/or web-based training. Section 249.10(d) in this final rule is clear in its requirement that all farmers and farmers' market managers who are participating in the SFMNP for the first time must receive interactive training that allows for real-time questions and answers between the State agency trainer and the farmer or farmers' market manager. Such training includes, for example, face-to-face training, videoconference training, and/or web-based training. Alternative methods of training may be used after the first year of program participation, at the State agency's discretion. The points that must be covered in training are listed at § 249.10(d), and are retained in this final rule as proposed.

d. Sanctions

Proposed § 249.10(k) set out a number of provisions related to sanctions that may be applied in the SFMNP. Comment letters were received from four State agencies suggesting that this section be rewritten in such a manner as to leave all fraud and sanction policies and procedures to the discretion of the State agency. FNS believes that the proposed rule offered sufficient flexibility and latitude to allow SFMNP State agencies to tailor the process to the particular needs and characteristics of its own program operations. Therefore, the provisions described in this section are retained in this final rule.

e. Community Supported Agriculture (CSA) Programs

The most significant difference between the FMNP and the SFMNP regarding market management

procedures falls in the area of CSA programs, which are not allowable outlets for program funds in the FMNP. As expected, there were a significant number of comments (44 in all) received in regard to, and largely in support of, CSA program operations and systems. Most of these comments focused on allowing State agencies with existing CSA program models in place to continue operating their programs with virtually no modifications or restrictions. Seventeen commenters supported the inclusion of CSAs in the SFMNP or opposed the implementation of a final rule that favors a coupon-based program over one that uses the CSA model.

A discussion of CSA programs and their unique requirements is provided below.

CSA programs are described in detail in the preamble to the proposed rule. The majority of State agencies that include a CSA program component in their SFMNP operations only do so on a limited basis, in combination with the more traditional coupon model. However, at least two State agencies have operated their SFMNP programs exclusively through the CSA program model since the SFMNP began in FY 2001.

Seven commenters categorically opposed FNS' proposal to restrict CSAs to no more than 50 percent of the State agency's total Federal SFMNP food grant, and another commenter requested further clarification of FNS' intent in establishing such a cap. As explained above, FNS believes that a greater number of low-income eligible seniors can be served through the more traditional coupon system, thereby improving the diets of a larger percentage of this vulnerable population.

One commenter expressed his objections to the limitations proposed for CSA program models. This commenter was of the opinion that Public Law 107–171 affords equal status to farmers' markets, roadside stands, and community supported agriculture programs, and that FNS does not have the discretion to choose those parts of the SFMNP that it wishes to support. This commenter further observed that Congress gave the States discretion to choose among these different delivery models in their development of successful SFMNP programs, and that FNS should not preempt such a state-level responsibility through rulemaking. FNS does not agree with this opinion. It is unquestionably true that no preference was stated or implied in the law for one program model over another, and USDA has made every effort to work with State agencies in the development and success of less traditional program models as well as those to which we may have been more accustomed. This does not mean, however, that FNS is prepared to allow any State agency, regardless of the program model selected, to operate outside the fundamental Program guidelines and expectations that have been developed to assure integrity and accountability. Congress, with the passage of the Farm Bill, did in fact empower FNS to promulgate regulations for the SFMNP that would provide such assurances. The restrictions and limitations that are imposed on CSA program models for the SFMNP in this final rule are based on information collected over the past 5 years of SFMNP operation, and represent FNS' best efforts to prevent as many problems as possible as the SFMNP matures. Therefore, this final rule retains the requirement as proposed.

FNS further proposed to establish at § 249.8(b) one minimum and one maximum benefit level in the SFMNP, regardless of the program model used by the State agency. We recognized the impact of this proposal on the CSA program models in use by SFMNP State agencies around the country. The revised approach to participant benefit levels designed in response to the comments received on this topic is discussed earlier in this preamble and reflected at § 249.8.

In § 249.10(b)(3)(vi), FNS proposed to require that State agencies enter into written agreements with CSA programs, in order to ensure that CSA programs track the value of program benefits actually provided to individual participants and the remaining value owed, provide State agencies with access to such a tracking system, and ensure that the value of program benefits provided is consistent with program requirements addressing minimum and maximum benefit levels for each participant. None of the commenters addressed these requirements, and they are retained in this final rule as proposed.

Finally, 2 SFMNP State agencies have used a portion of their grants to purchase CSA program shares that are then used to supplement meals served at congregate feeding sites. Such a practice was technically allowable under the SFMNP competitive grants, primarily because there were no legislative or regulatory provisions to prevent it and the grants provided an opportunity to look at various program models. However, it is not consistent with the underlying intent of the SFMNP, which is to provide individual low-income seniors with a resource that benefits their diets directly, rather than through any type of congregate feeding program. Therefore, at § 249.12(a)(3), FNS proposed that the use of any SFMNP funds to supplement congregate meal programs would be specifically prohibited. A total of 21 commenters wrote to protest this prohibition. However, FNS believes that adherence to the fundamental intent of the SFMNP cannot be ensured without such a restriction, and is retaining this provision as set forth in the proposed rule.

11. Financial Management System (§ 249.11)

This section of the proposed rule set forth FNS' specific requirements that would ensure the prompt and accurate payment or allowable costs in the SFMNP, as well as the allowability and allocability of costs in accordance with established general accounting and management procedures. Only one comment was received regarding this section, expressing general support for its provisions. Therefore, this section is retained in its entirety as proposed.

12. SFMNP Costs (§ 249.12)

a. Administrative Funding

The proposed SFMNP rule contained a provision that would have allowed a State agency to use up to 8 percent of its total Federal grant to defray administrative costs associated with the SFMNP, as described at § 249.12(a)(1)(i). Nearly 40 comments were received in opposition to the 8 percent administrative allowance, citing the extensive increase in administrative requirements for State and local agencies as well as the inequity between the administrative cost allowance for the FMNP and the proposed level for the SFMNP—a problem for the many State agencies that administer both programs. Based on commenters' suggestions, FNS has increased the maximum administrative allowance for the SFMNP in this final rule to 10 percent of the State agency's total Federal grant. This position is consistent with OMB Circular A–87 and the mission of this Agency to provide a level of administrative funding to help reasonably offset the costs for administering the program.

Eleven commenters also suggested that FNS should secure additional Federal funds for the SFMNP to cover the administrative allowance. This is not an issue that can be addressed through the regulatory process.

b. Food and Administrative Costs

As proposed, this section of the rule defined allowable and unallowable costs for the SFMNP, and defined specified allowable SFMNP costs. No comments were received that specifically addressed this section. It is retained in the final rule as proposed.

13. SFMNP Income (§ 249.13)

As proposed, this section defined program income for the SFMNP as gross income the State agency earns from grant-supported activities, and established procedures for its use and documentation. No comments were received that specifically addressed this section. It is retained in the final rule as proposed.

14. Distribution of Funds to State Agencies (§ 249.14)

In order to grandfather in those State agencies currently participating in the SFMNP competitive grant program, as previously discussed in Section 5 of this preamble, Selection of State Agencies, it was necessary to establish some fundamental principles for the allocation of SFMNP funds. The preamble to the proposed rule provided a comprehensive description of FNS' proposal for allocating both base grants and any SFMNP funds that might be available for expansion once the base grants are fulfilled. Briefly, SFMNP base grant levels would be based on the prior fiscal year's grant levels (rather than the prior year's expenditures); in the event that the amount of funding available to the SFMNP in any fiscal year is not sufficient to maintain the prior year funding levels for each participating SFMNP State agency, each State's grant would be ratably reduced by FNS. Once the base grants have been satisfied, any remaining funds that are available to the SFMNP will be allocated so that 75 percent of the remaining funding would be available to currently participating State agencies to expand their existing programs, and 25 percent would be available to State agencies with approved State plans that have not previously participated in the SFMNP. If either amount is greater than the amount necessary to satisfy requests for that category (i.e., current State agencies or new State agencies), the unallocated amount is then applied toward satisfying any unmet need in the other category.

Most of the 15 commenters that addressed these provisions were supportive of the base grant provision, but opinions were divided regarding the division of available funds after base grant commitments are met; one commenter specifically supported the 75/25 split, and 3 commenters suggested a 50/50 split instead. Other comments included a recommendation to give preference to new State agencies over current ones, and 3 commenters stated that SFMNP funding is not proportionally allocated and that all State agencies should have an equal chance to secure funds for the SFMNP at the beginning of each year. However, FNS continues to believe that the funding allocation process set forth in the SFMNP proposed rule is the most logical and equitable process for the disbursal of SFMNP funds. Thus, these provisions are retained in this final rule as proposed.

It was also suggested that SFMNP funds should be made available to all interested State agencies and ITOs, and that funding should be increased for the SFMNP. As indicated earlier in this section, these are not matters that can be addressed through the promulgation of program regulations.

Finally, 4 commenters suggested that a timeline for base grant and expansion funding allocations be set out in the SFMNP regulations. FNS will allocate the funds as soon as they become available. No changes have been made in this final rule to address this commitment.

15. Closeout Procedures (§ 249.15)

As proposed, this section required SFMNP State agencies to submit a final closeout report to FNS for each fiscal year, and set forth the specific procedures to be followed when a SFMNP grant to a State agency is terminated. No comments were received that specifically addressed this section. It is retained in this final rule as proposed.

16. Administrative Appeal of State Agency Decisions (§ 249.16)

As proposed, SFMNP State agencies are required to provide a hearing procedure whereby any entity (applicants, participants, local agencies and farmers, farmers' markets, roadside stands, and/or CSA programs) adversely affected by certain actions of the State agency may appeal those actions. This section provided a list of the adverse actions that may be appealed. It also set out the procedures that must be followed when an appeal is requested, and clarifies that appealing an adverse action does not relieve the entity that has been permitted to continue in the SFMNP while its appeal is pending from responsibility for continued compliance with the terms of the written agreement or contract with the State agency. Finally, as proposed, § 249.16 required that the State agency explain the appellant's right to judicial review of any State level decision rendered against the appellant, and set forth additional proposed appeals procedures for State agencies that authorize farmers' markets rather than individual farmers.

Three comments were received that objected to the provisions in this section as too burdensome, and suggested that a less formal system be permitted. FNS does not agree with these comments. The requirements set forth regarding a formal hearing process for participants are necessary to ensure due process for any participant against whom an adverse action has been taken, and as such are critically important to protecting the rights of all participants. Therefore, the requirements set forth in the proposed rule are retained in this final rule.

17. Management Evaluations and Reviews (§ 249.17)

This section of the proposed rule would have required FNS and each SFMNP State agency to establish a management evaluation system in order to assess the accomplishment of SFMNP objectives, the State Plan, and the written agreement with FNS. No comments were received that specifically addressed this section. Therefore, the monitoring requirements are retained in this final rule as proposed.

18. Audits (§ 249.18)

As proposed, this section set forth the specific audit requirements for SFMNP State agencies. No comments were received that specifically addressed this section. It is retained in this final rule as proposed.

19. Investigations (§ 249.19)

Under this section of the proposed rule, FNS would be allowed to make an investigation of any allegation of noncompliance with the SFMNP regulations and FNS guidelines and instructions. As proposed, this section also requires that the identity of every complainant be kept confidential to the maximum extent possible. No comments were received that specifically addressed this section. It is retained in this final rule as proposed.

20. Claims and Penalties (§ 249.20)

As proposed, this section established procedures for the assessment of claims against a State agency, established the conditions under which interest would accrue on any unpaid claim against a State agency, and set out mandatory penalties for embezzlement, willful

misapplication, theft, or fraudulent acquisition of SFMNP funds. No comments were received that specifically addressed the provisions related to claims and interest charges against State agencies (§ 249.20(a) and (b)). These provisions are retained in this final rule as proposed.

Although no comments were received on the provision concerning penalties for embezzlement, willful misapplication, theft, or fraudulent acquisition (§ 249.20(c)), upon further review, we do not believe these provisions are authorized by the SFMNP legislation. The provisions proposed at § 249.20(c) are therefore deleted from the final rule. It should be noted, however, that the actions specified in the proposed rule are punishable under other Federal and State criminal laws.

21. Procurement and Property Management (§ 249.21)

The requirements in this section were proposed by FNS to ensure that all materials and services are obtained for the SFMNP in an effective manner and in compliance with the provisions of applicable law and executive orders. No comments were received that specifically addressed this section. It is retained in this final rule as proposed.

22. Nonprocurement/Suspension, Drug-Free Workplace, and Lobbying Restrictions (§ 249.22)

Under the proposed rule, SFMNP State agencies were required to ensure compliance with the requirements of FNS' regulations governing nonprocurement debarment and suspension, drug-free workplace, and FNS' regulations governing restrictions on lobbying, where applicable. No comments were received that specifically addressed this section. It is retained in this final rule as proposed.

23. Records and Reports (§ 249.23)

As proposed, this section set forth FNS' requirements to ensure that each SFMNP State agency maintains full and complete records concerning SFMNP operations, including the types of records that must be maintained, retention requirements for such records, and provisions addressing the access and availability of such records. It also required State agencies to submit financial and SFMNP performance data on a yearly basis as specified by FNS, and identified the minimum data that must be provided in such reports. In response to a technical comment, the words ''and type''are removed from § 249.23(b)(1) of the final rule; they are not applicable to the SFMNP.

24. Data Safeguarding Requirements (§ 249.24)

This section of the proposed rule would affirm the Department's commitment to protecting the privacy of SFMNP applicants and participants by restricting the use or disclosure of information obtained from SFMNP applicants and participants to individuals directly connected with the operation or enforcement of the SFMNP, representatives of public organizations that administer food, nutrition, or other assistance programs serving persons categorically eligible for the SFMNP when written agreements with such organizations are in place, and the Comptroller General of the United States, for audit purposes. Although no comments were received that specifically addressed this section, it has been slightly revised and renamed for clarity.

25. Other Provisions (§ 249.25)

Section 249.25(a) of the proposed rule clarified that participation in the SFMNP did not preclude a participant from participating in food or nutrition assistance programs for which she/he may also be eligible. Two commenters wrote to support this provision. No other comments were received that specifically addressed this section. It is retained in this final rule as proposed.

26. SFMNP Information (§ 249.26)

This section lists the seven Regional offices of FNS, provides their contact information, and identifies the State agencies that are covered by each one.

27. OMB Control Number (§ 249.27)

The information collections in this rule are being reviewed by OMB and will not be effective until they have received OMB approval. Once they have received OMB approval, FNS will publish a notice in the **Federal Register**.

List of Subjects in 7 CFR Part 249

Aging, Community supported agriculture programs, Elderly, Farmers, Farmers' markets, Food assistance programs, Food donations, Grant programs, Nutrition education, Public assistance programs, Seniors, Social programs.

■ Accordingly, 7 CFR part 249 is added to read as follows:

PART 249—SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP)

Subpart A—General

Sec.

249.1 General purpose and scope.
249.2 Definitions.
249.3 Administration.

Subpart B—State Agency Eligibility

249.4 State plan.
249.5 Selection of new State agencies.

Subpart C—Participant Eligibility

249.6 Participant eligibility.
249.7 Nondiscrimination.

Subpart D—Participant Benefits

249.8 Level of benefits and eligible foods.
249.9 Nutrition education.

Subpart E—State Agency Provisions

249.10 Coupon, market, and CSA program management.
249.11 Financial management system.
249.12 SFMNP costs.
249.13 Program income.
249.14 Distribution of funds to State agencies.
249.15 Closeout procedures.
249.16 Administrative appeal of State agency decisions.

Subpart F—Monitoring and Review of State Agencies

249.17 Management evaluations and reviews.
249.18 Audits.
249.19 Investigations.

Subpart G—Miscellaneous Provisions

249.20 Claims and penalties.
249.21 Procurement and property management.
249.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.
249.23 Records and reports.
249.24 Data safeguarding requirements.
249.25 Other provisions.
249.26 SFMNP information.
249.27 OMB control number. [Reserved]

Authority: 7 U.S.C. 3007.

Subpart A—General

§ 249.1 General purpose and scope.

(a) This part announces regulations under which the Secretary of Agriculture shall carry out the Senior Farmers' Market Nutrition Program (SFMNP). The purposes of the SFMNP are to:

(1) Provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs from farmers' markets, roadside stands, and community supported agriculture (CSA) programs to low-income seniors;

(2) Increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and CSAs; and

(3) Develop or aid in the development of new and additional farmers' markets, roadside stands, and CSAs.

(b) These goals will be accomplished through payment of cash grants to approved State agencies. The SFMNP shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011, *et seq.*), and to any other Federal or State food or nutrition assistance program under which foods are distributed to needy families in lieu of food stamps.

§ 249.2 Definitions.

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

Administrative costs means those direct and indirect costs (as defined in—249.12(a)(1)(ii)), exclusive of food costs, which State agencies determine to be necessary to support SFMNP operations. Administrative costs include, but are not limited to, the costs associated with administration and start-up; the provision of nutrition education; SFMNP coupon issuance; participant education covering coupon redemption procedures; eligibility determinations; outreach services; printing SFMNP coupons, processing redeemed coupons, and training farmers, market managers, and/or farmers who operate CSA programs on the food delivery system; monitoring and reviewing program operations; required reporting and recordkeeping; determining which local sites will be utilized; recruiting and authorizing farmers, farmers' markets, roadside stands, and/or CSA programs to participate in the SFMNP; preparing contracts for farmers, farmers' markets, roadside stands, and/or CSA programs; developing a data processing system for redemption and reconciliation of coupons; designing program training and informational materials; and coordinating SFMNP implementation responsibilities between designated administering agencies.

Bulk purchase means a program model in which bulk quantities of certain produce items, such as apples or sweet potatoes, are purchased directly from authorized farmers by the State agency, and are then equitably divided among and distributed directly to eligible SFMNP participants, either at a central distribution point (such as a local senior center) or through some type of home delivery network.

Community supported agriculture (CSA) program means a program under which a farmer or group of farmers grows food for a group of shareholders (or subscribers) who pledge to buy a portion of the farmer's crop(s) for that season. State agencies may purchase shares or subscribe to a community supported agriculture program on behalf of individual SFMNP participants.

Compliance buy means a covert, on-site investigation in which a SFMNP representative poses as a SFMNP participant or authorized representative and attempts to transact one or more SFMNP coupons, or, in the case of CSA programs, attempts to obtain eligible foods purchased with SFMNP funds at a distribution site.

Coupon means a check or other negotiable financial instrument by which benefits under the program are transferred to program participants.

Days means calendar days.

Department means the U.S. Department of Agriculture.

Distribution site means the location where packages of eligible foods are assembled for and/or distributed to SFMNP participants who are shareholders in CSA programs.

Eligible foods means fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Dried fruits or vegetables, such as prunes (dried plums), raisins (dried grapes), sun-dried tomatoes, or dried chili peppers are not considered eligible foods. Potted fruit or vegetable plants, potted or dried herbs, wild rice, nuts of any kind (even raw), honey, maple syrup, cider, seeds, eggs, meat, cheese and seafood are also not eligible foods for purposes of the SFMNP.

Farmer means an individual authorized to sell eligible foods at participating farmers' markets and/or roadside stands, and through CSAs. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the SFMNP. A participating State agency has the option to authorize individual farmers or farmers' markets, roadside stands, and/or CSA programs.

Farmers' market means an association of local farmers who assemble at a defined location for the purpose of selling their produce directly to consumers.

Federally recognized Indian tribal government means the same as the definition of that term found at § 3016.3 of this chapter, i.e., the governing body or a governmental agency of any Indian tribe, band, organization, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by the Secretary through the Bureau of Indian Affairs.

Fiscal year means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

FNS means the Food and Nutrition Service of the U.S. Department of Agriculture.

Food costs means the cost of eligible foods purchased at authorized farmers' markets, roadside stands, and/or through bulk purchases or CSA programs.

Household means a group of related or nonrelated individuals who are living together as one economic unit.

Local agency means any nonprofit entity or local government agency that certifies eligible participants, issues SFMNP coupons, arranges for distribution of eligible foods through CSA programs, and/or provides nutrition education or information on operational aspects of the Program to SFMNP participants.

Locally grown means grown within State borders. If the State agency chooses, *locally grown* may also mean grown in areas of States adjacent to that State, as long as such areas are part of the United States.

Nonprofit agency means a private agency that is exempt from the payment of Federal income tax under the Internal Revenue Code of 1986, as amended (26 U.S.C. 1, *et seq.*).

Nutrition education means:

(1) Individual or group sessions; and

(2) The provision of relevant materials, in keeping with the individual's personal, cultural, and socioeconomic preferences and the Dietary Guidelines for Americans, that:

(i) Emphasize relationships between nutrition and health; and

(ii) Encourage participants to build healthful eating patterns, and to take action for good health.

OIG means FNS' Office of Inspector General.

Participant means a person or household who meets the eligibility requirements of the SFMNP and to whom coupons or equivalent benefits have been issued.

Program or SFMNP means the Senior Farmers' Market Nutrition Program authorized by Section 4402 of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 3007.

Proxy means an individual authorized by an eligible senior to act on the senior's behalf, including application for certification, receipt of SFMNP

coupons or other benefits, use of SFMNP coupons at authorized outlets, and/or acceptance of SFMNP foods provided through a CSA program, as long as the SFMNP benefits are ultimately received by the eligible senior. The terms *proxy* and *authorized representative* may be used interchangeably for purposes of this program.

Roadside stand means a location at which an individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers' market or through a CSA program. The term *roadside stand* may be used interchangeably with the term *farmstand* as defined in § 248.2 of this chapter.

Senior means an individual 60 years of age or older, or as defined in § 249.6(a)(1).

SFPD means the Supplemental Food Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

Shareholder means a SFMNP participant for whom a full or partial share in a community supported agriculture program has been purchased by the State agency, and who receives SFMNP benefits in the form of actual eligible foods rather than coupons that must be exchanged for eligible foods at farmers' markets and/or roadside stands.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and as applicable, American Samoa or the Commonwealth of the Northern Marianas.

State agency means the agriculture, aging, or health department, or any other agency approved by the Chief Executive Officer of the State that has administrative responsibility for the SFMNP; an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by FNS of the Interior and that has an ongoing relationship with such tribes, bands, or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service, a division of FNS of Health and Human Services.

State Plan means a plan of SFMNP operation and administration that describes the manner in which the State agency intends to implement, operate and administer all aspects of the SFMNP within its jurisdiction in accordance with § 249.4.

WIC means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

WIC Farmers' Market Nutrition Program (FMNP) means the nutrition assistance program authorized by Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)), to provide resources to women, infants, and children who are nutritionally at risk, in the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets; to expand the awareness and use of farmers' markets; and to increase sales at such markets.

§ 249.3 Administration.

(a) *Delegation to FNS.* Within FNS, FNS shall act on behalf of the Department in the administration of the SFMNP. Within FNS, SFPD and the FNS Regional Offices are responsible for SFMNP administration. FNS shall provide assistance to State agencies and evaluate all levels of SFMNP operations to ensure that the goals of the SFMNP are achieved in the most effective and efficient manner possible.

(b) *Delegation to State agency.* The State agency is responsible for the effective and efficient administration of the SFMNP in accordance with the requirements of this Part; the requirements of FNS' regulations governing nondiscrimination (parts 15, 15a and 15b of this title), administration of grants (part 3016 of this title), nonprocurement debarment/suspension (part 3017 of this title), drug-free workplace (part 3021 of this title), and lobbying (part 3018 of this title); FNS guidelines; FNS Instructions issued under the FNS Directives Management System; and Office of Management and Budget Circular A–130 (For availability of OMB Circulars referenced in this section, see 5 CFR 1310.3). The State agency shall provide guidance to cooperating State and local agencies on all aspects of SFMNP operations. State agencies may operate the SFMNP locally through nonprofit organizations or local government entities and must ensure coordination among the appropriate agencies and organizations.

(c) *Agreement and State Plan.* Each State agency desiring to administer the SFMNP shall annually submit a State Plan of Operations and enter into a written agreement with FNS for administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this Part. If the State agency administers both the SFMNP and the WIC Farmers' Market Nutrition Program (FMNP), one consolidated State Plan may be submitted for both programs, in accordance with guidance provided by FNS.

(d) *Coordination with other agencies.* The Chief Executive Officer of the State shall ensure coordination between the designated administering State agency and any other State, local, or nonprofit agencies or entities involved in administering any aspect of the SFMNP by ensuring that the agencies enter into a written agreement or letter/memorandum of understanding. The written agreement or letter/memorandum of understanding must delineate the responsibilities of each agency, describe any compensation for services, and must be signed by the designated representative of each agency. This agreement must be submitted each year along with the State Plan.

(e) *State staffing standards.* Each State agency shall ensure that sufficient staff is available to administer the SFMNP efficiently and effectively. This shall include, but not be limited to, sufficient staff to identify and certify eligible SFMNP participants, provide program information and nutrition education to participants, and oversee coupon, market, and/or CSA program management, fiscal reporting, monitoring, and training. The State agency shall provide in its State Plan an outline of administrative staff and job descriptions for staff whose salaries will be paid from program funds.

Subpart B—State Agency Eligibility

§ 249.4 State Plan.

(a) *Requirements.* By November 15 of each year, each applying or participating State agency shall submit to FNS for approval a State Plan for the following year as a prerequisite to receiving funds under this section. If the State agency administers both the SFMNP and the FMNP, one consolidated State Plan may be submitted for both programs, in accordance with guidance provided by FNS. The State Plan must be signed by the State-designated official responsible for ensuring that the Program is operated in accordance with the State Plan. FNS will provide written approval or denial of a completed State Plan or amendment within 30 days of receipt. Portions of the State Plan that do not change annually need not be resubmitted. However, the State agency shall provide the title of the sections that remain unchanged, as well as the year of the last Plan in which the sections were submitted. At a minimum, the Plan must include the following items, which must include sufficient detail to demonstrate the State agency's ability to meet the requirements of the SFMNP:

(1) A copy of the agreement between the designated administering State agency and any other cooperating State, local, or nonprofit agencies or organizations for services such as certification of eligible participants, issuance of SFMNP coupons or benefits, and/or nutrition education, as required in § 249.3(d).

(2) A description of the State agency's procedures for identifying and certifying eligible SFMNP participants, including the specific age and income criteria that will be used to determine SFMNP eligibility.

(3) An estimated number of participants for the fiscal year, and proposed months of operation.

(4) A detailed budget for the SFMNP, including:

(i) The minimum amount necessary to operate the SFMNP;

(ii) A description of the Federal and non-Federal funds that will be used to operate the Program; and

(iii) An assurance that no more than 50 percent of the Federal SFMNP grant will be used to support a CSA program model for the delivery of SFMNP benefits.

(5) An outline of administrative staff and job descriptions.

(6) A detailed description of the SFMNP recordkeeping system including, but not limited to, the system for maintaining separate records for SFMNP funds pertaining to financial operations, coupon issuance and redemption, authorization of farmers, markets, and/or CSA programs, distribution of eligible foods through CSA programs, and SFMNP participation.

(7) A detailed description of the State agency's financial management system, including how the system will provide accurate, current and complete disclosure of the program's financial status and required reports.

(8) A detailed description of the service area, including:

(i) The number and addresses of authorized farmers, farmers' markets, roadside stands, and community supported agriculture programs that participated in the SFMNP during the prior year; and

(ii) SFMNP certification/issuance sites (such as senior centers or senior housing facilities), including a map outlining the service area and proximity of markets, roadside stands, and/or community supported agriculture programs to certification/issuance or distribution sites that participated in the SFMNP during the prior year.

(9) A description of the coupon issuance system including:

(i) A description of how the State agency will target areas with the highest concentrations of eligible persons and greatest access to farmers' markets and/or roadside stands;

(ii) The benefit level per participant, or household if benefits are issued on a household basis, including:

(A) How coupons will be issued;

(B) The value of benefits provided to each participant or household at each issuance during the year;

(C) The frequency of coupon issuance; and

(D) The total amount of SFMNP benefits issued to each participant or household during the year.

(iii) A method for instructing participants on the proper use of SFMNP coupons and the purpose of the SFMNP;

(iv) A method for ensuring that SFMNP coupons are issued only to eligible participants; and

(v) A method for preventing and identifying dual participation, in accordance with § 249.6(d)(1).

(10) If the agency is using a ''paperless'' system, i.e., a system that does not issue actual coupons, a complete description of how such a system will be operated in a manner that ensures the integrity of SFMNP funds and benefits.

(11) A detailed description of the SFMNP coupon redemption process including:

(i) The procedures for ensuring the secure transportation and storage of SFMNP coupons;

(ii) A system for identifying and reconciling SFMNP coupons; and

(iii) The timeframes for SFMNP coupon redemption by participants, submission for payment by farmers or authorized outlets (farmers' markets and/or roadside stands), and payment by the State agency.

(12) A description of the State agency's CSA program, if applicable, including:

(i) How the State agency will target and select community supported agriculture programs designed to provide SFMNP benefits to eligible participants;

(ii) The annual benefit amount per participant or household, if benefits are issued on a household basis;

(iii) How CSA program contracts are developed, negotiated, and executed by the State agency;

(iv) How CSA program shares are allocated to eligible SFMNP participants;

(v) A method for instructing participants and farmers participating in the CSA program on the purpose of the SFMNP, and the procedures for delivery and distribution of eligible foods provided for the SFMNP through the CSA;

(vi) A system to ensure receipt by eligible participants of eligible foods provided through a CSA program. Such a system should include a written receipt or distribution log, with the participant's signature (or that of the eligible participant's proxy, if proxies are allowed) and the date of each distribution;

(vii) The payment procedures for the CSA program(s) used by the State agency;

(viii) How the State agency ensures that the full value of eligible foods for which it has contracted is provided regularly throughout the SFMNP season;

(ix) A listing of delivery dates and distribution sites for CSA program-provided eligible foods; and

(x) A system for ensuring that each SFMNP shareholder receives an equitable amount of eligible foods at each delivery, and that the total value of the eligible foods provided under the SFMNP falls within the minimum and maximum Federal SFMNP benefit levels, as specified in § 249.8(b).

(13) A complete description of age- and circumstance-appropriate nutrition education to be provided to SFMNP participants, including:

(i) The agencies that will provide the nutrition education;

(ii) The format(s) in which the nutrition education will be provided; and

(iii) The locations where nutrition education is likely to be provided.

(14) A detailed description of the State agency's system for managing its coupon, market, and CSA program management systems, including:

(i) The criteria for authorizing farmers' markets, roadside stands, and/or community supported agriculture programs, including the agency responsible for authorization;

(ii) The procedures for training farmers, market managers, and/or CSA program farmers at authorization, and annually thereafter;

(iii) The procedures for monitoring farmers' markets, roadside stands, and/or community supported agriculture programs;

(iv) A description of the State agency's system for identifying high-risk farmers and farmers' markets, roadside stands, and/or community supported agriculture programs, as set forth at § 249.10(e)(2)(ii);

(v) The procedures for sanctioning farmers, farmers' markets, roadside stands, and/or community supported agriculture programs;

(vi) A facsimile of the SFMNP coupon, including the denominations of

coupons that will be issued, and a clear indication of where the participant/proxy and (if applicable) farmer are required to sign, stamp, or otherwise endorse the coupon before it can be redeemed;

(vii) A complete listing of the fresh, nutritious, unprepared fruits, vegetables, and herbs eligible for purchase under the SFMNP;

(viii) A description of SFMNP coupon replacement policy or statement that coupons will not be replaced; and

(ix) The State agency's procedures for handling participant and farmer/farmers' market, roadside stands, and CSA program complaints.

(15) A system for ensuring that SFMNP coupons are redeemed only by authorized farmers/farmers' markets/roadside stands, and only for eligible foods.

(16) A system for identifying SFMNP coupons that are redeemed or submitted for payment outside valid dates or by unauthorized farmers/farmers' markets/roadside stands.

(17) A copy of the written agreement to be used between the State agency and authorized farmers/farmers' markets, roadside stands, and/or CSA programs. In those States that authorize farmers' markets, but not individual farmers, this agreement shall specify in detail the role of and procedures to be used by farmers' markets for monitoring and sanctioning farmers, and the appropriate procedures to be used by a farmer to appeal a sanction or disqualification imposed by a farmers' market.

(18) If available, information on the change in consumption of fresh fruits, vegetables, and herbs by SFMNP participants. This information shall be submitted as an addendum to the State Plan and shall be submitted at a date specified by the Secretary.

(19) If available, information on the effects of the program on farmers' markets, roadside stands, and/or CSA programs. This information shall be submitted as an addendum to the State Plan and shall be submitted at a date specified by the Secretary.

(20) A description of the procedures the State agency will use to comply with the civil rights requirements described in § 249.7(a), including the processing of discrimination complaints.

(21) A copy of the State agency's fair hearing procedures for SFMNP participants and the administrative appeal procedures for local agencies, farmers, farmers' markets, roadside stands, and/or CSA programs.

(22) State agencies that have not previously participated in the SFMNP must provide:

(i) A description of the need for the SFMNP in that State agency;

(ii) The specific goals and objectives of the SFMNP, designed to fulfill the purpose of the Program as set forth in § 249.1; and

(iii) A capability statement that includes a summary description of any prior experience with farmers' market projects or programs, including information and data describing the attributes of such projects or programs.

(23) For State agencies making expansion requests, documentation that demonstrates:

(i) The need for an increase in funding;

(ii) That the use of the increased funding will be consistent with serving eligible SFMNP participants by expanding benefits to more persons, by enhancing current benefits, or a combination of both, and expanding the awareness and use of farmers' markets, roadside stands, and CSA programs;

(iii) The ability of the State agency to operate the existing SFMNP satisfactorily;

(iv) The management capabilities of the State agency to expand; and

(v) Whether, in the case of a State agency that intends to use the funding to increase the value of the Federal benefits received by a participant, the funding provided will increase the rate of coupon redemption.

(b) *Amendments.* At any time after approval, the State agency may amend the State Plan to reflect changes. The State agency shall submit such amendments to FNS for approval. The proposed amendments shall be signed by the State-designated official responsible for ensuring that the SFMNP is operated in accordance with the State Plan. The amendments must be approved by FNS prior to implementation.

(c) *Retention of copy.* A copy of the approved State Plan shall be kept on file at the State agency for public inspection.

§ 249.5 Selection of new State agencies.

In selecting new State agencies, FNS will use objective criteria to rank and approve State plans submitted in accordance with § 249.4. In making this ranking, FNS will consider the amount of funds necessary to operate the SFMNP successfully in the State compared with other States and with the total amount of funds available to the SFMNP, the number of participants estimated to be served, and the projected benefit level. Approval of a State Plan does not equate to an obligation on the part of FNS to fund the SFMNP within that State.

Subpart C—Participant Eligibility

§ 249.6 Participant eligibility.

(a) *Eligibility for certification.* Individuals who are eligible to receive Federal benefits under the SFMNP are those who meet the following criteria:

(1) *Categorical eligibility.* Participants must be not less than 60 years of age, except that State agencies may exercise the option to deem Native Americans who are 55 years of age or older as categorically eligible for SFMNP benefits. State agencies may, at their discretion, also deem disabled individuals less than 60 years of age who are currently living in housing facilities occupied primarily by older individuals where congregate nutrition services are provided, as categorically eligible to receive SFMNP benefits.

(2) *Residency requirement.* The State agency may establish a residency requirement for SFMNP applicants. The State agency may determine a service area for any local agency, and may require that an applicant be residing within the service area at the time of application to be eligible for the Program. However, the State agency may not impose any durational or fixed residency requirements.

(3) *Income eligibility.* The State agency must ensure that local agencies determine income eligibility through the use of a clear and simple application process approved by the State agency. Participants must have a maximum household income of not more than 185 percent of the annual poverty income guidelines, or be determined automatically income eligible based on current participation/eligibility to receive benefits in another means-tested program, as designated by the State agency, for which income eligibility is set at or below 185 percent of the poverty income guidelines and for which documentation of family income is required. FNS will announce the income poverty guidelines annually.

(b) *Documentation of income eligibility.*

(1) *Automatically income eligible applicants.* The State or local agency must require applicants determined to be automatically income eligible to provide documentation of their eligibility to participate in another means-tested assistance program, as designated by the State agency.

(2) *Other applicants.*

(i) The State or local agency must require all other applicants to provide, at a minimum, a signed statement affirming that their household size and income does not exceed the maximum income eligibility standard in use by the State agency.

(ii) If the State agency offers a benefit of more than $50 per participant through a CSA program, it must require documentation of household size and income from all participants receiving the higher benefit level.

(iii) The State agency has the option to require all applicants to provide documentation of family income at certification, and/or to require verification of the information provided by the applicant.

(c) *Certification periods.* Participants may be certified only for the current fiscal year's SFMNP period of operation. Eligibility must be determined at the beginning of each period of operation. Prior fiscal year certifications may not be carried over into subsequent fiscal years, but the State agency may make use of its participant enrollment listings from the prior fiscal year in its outreach efforts for the current fiscal year.

(d) *Participant rights and responsibilities.* Where a significant number or proportion of the population eligible to be served needs information regarding participation in the SFMNP in a language other than English, reasonable steps must be taken to provide this information in the appropriate language(s) to such persons, considering the scope of the Program and the size and concentration of such population(s). In order to inform applicants and participants or their authorized representatives/proxies of SFMNP rights and responsibilities, State/local agencies must provide the following information:

(1) During the certification process, every program applicant or authorized representative must be informed of the illegality of dual participation, i.e., obtaining SFMNP benefits from more than one service delivery area or from more than one SFMNP program model (coupon system and CSA program) within the same service delivery area.

(2) At the time of certification, each SFMNP applicant or authorized representative must read or have read to him or her the following statements or similar statements:

I have been advised of my rights and obligations under the SFMNP. I certify that the information I have provided for my eligibility determination is correct, to the best of my knowledge. This certification form is being submitted in connection with the receipt of Federal assistance. Program officials may verify information on this form. I understand that intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts may result in paying the State agency, in cash, the value of the food benefits improperly issued to me and may subject me to civil or criminal prosecution under State and Federal law.

Standards for eligibility and participation in the SFMNP are the same for everyone, regardless of race, color, national origin, age, disability, or sex.

I understand that I may appeal any decision made by the local agency regarding my eligibility for the SFMNP.

(3) During the certification visit, each participant or authorized representative must:

(i) Receive an explanation of how to use his/her SFMNP coupons at farmers' markets and roadside stands, and/or how SFMNP foods will be provided under the CSA program in that service delivery area; and

(ii) Be advised of the other types of services that are available to SFMNP participants, where such services are located, how they may be obtained, and why they may be useful.

(4) Persons found ineligible for the SFMNP during a certification visit must be advised in writing of their ineligibility, of the reasons for their ineligibility, and of their right to a fair hearing. The reasons for ineligibility must be properly documented and must be retained on file at the local agency. Such notice is not required when participation is denied solely because of lack of sufficient funding to provide SFMNP benefits to all eligible applicants.

(5) When a State or local agency pursues collection of a claim pursuant to § 249.20(c) against an individual who has been issued SFMNP benefits for which she/he is not eligible, the person must be advised in writing of the reason(s) for the claim, the value of the improperly issued benefits that must be repaid, and of his/her right to a fair hearing.

(e) *Certification without charge.* Certification for the SFMNP must be performed at no cost to the applicant or the authorized representative.

(f) *Use of proxies or authorized representatives.* At the State agency's discretion, a senior may designate an authorized representative (proxy) to apply for certification, shop at the farmers' market or roadside stands, and/or pick up their eligible foods from CSA program distribution sites on his/her behalf if the senior is unable to perform these actions. The State agency must obtain a signed statement from the eligible senior designating another individual as his/her authorized representative. A senior who has been certified to receive SFMNP benefits may designate an authorized representative at any point during the program's period of operation.

(g) *Processing standards.* (1) Applicants for the SFMNP must be notified of their eligibility or ineligibility for benefits, or of their placement on a waiting list, as described in paragraph (g)(2) of this section, within 15 days from the date of application.

(2) When all available program benefits have been allocated to eligible participants, and there is a reasonable expectation that additional funds may become available to provide further SFMNP benefits to eligible seniors, the local agency must maintain a waiting list of individuals who contact the local agency to apply for the Program. Individuals must be notified of their placement on a waiting list within 15 days after they contact the local agency to request Program benefits. To enable the local agency to contact these individuals when caseload space becomes available, the waiting list must include the name of the applicant, the date placed on the waiting list, and an address or phone number of the applicant.

(h) *Limitations on certification.* If necessary to limit the number of participants, State agencies may impose additional eligibility requirements, such as limiting participant certification to certain geographic areas. Each State agency must specifically identify these limitations on certification in its State Plan.

§ 249.7 Nondiscrimination.

(a) *Civil rights requirements.* (1) The State agency must comply with the following requirements to ensure that no person shall, on the grounds of race, color, national origin, age, sex or disability, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the SFMNP:

(i) Title VI of the Civil Rights Act of 1964;

(ii) Title IX of the Education Amendments of 1972;

(iii) Section 504 of the Rehabilitation Act of 1973;

(iv) The Age Discrimination Act of 1975;

(v) Department of Agriculture regulations on nondiscrimination (parts 15, 15a and 15b of this title); and

(vi) Applicable FNS Instructions, including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and annual reviews of each local agency's racial and ethnic participation data (as required by title VI of the Civil Rights Act of 1964).

(2) Compliance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of

1975, and regulations and instructions issued thereunder shall include, but not be limited to:

(i) Notification to the public of the nondiscrimination policy and complaint rights of participants and potentially eligible persons, which may be satisfied through FNS' required nondiscrimination statement on brochures and publications;

(ii) Review and monitoring activity to ensure SFMNP compliance with the nondiscrimination laws and regulations; and

(iii) Establishment of grievance procedures for handling participant complaints based on sex and handicap.

(b) *Complaints.* Persons seeking to file discrimination complaints may file them either with the Secretary of Agriculture, or the Director, Office of Civil Rights, USDA, Washington, DC 20250 or with the office established by the State agency to handle discrimination grievances or complaints. All complaints received by State agencies that allege discrimination based on race, color, national origin, or age shall be referred to the Secretary of Agriculture or the Director of the Office of Civil Rights, USDA. A State agency may process complaints that allege discrimination based on sex or disability if grievance procedures are in place.

Subpart D—Participant Benefits

§ 249.8 Level of benefits and eligible foods.

(a) *General.* State agencies must identify in the State Plan the fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs that are eligible for purchase under the SFMNP. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Dried fruits or vegetables, such as prunes (dried plums), raisins (dried grapes), sun-dried tomatoes, or dried chili peppers are not considered eligible foods in the SFMNP. Potted fruit or vegetable plants, potted or dried herbs, wild rice, nuts of any kind (even raw), honey, maple syrup, cider, seeds, eggs, meat, cheese, and seafood are also not eligible for purposes of the SFMNP. ''Locally grown'' means produce grown only within a State's borders but may be defined by State agencies to include border areas in adjacent States. Under no circumstances may produce grown outside of the United States and its territories be considered eligible food.

(b) *The value of the Federal benefits received.* (1) The Federal SFMNP benefit level received by each participant, whether individual or household, may not be less than $20 per year or more than $50 per year, except that:

(i) A State agency that operated the SFMNP in FY 2006 may continue to issue the same level of benefits that was provided to participants in FY 2006, even if the benefit level was less than $20;

(ii) Participants served by a State agency that operated the SFMNP through a CSA program model in FY 2006 may, at the State agency's discretion, continue to receive the same CSA benefit levels that were provided to such participants in FY 2006, subject to the conditions set forth at § 249.14(e)(3), Distribution of Funds; and

(iii) Participants who are participating in the SFMNP through a CSA program may receive a higher total benefit level than participants participating in a check or coupon program model, as long as that level is consistent for all Senior CSA program participants and does not exceed the $50 annual maximum per individual or household, except as provided in paragraph (b)(1) of this section.

(2) The total value of SFMNP benefits provided in a combination of program models, such as coupons/checks and bulk purchase, may not exceed the $50 maximum benefit level set forth in paragraph 249.8(b)(1).

(c) *Participant or household benefit allocation.* (1) All SFMNP participants living in the areas served by the State agency must be offered the same amount of SFMNP benefits, regardless of the program model(s) used by that State agency.

(2) Benefits may be allocated on an individual or on a household basis.

(3) Foods provided are intended for the sole benefit of SFMNP participants and are not meant to be shared with other non-participating household members.

(4) Participants must receive SFMNP benefits free of charge.

§ 249.9 Nutrition education.

(a) *Goal.* Nutrition education shall emphasize the relationship of proper nutrition to good health, including the importance of consuming fruits and vegetables.

(b) *Requirement.* The State agency shall integrate nutrition education into SFMNP operations and may satisfy nutrition education requirements through coordination with other agencies within the State. State agencies wishing to coordinate nutrition education with another State agency or organization must enter into a written cooperative agreement with such agencies to offer nutrition education relevant to the use and nutritional value of foods available to SFMNP participants. In cases where SFMNP participants are receiving relevant nutrition education from an agency other than the administering State agency, the provision of nutrition education is an allowable administrative cost under the SFMNP.

Subpart E—State Agency Provisions

§ 249.10 Coupon, market, and CSA program management.

(a) *General.* This section sets forth State agency responsibilities regarding the authorization of farmers, farmers' markets, roadside stands, and/or CSA programs. The State agency is responsible for the fiscal management of and accountability for SFMNP-related activities for farmers, farmers' markets, roadside stands, and CSA programs. Each State agency may decide whether to authorize individual farmers and farmers' markets separately, or to authorize only farmers' markets. In addition, each State agency may decide whether to authorize roadside stands and/or CSA programs. The State agency may authorize a farmer for participation in a farmers' market, a roadside stand, and/or CSA program simultaneously. All contracts or agreements entered into by the State agency for the management or operation of farmers, farmers' markets, roadside stands, and/or CSA programs shall conform to the requirements of part 3016 of this title.

(1) Only farmers, farmers' markets, and/or roadside stands authorized by the State agency may redeem SFMNP coupons. Only farmers authorized by the State agency, or having a valid agreement with an authorized farmers' market, may redeem coupons. Only CSA programs authorized by the State agency may receive payment from the State agency at the beginning of the planting season, in order to provide eligible foods to senior participants who are shareholders.

(2) The State agency must establish criteria for the authorization of individual farmers and/or farmers' markets, roadside stands, and/or CSA programs. Any authorized farmer, farmers' market, roadside stand and/or CSA program must agree to sell participants only those foods identified as eligible by the State agency. State agencies may determine farmers, farmers' markets and/or roadside stands as automatically authorized to participate in the SFMNP based on current authorization to operate in the FMNP under Part 248 of this chapter. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be

authorized to participate in the SFMNP, except individuals employed by a farmer otherwise qualified under these regulations, or individuals hired by a nonprofit organization to sell produce at roadside stands on behalf of local farmers.

(3) The State agency must ensure that an appropriate number of farmers, farmers' markets, roadside stands, and/or CSA programs are authorized for adequate participant access in the area(s) proposed to be served and for effective management of the farmers, farmers' markets, roadside stands, and/or CSA programs by the State agency.

(4) The State agency may establish criteria to limit the number of authorized farmers, farmers' markets, and/or roadside stands.

(5) The State agency must limit the value of shares awarded to CSA programs to no more than 50 percent of their total Federal SFMNP food grant, except in the case of a State agency that has grandfathered a CSA program model into the permanent SFMNP that uses more than 50 percent of the total Federal SFMNP food grant for the CSA program. The State agency shall make efforts to select the CSA program(s) that provides the greatest variety of eligible foods.

(6) The State agency may purchase bulk quantities of eligible foods directly from authorized farmers. Such foods must then be equitably divided among and distributed directly to eligible SFMNP participants. SFMNP participants who have received checks or coupons to purchase eligible foods earlier in the season may also receive foods through the bulk purchase option as long as the total combined value of the benefits provided to each SFMNP participant does not exceed $50, as stipulated in § 249.8(b).

(7) The State agency shall ensure that training is conducted prior to start up of the first year of SFMNP participation of an individual farmer, farmers' market, roadside stand, and/or CSA program. The training shall include at a minimum those items listed in paragraph (d) of this section, and may be delivered in a variety of methods, including but not limited to classroom settings, telephone conferences, videoconferences, and web-based training modules.

(8) Authorized farmers shall display a sign stating that they are authorized to redeem SFMNP coupons.

(9) Authorized farmers, farmers' markets, roadside stands, and/or CSA programs shall comply with the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (parts 15, 15a and 15b of this title), and FNS Instructions as outlined in § 249.7.

(10) The State agency shall ensure that there is no conflict of interest between the State or local agency and any participating farmer, farmers' market, roadside stand and/or CSA program.

(b) *Farmer, farmers' market, roadside stand, and/or CSA program agreements.* The State agency shall ensure that all participating farmers' markets, roadside stands, and/or CSA programs enter into written agreements with the State agency. State agencies that authorize individual farmers shall also enter into written agreements with the individual farmers. The agreement must be signed by a representative who has legal authority to obligate the farmer, farmers' market, roadside stand, and/or CSA program. Agreements must include a description of sanctions for noncompliance with SFMNP requirements and shall contain, at a minimum, the following specifications, although the State agency may determine the exact wording to be used:

(1) The farmer, farmers' market and/or roadside stand shall:

(i) Provide such information as the State agency may require for its periodic reports to FNS;

(ii) Assure that SFMNP coupons are redeemed only for eligible foods;

(iii) Provide eligible foods at or less than the price charged to other customers;

(iv) Accept SFMNP coupons within the dates of their validity and submit such coupons for payment within the allowable time period established by the State agency;

(v) In accordance with a procedure established by the State agency, mark each transacted coupon with a farmer identifier. In those cases where the agreement is between the State agency and the farmer and/or roadside stand, each transacted SFMNP coupon shall contain a farmer identifier and shall be batched for reimbursement under that identifier. In those cases where the agreement is between the State agency and the farmers' market, each transacted SFMNP coupon shall contain a farmer identifier and be batched for reimbursement under a farmers' market identifier.

(vi) Accept training on SFMNP procedures and provide training to farmers and any employees with SFMNP responsibilities on such procedures;

(vii) Agree to be monitored for compliance with SFMNP requirements, including both overt and covert monitoring;

(viii) Be accountable for actions of farmers or employees in the provision of eligible foods and related activities;

(ix) Pay the State agency for any coupons transacted in violation of this agreement;

(x) Offer SFMNP participants the same courtesies as other customers;

(xi) Comply with the nondiscrimination provisions of USDA regulations as provided in § 249.7; and

(xii) Notify the State agency if any farmer, farmers' market or roadside stand ceases operation prior to the end of the authorization period.

(2) The farmer, farmers' market and/or roadside stand shall neither:

(i) Seek restitution from SFMNP participants for coupons not paid by the State agency; nor

(ii) Issue cash change for purchases that are in an amount less than the value of the SFMNP coupon(s).

(3) The CSA program shall:

(i) Provide such information as the State agency may require for its periodic reports to FNS;

(ii) Assure that SFMNP participants receive only eligible foods;

(iii) Provide eligible foods to their SFMNP shareholders at or less than the price charged to other customers;

(iv) Assure that the shareholder receives eligible foods that are of equitable value and quantity to their share;

(v) Assure that all funds from the State agency are used for planting of crops for SFMNP shareholders;

(vi) Provide to the State agency access to a tracking system that determines the value of the eligible foods provided and the remaining value owed to each SFMNP shareholder;

(vii) Assure that SFMNP shareholders/authorized representatives provide written acknowledgement of receipt of eligible foods;

(viii) Accept training on SFMNP procedures and provide training to farmers and any employees with SFMNP responsibilities for such procedures;

(ix) Agree to be monitored for compliance with SFMNP requirements, including both overt and covert monitoring;

(x) Be accountable for actions of farmers or employees in the provision of eligible foods and related activities;

(xi) Offer SFMNP shareholders the same courtesies as other customers;

(xii) Notify the State agency immediately when the CSA program is experiencing a problem with its crops, and may be unable to provide SFMNP shareholders with the complete amount

of eligible foods agreed upon between the CSA program and the State agency;

(xiii) Comply with the nondiscrimination provisions of USDA regulations as provided in § 249.7; and

(xiv) Notify the State agency if any CSA program ceases operation prior to the end of the authorization period.

(4) The CSA program shall not substitute ineligible produce when eligible foods are not available.

(5) Neither the State agency nor the farmer, farmers' market, roadside stand, and/or CSA program has an obligation to renew the agreement. The State agency or the farmer, farmers' market, roadside stand and/or CSA program may terminate the agreement for cause after providing advance written notification.

(6) The State agency may deny payment to the farmer, farmers' market and/or roadside stand for improperly redeemed SFMNP coupons and may demand refunds for payments already made on improperly redeemed coupons.

(7) The State agency may demand a refund from any CSA program that fails to provide the full benefit to all SFMNP shareholders as specified in its contract, or that provides ineligible foods as substitutes for eligible foods.

(8) The State agency may disqualify a farmer, farmers' market, roadside stand, and/or CSA program for SFMNP violations. The farmer, farmers' market, roadside stand, and/or CSA program has the right to appeal a denial of an application to participate, a disqualification, or a SFMNP sanction by the State agency. Expiration of a contract or agreement with a farmer, farmers' market, roadside stand, and/or CSA program, and claims actions under § 249.20, are not appealable.

(9) A farmer, farmers' market, roadside stand, and/or CSA program, which commits fraud or engages in other illegal activity is liable to prosecution under applicable Federal, State or local laws.

(10) Agreements may not exceed 3 years.

(c) *Agreements with farmers' markets that do not authorize individual farmers.* Those State agencies that authorize farmers' markets but not individual farmers shall require authorized farmers' markets to enter into a written agreement with each farmer within the market that is participating in SFMNP. The State agency must set forth the required terms for the agreement and provide a sample agreement that may be used.

(d) *Annual training for farmers, farmers' market managers and/or farmers that operate a roadside stand or CSA program.* State agencies shall conduct annual training for farmers, farmers' market managers, and/or farmers who operate a CSA program in the SFMNP. The State agency must conduct interactive training for all farmers and farmers' market managers who have never previously participated in the SFMNP. After a farmer/farmers' market manager's first year of SFMNP operation, State agencies have discretion in determining the method used for annual training purposes. At a minimum, annual training shall include instruction emphasizing:

(1) Eligible food choices;

(2) Proper SFMNP coupon redemption procedures, including deadlines for submission of coupons for payment, and/or receipt of payment for CSA programs' distribution of eligible foods;

(3) Equitable treatment of SFMNP participants, including the availability of eligible foods to SFMNP participants that are of the same quality and cost as that sold to other customers;

(4) Civil rights compliance and guidelines;

(5) Guidelines for storing SFMNP coupons safely; and

(6) Guidelines for cancelling SFMNP coupons, such as punching holes or rubber-stamping.

(e) *Monitoring and review of farmers, farmers' markets, roadside stands, CSA programs and local agencies.* The State agency shall be responsible for the monitoring of farmers, farmers' markets, roadside stands, CSA programs and local agencies within its jurisdiction. This shall include developing a system for identifying high risk farmers, farmers' markets, roadside stands, and/or CSA programs, and ensuring on-site monitoring, conducting further investigation, and sanctioning of such farmers, farmers' markets, roadside stands, and/or CSA programs as appropriate. In States where both the SFMNP and the FMNP are in operation, these monitoring/review requirements may be coordinated to avoid duplication. If the same farmers, farmers' markets, and/or roadside stands are authorized for both programs, a review conducted by one program may be counted toward the requirement for the other program.

(1) Where coupon reimbursement responsibilities are delegated to farmers' market managers, farmers' market associations, or nonprofit organizations, the State agency may establish bonding requirements for these entities. Costs of such bonding are not reimbursable administrative expenses.

(2)(i) Each State agency shall rank participating farmers, farmers' markets, roadside stands, and/or CSA programs by risk factors, and shall conduct annual, on-site monitoring of at least 10 percent of farmers, 10 percent of farmers' markets, 10 percent of roadside stands, and 10 percent of the CSA programs or one of each program model, whichever is greater, which shall include those farmers, farmers' markets, roadside stands, and/or CSA programs identified as being the highest-risk.

(ii) Mandatory high-risk indicators include:

(A) A proportionately high volume of SFMNP coupons redeemed by a farmer within a farmers' market or at a single roadside stand (as compared to other farmers within the farmers' market or within the State);

(B) Participant complaints;

(C) In the case of CSA programs, an extended or ongoing inability to provide the full SFMNP benefit to each shareholder as contracted; and

(D) Farmers, farmers' markets, roadside stands, and/or CSA programs in their first year of SFMNP operation. States are encouraged to formally establish other high-risk indicators for identifying potential problems.

(iii) If additional high-risk indicators are established, they must be set forth in the farmers, farmers' market, roadside stand, and/or CSA program agreement and in the State Plan. If application of the high-risk indicators results in fewer than 10 percent of farmers, farmers' markets, roadside stands, and/or CSA programs being designated as high-risk, the State agency shall randomly select additional farmers, farmers' markets, roadside stands, and/or CSA programs to be monitored in order to meet the 10 percent minimum. The high-risk indicators listed above generally apply to a State agency already participating in the SFMNP. A State agency participating in the SFMNP for the first time shall, in lieu of applying the high-risk indicators, randomly select 10 percent of its participating farmers, 10 percent of its participating farmers' markets, 10 percent of its participating roadside stands, and 10 percent of its participating CSA programs or at least one farmers' market, roadside stand, and/or CSA program, whichever is greater, for monitoring visits.

(3)(i) The following shall be documented for all on-site monitoring visits to farmers, farmers' markets, roadside stands, and/or CSA programs, at a minimum:

(A) Names of both the farmer, farmers' market, roadside stand, and/or CSA program and the reviewer;

(B) Date of review;

(C) Nature of problem(s) detected or the observation that the farmer, farmers' market, roadside stand, and/or CSA

program appears to be in compliance with SFMNP requirements;

(D) Record of interviews with participants, market managers, farmers, and/or farmers who operate a CSA program; and

(E) Signature of the reviewer.

(ii) Reviewers are not required to notify the farmer, farmers' market, roadside stand, and/or CSA program of the monitoring visit before, during, or immediately after the visit. The State agency shall do so after a reasonable delay when necessary to protect the identity of the reviewer(s) or the integrity of the investigation.

(iii) In instances where the farmer, farmers' market, roadside stand, and/or CSA program will be permitted to continue participating in the SFMNP after being informed of any deficiencies detected by the monitoring visit, the farmer, farmers' market, roadside stand, and/or CSA program shall provide plans as to how the deficiencies will be corrected.

(4) At least every 2 years, the State agency must review all local agencies within its jurisdiction.

(f) *Control of SFMNP coupons.* The State agency must:

(1) Control and provide accountability for the receipt and issuance of SFMNP coupons;

(2) Ensure that there is secure transportation and storage of unissued SFMNP coupons; and

(3) Design and implement a system of review of SFMNP coupons to detect errors. At a minimum, the errors the system must detect are a missing participant signature (if such signature is required by the State agency), a missing farmer and/or market identification, and redemption by a farmer outside of the valid date. The State agency must have procedures in place to reduce the number of errors in transactions.

(g) *Payment to farmers, farmers' markets, roadside stands, and/or CSA programs.* The State agency must ensure that farmers, farmers' markets, roadside stands, and/or CSA programs are promptly paid for food costs.

(h) *Reconciliation of SFMNP coupons.* The State agency shall identify the disposition of all SFMNP coupons as validly redeemed, lost or stolen, expired, or not matching issuance records. Validly redeemed SFMNP coupons are those that are issued to a valid participant and redeemed by an authorized farmer, farmers' market, and/or roadside stand within valid dates. SFMNP coupons that were redeemed but cannot be traced to a valid participant or authorized farmer, farmers' market, and/or roadside stand shall be subject to claims action in accordance with § 249.20.

(1) If the State agency elects to replace lost, stolen or damaged SFMNP coupons, it must describe its system for doing so in the State Plan.

(2) The State agency must use uniform SFMNP coupons within its jurisdiction.

(3) SFMNP coupons must include, at a minimum, the following information:

(i) The last date by which the participant may use the coupon. This date shall be no later than November 30 of each year.

(ii) A date by which the farmer or farmers' market must submit the coupon for payment. When establishing this date, State agencies shall take into consideration the date financial statements are due to the FNS, and allow time for the corresponding coupon reconciliation that must be done by the State agency prior to submission of financial statements. Financial statements are due to FNS by January 30.

(iii) A unique and sequential serial number.

(iv) A denomination (dollar amount).

(v) A farmer identifier for the redeeming farmer when agreements are between the State agency and the farmer.

(vi) In those instances where State agencies have agreements with farmers' markets, there must be a farmer identifier on each coupon and a market identifier on the cover of coupons that are batched by the market manager for reimbursement.

(i) *Instructions to participants.* Each participant must receive instruction on the redemption of the SFMNP coupons, or participation in a CSA program (where applicable), including, but not limited to:

(1) A list of names and addresses of authorized farmers, farmers' markets, and/or roadside stands at which SFMNP coupons may be redeemed, or procedures on the home-delivery process;

(2) Procedures to designate a proxy;

(3) The name and address of the authorized farmer of the CSA program, and locations of distribution sites;

(4) A description of eligible foods and the prohibition against cash change for SFMNP purchases of eligible foods;

(5) A description of eligible foods that will be provided through the CSA program;

(6) A schedule outlining a timeframe for distribution of the eligible foods from the CSA program; and

(7) An explanation of his/her right to complain about improper farmer, farmers' market, roadside stand, and/or CSA program practices with regard to SFMNP responsibilities and the process for doing so.

(j) *Participant and farmer, farmers' market, roadside stand, and/or CSA program complaints.* The State agency must have procedures that document the handling of complaints from participants and farmers/farmers' markets, roadside stands, and/or CSA programs. Complaints of civil rights discrimination shall be handled in accordance with § 249.7(b).

(k) *Participant and farmer, farmers' market, roadside stand, and/or CSA program sanctions.* (1) The State agency must establish policies which determine the type and level of sanctions to be applied against participants and farmers, farmers' markets, roadside stands, and/or CSA programs based upon the severity and nature of the SFMNP violations observed, and such other factors as the State agency determines appropriate, such as whether repeated offenses have occurred over a period of time. Farmers, farmers' markets, roadside stands, and/or CSA programs may be sanctioned, disqualified, or both, when appropriate. Sanctions may include fines for improper SFMNP coupon redemption and the penalties outlined in § 249.20, in the case of deliberate fraud.

(2) In those instances where compliance purchases are conducted, the results of covert compliance purchases can be a basis for farmer, farmers' market, and/or roadside stand sanctions.

(3) A farmer, farmers' market, roadside stand, and/or CSA program committing fraud or other unlawful activities are liable to prosecution under applicable Federal, State or local laws.

(4) State agency policies must ensure that a farmer that is disqualified from the SFMNP at one market, roadside stand, or CSA program shall not participate in the SFMNP at any other farmers' market, roadside stand or CSA program in the State's jurisdiction during the disqualification period.

(5) State agency policies must ensure that a farmer, farmers' market, roadside stand, and/or CSA program that is disqualified from participating in the WIC Farmers' Market Nutrition Program is also disqualified from participating in the SFMNP in the State's jurisdiction during the disqualification period.

§ 249.11 Financial management system.

(a) *Disclosure of expenditures.* The State agency must maintain a financial management system that provides accurate, current and complete disclosure of the financial status of the SFMNP. This must include an accounting for all property and other

assets and all SFMNP funds received and expended each fiscal year.

(b) *Internal controls.* The State agency shall maintain effective controls over and accountability for all SFMNP funds. The State agency must have effective internal controls to ensure that expenditures financed with SFMNP funds are authorized and properly chargeable to the SFMNP.

(c) *Record of expenditures.* The State agency must maintain records that adequately identify the source and use of funds expended for SFMNP activities. These records must contain, but are not limited to, information pertaining to authorization, receipt of funds, obligations, unobligated balances, assets, liabilities, outlays, and income.

(d) *Payment of costs.* The State agency must implement procedures that ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocability of costs in accordance with the cost principles and standard provisions of this part, part 3016 of this title, and FNS guidelines and Instructions.

(e) *Identification of obligated funds.* The State agency must implement procedures that accurately identify obligated SFMNP funds at the time the obligations are made.

(f) *Resolution of audit findings.* The State agency shall implement procedures that ensure timely and appropriate resolution of claims and other matters resulting from audit findings and recommendations.

(g) *Reconciliation of food instruments.* The State agency must reconcile SFMNP coupons in accordance with § 249.10(h).

(h) *Transfer of cash.* The State agency must establish the timing and amounts of its cash draws against its Letter of Credit in accordance with 31 CFR Part 205.

§ 249.12 SFMNP costs.

(a) *General.* (1) *Composition of allowable costs.* In general, a cost item will be deemed allowable if it is reasonable and necessary for SFMNP purposes and otherwise satisfies allowability criteria set forth in part 3016.22 of this title and this Part. SFMNP purposes include the administration and operation of the SFMNP. Allowable SFMNP costs may be classified as follows:

(i) *Food costs and administrative costs.* Food costs are the costs of eligible foods provided to SFMNP participants. Administrative costs are the costs associated with providing SFMNP benefits and services to participants and generally administering the SFMNP. Specific examples of allowable administrative costs are listed in paragraph (b) of this section. A State agency may use up to 10 percent of its total Federal SFMNP grant to cover administrative costs. Any costs incurred for food and/or administration above the Federal grant level will be the State agency's responsibility.

(ii) *Direct and indirect costs.* Direct costs are food and administrative costs incurred specifically for the SFMNP. Indirect costs are administrative costs that benefit multiple programs or activities, and cannot be identified to any one program or activity without effort disproportionate to the results achieved. In accordance with the provisions of part 3016 of this title, a claim for reimbursement of indirect costs shall be supported by an approved allocation plan for the determination of such costs. An indirect cost rate developed through such an allocation plan may not be applied to a base that includes food costs.

(2) *Costs allowable with prior approval.* A State or local agency must obtain prior approval in accordance with part 3016.22 of this title before charging to the SFMNP any capital expenditures and other cost items designated by part 3016.22 of this title as requiring such approval.

(3) *Unallowable costs.* Costs that are not reasonable and necessary for SFMNP purposes, or that do not otherwise satisfy the cost principles of part 3016.22 of this title, are unallowable. Notwithstanding any other provision of part 3016 of this title or this Part, the cost of constructing or operating a farmers' market is unallowable. The use of SFMNP funds to supplement congregate meal programs is prohibited. Unallowable costs may never be claimed for Federal reimbursement.

(b) *Specified allowable administrative costs.* Allowable administrative costs include the following:

(1) The costs associated with administration and start-up;

(2) The costs associated with the provision of nutrition education that meets the requirements of § 249.9;

(3) The costs of SFMNP coupon issuance, or participant education covering proper coupon redemption procedures;

(4) The cost of eligibility determinations and outreach services;

(5) The costs associated with the coupon and market management process, such as printing SFMNP coupons, processing redeemed coupons, purchasing bags or other containers to be used in home-delivery and bulk purchase operations, and training farmers, market managers, and/or farmers who operate CSA programs on SFMNP operations;

(6) The cost of monitoring and reviewing Program operations;

(7) The cost of SFMNP training;

(8) The cost of required reporting and recordkeeping;

(9) The cost of determining which local sites will be utilized;

(10) The cost of recruiting and authorizing farmers, farmers' markets, roadside stands, and/or CSA programs to participate in the SFMNP;

(11) The cost of preparing contracts for farmers, farmers' markets, roadside stands, and/or CSA programs;

(12) The cost of developing a data processing system for redemption and reconciliation of SFMNP coupons;

(13) The cost of designing program training and informational materials; and

(14) The cost of coordinating SFMNP responsibilities between designated administering agencies.

§ 249.13 Program income.

Program income means gross income the State agency earns from grant supported activities. It includes fees for services performed and receipts from the use or rental of real or personal property acquired with Federal grant funds, but does not include proceeds from the disposition of such property. The State agency must retain Program income earned during the agreement period and use it for Program purposes in accordance with the addition method described in part 3016.25(g)(2) of this title. Fines, penalties or assessments paid by local agencies or farmers, farmers' markets, roadside stands, and/or CSA program are also deemed to be Program income. The State agency must ensure that the sources and applications of Program income are fully documented.

§ 249.14 Distribution of funds to State agencies.

(a) *State Plan and agreement.* As a prerequisite to the receipt of Federal funds, a State agency must have its State Plan approved and must execute an agreement with FNS in accordance with § 249.3(c).

(b) *Distribution of SFMNP funds to previously participating State agencies.* Provided that sufficient SFMNP funds are available, each State agency that participated in the SFMNP in any prior fiscal year shall receive not less than the amount of funds the State agency received in the most recent fiscal year in which it received funding, if it otherwise complies with the requirements established in this Part.

(c) *Ratable reduction.* If amounts appropriated for any fiscal year for

grants under the SFMNP are not sufficient to pay to each previously participating State agency at least an amount as identified in paragraph (b) of this section, each State agency's grant must be ratably reduced. However, to the extent permitted by available funds, each State agency shall receive at least $75,000 or the amount that the State agency received for the most recent prior fiscal year in which the State participated, if that amount is less than $75,000.

(d) *Expansion of participating State agencies and establishment of new State agencies.* Any SFMNP funds remaining for allocation after meeting the requirements of paragraph (b) of this section shall be allocated in the following manner:

(1) Of the remaining funds, 75 percent shall be made available to State agencies already participating in the SFMNP that wish to serve additional participants or increase the current benefit level. If this amount is greater than that necessary to satisfy all State Plans approved for expansion, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(2) of this section.

(2) Of the remaining funds, 25 percent shall be made available to State agencies that have not participated in the SFMNP in any prior fiscal year. If this amount is greater than that necessary to satisfy the approved State Plans for new States, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(1) of this section. FNS reserves the right not to fund every State agency with an approved State Plan.

(e) *Expansion for current State agencies.* In providing funds to State agencies that participated in the SFMNP in the previous fiscal year, FNS must consider on a case-by-case basis the following factors:

(1) Whether the State agency utilized at least 80 percent of its prior year food grant. States that did not spend at least 80 percent of their prior year food grant may still be eligible for expansion funding if, in the judgment of FNS, good cause existed which was beyond the management control of the State, such as severe weather conditions or unanticipated decreases in participant caseload;

(2) Documentation supporting the funds expansion request as outlined in § 249.4(a)(23); and

(3) Whether the State agency currently issues a participant benefit greater than $50. Such State agencies will not be eligible to receive additional SFMNP funds for expansion until the maximum participant benefit no longer exceeds $50.

(f) *Funding of new State agencies.* Funds will be awarded to new SFMNP State agencies in accordance with § 249.5.

(g) *Administrative funding.* A State agency will have available for administrative costs an amount not greater than 10 percent of the total SFMNP funds it receives.

(h) *Recovery of unused funds.* State agencies must return to FNS any unexpended funds made available for a given fiscal year by February 1 of the following fiscal year.

§ 249.15 Closeout procedures.

(a) *General.* State agencies must submit to FNS a final closeout report for the fiscal year on a form prescribed by FNS and on a date specified by FNS.

(b) *Grant closeout procedures.* When grants to State agencies are terminated, the following procedures shall be followed in accordance with part 3016 of this title.

(1) FNS may disqualify a State agency's participation under the SFMNP, in whole or in part, or take such remedies as may be appropriate, whenever FNS determines that the State agency failed to comply with the conditions prescribed in this part, in its Federal-State Agreement, or in FNS guidelines and Instructions. FNS will promptly notify the State agency in writing of the disqualification together with the effective date.

(2) FNS may terminate a grant when both parties agree that continuation under the SFMNP would not produce beneficial results commensurate with the further expenditure of funds.

(3) Upon termination of a grant, the affected agency may not incur new obligations after the effective date of the disqualification, and must cancel as many outstanding obligations as possible. FNS will allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to disqualification, and the State agency shall do the same for farmers, farmers' markets, roadside stands, and/or CSA programs.

(4) A grant closeout shall not affect the retention period for, or Federal rights of access to, SFMNP records as specified in § 249.23(a). The closeout of a grant does not affect the responsibilities of the State agency regarding property or with respect to any SFMNP income for which the State agency is still accountable.

(5) A final audit is not a required part of the grant closeout and should not be needed unless there are problems with the grant that require attention. If FNS considers a final audit to be necessary, it shall so inform OIG. OIG will be responsible for ensuring that necessary final audits are performed and for any necessary coordination with other Federal cognizant audit agencies or State or local auditors. Audits performed in accordance with § 249.18 may serve as final audits providing such audits meet the needs of requesting agencies. If the grant is closed out without an audit, FNS reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

§ 249.16 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby applicants, participants, local agencies and farmers, farmers' markets, roadside stands, and/or CSA programs adversely affected by certain actions of the State agency may appeal those actions.

(1) *What may be appealed.*

(i) An applicant may appeal denial of certification of SFMNP benefits, except that no appeal is available if certification is denied solely because of the lack of sufficient funding to provide SFMNP benefits to all eligible applicants.

(ii) A participant may appeal disqualification/suspension of SFMNP benefits.

(iii) A local agency may appeal an action of the State agency disqualifying it from participating in the SFMNP.

(iv) A farmer, farmers' market, roadside stand, and/or CSA program may appeal an action of the State agency denying its application to participate, imposing a sanction, or disqualifying it from participating in the SFMNP.

(2) *What may not be appealed.* Expiration of a contract or agreement shall not be subject to appeal.

(b) *Time limit for request.* The State or local agency must provide individuals, local agencies, farmers, farmers' markets, roadside stands, and/or CSA programs a reasonable period of time to request a fair hearing. Such time limit must not be less than 30 days from the date the agency mails or otherwise issues the notice of adverse action.

(c) *Postponement pending decision.* An adverse action may, at the State agency's option, be postponed until a decision in the appeal is rendered.

(1) In a case where an adverse action affects a local agency or farmer, farmers' market, roadside stand, and/or CSA program, a postponement is appropriate where the State agency finds that participants would be unduly

inconvenienced by the adverse action. In addition, the State agency may determine other relevant criteria to be considered in deciding whether or not to postpone an adverse action.

(2) Applicants who are denied benefits at initial certification may appeal the denial, but must not receive SFMNP benefits while awaiting the hearing. Participants who appeal the termination of benefits within the period of time provided under paragraph (b) of this section must continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to participants whose certification period has already expired or who become otherwise ineligible for SFMNP benefits. Participants who become ineligible during a certification, or whose certification period expires, may appeal the termination, but must not receive benefits while awaiting the hearing.

(d) *Procedure.* The State agency hearing procedure shall at a minimum provide the participant, local agency or farmer, farmers' market, roadside stand, and/or CSA program with the following:

(1) Written notification of the adverse action, the cause(s) for the action, and the effective date of the action, including the State agency's determination of whether the action shall be postponed under paragraph (c) of this section if it is appealed, and the opportunity for a hearing. Such notification shall be provided within a reasonable timeframe established by the State agency and in advance of the effective date of the action.

(2) The opportunity to appeal the action within the time specified by the State agency in its notification of adverse action.

(3) Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing.

(4) The opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request. The State agency may set standards on how many hearing dates can be scheduled, provided that a minimum of two hearing dates is allowed.

(5) The opportunity to confront and cross-examine adverse witnesses.

(6) The opportunity to be represented by counsel or, in the case of a participant appeal, by a representative designated by the participant, if desired.

(7) The opportunity to review the case record prior to the hearing.

(8) An impartial decision maker, whose decision as to the validity of the State agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the SFMNP. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.

(9) Written notification of the decision in the appeal, within 60 days from the date of receipt of the request for a hearing by the State agency.

(e) *Continuing responsibilities.* When a farmer, farmers' market, roadside stand, CSA program, and/or local agency appeals an adverse action (and is permitted to continue in the SFMNP while its appeal is pending), it continues to be responsible for compliance with the terms of the written agreement or contract with the State agency.

(f) *Judicial review.* If a State level decision is rendered against the participant, local agency, farmer, farmers' market, roadside stand, and/or CSA program and the appellant expresses an interest in pursuing a further review of the decision, the State agency shall explain any further State level review of the decision and any available State level rehearing process. If neither is available or both have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

(g) *Additional appeals procedures for State agencies that authorize farmers' markets and not individual farmers.* A State agency that authorizes farmers' markets and not individual farmers shall ensure that procedures are in place to be used when a farmer seeks to appeal an action of a farmers' market or association denying the farmer's application to participate, or sanctioning or disqualifying the farmer. The procedures shall be set forth in the State Plan and in the agreements entered into by the State agency and the farmers' market and the farmers' market and the farmer.

Subpart F—Monitoring and Review of State Agencies

§ 249.17 Management evaluations and reviews.

(a) *General.* FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of SFMNP objectives as provided under these regulations, the State Plan, and the written agreement with FNS. FNS will:

(1) Provide assistance to State agencies in discharging this responsibility;

(2) Establish standards and procedures to determine how well the objectives of this Part are being accomplished; and

(3) Implement sanction procedures as warranted by State SFMNP performance.

(b) *Responsibilities of FNS.* FNS will establish evaluation procedures to determine whether State agencies carry out the purposes and provisions of this part, the State Plan, and the written agreement with FNS. As a part of the evaluation procedure, FNS will review audits to ensure that the SFMNP has been included in audit examinations at a reasonable frequency. These evaluations shall also include reviews of selected local agencies, and on-site reviews of selected farmers, farmers' markets, roadside stands, and community supported agriculture programs. These evaluations will measure the State agency's progress toward meeting the objectives outlined in its State Plan and the State agency's compliance with these regulations.

(1) FNS may withhold up to 10 percent of the State agency's total SFMNP grant if FNS determines that the State agency has:

(i) Failed, without good cause, to demonstrate efficient and effective administration of its SFMNP; or

(ii) Failed to comply with the requirements contained in this section or the State Plan.

(2) Sanctions imposed upon a State agency by FNS in accordance with this section (but not claims for repayment assessed against a State agency) may be appealed in accordance with the procedures established in § 249.20(a). Before carrying out any sanction against a State agency, the following procedures will be followed:

(i) FNS will notify the chief departmental officer of the administering agency in writing of the deficiencies found and of FNS' intention to withhold administrative funds unless an acceptable corrective action plan is submitted by the State agency to FNS within 45 days after mailing of notification.

(ii) The State agency shall develop a corrective action plan, including timeframes for implementation to address the deficiencies and prevent their future recurrence.

(iii) If the corrective action plan is acceptable, FNS will notify the chief departmental officer of the administering agency in writing within 30 days of receipt of the plan. The letter will advise the State agency of the sanctions to be imposed if the corrective action plan is not implemented

according to the schedule set forth in the approved plan.

(iv) Upon notification from the State agency that corrective action has been taken, FNS will assess such action and, if necessary, perform a follow-up review to determine if the noted deficiencies have been corrected. FNS will then advise the State agency of whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed. Compliance buys can be required if, during FNS management evaluations by regional offices, a State agency is found to be out of compliance with its responsibility to monitor and review farmers, farmers' markets, roadside stands, and community supported agriculture programs.

(v) If an acceptable corrective action plan is not submitted within 45 days, or if corrective action is not completed according to the schedule established in the corrective action plan, FNS may withhold the award of SFMNP administrative funds. If the 45-day warning period ends in the fourth quarter of a fiscal year, FNS may elect not to withhold funds until the next fiscal year. In such an event, FNS will notify the chief departmental officer of the administering State agency.

(vi) If compliance is achieved before the end of the fiscal year in which the SFMNP administrative funds are withheld, the funds withheld may be restored to the State agency. FNS is not required to restore funds withheld beyond the end of the fiscal year for which the funds were initially awarded.

(c) *Responsibilities of State agencies.* The State agency is responsible for meeting the following requirements:

(1) The State agency must establish evaluation and review procedures and document the results of such procedures. The procedures must include, but are not limited to:

(i) Conducting annual monitoring reviews of participating farmers' markets, roadside stands, and community supported agriculture programs. This includes on-site reviews of a minimum of 10 percent of farmers and 10 percent of each type of authorized outlet (farmers' markets, roadside stands, and community supported agriculture programs), and includes those farmers and authorized outlets identified as being at the highest risk. The first year of operation in the SFMNP shall be considered a high-risk indicator. More frequent reviews may be performed, as the State agency deems necessary. In States where both the SFMNP and the WIC Farmers' Market Nutrition Program are in operation, these reviews may be coordinated to avoid duplication. A review by one program may be counted by the other program toward the monitoring requirement, provided that appropriate sanction action is taken for all violations found.

(ii) Conducting monitoring reviews of all local agencies within the State agency's jurisdiction at least once every 2 years. Monitoring of local agencies shall encompass, but not be limited to, evaluation of management, accountability, certification, nutrition education, financial management systems, and coupon and/or CSA program management systems. When the State agency conducts a local agency review outside of the SFMNP season, a review of documents and procedural plans of the SFMNP, rather than actual SFMNP activities, is acceptable.

(iii) Instituting the necessary follow-up procedures to correct identified problem areas.

(2) On its own initiative or when required by FNS, the State agency must provide special reports on SFMNP activities, and take positive action to correct deficiencies in SFMNP operations.

§ 249.18 Audits.

(a) *Federal access to information.* The Secretary of the U.S. Department of Agriculture, the Comptroller General of the United States, or any of their duly authorized representatives, or duly authorized State auditors shall have access to any books, documents, papers, and records of the State agency and their contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *State agency response.* The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FNS as to the action taken or planned regarding the findings. A proposed corrective action plan developed and submitted by the State agency must include specific time frames for its implementation and for completion of the correction of deficiencies and problems leading to the deficiencies.

(c) *Corrective action.* FNS will determine whether SFMNP deficiencies identified in an audit have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a follow-up review, allowing a reasonable time for such corrective action to be taken.

(d) *State sponsored audits.* State and local agencies must conduct independent audits in accordance with parts 3015, 3016 (§ 3016.26 of this title), or 3051 of this title, as applicable. A State or local agency may elect to obtain either an organization-wide audit or an audit of the Program if it qualifies to make such an election under applicable regulations.

§ 249.19 Investigations.

(a) *Authority.* FNS may make an investigation of any allegation of noncompliance with this part and FNS guidelines and instructions. The investigation may include, where appropriate, a review of pertinent practices and policies of any State and local agency, the circumstances under which the possible noncompliance with this Part occurred, and other factors relevant to a determination as to whether the State and local agency has failed to comply with the requirements of this Part.

(b) *Confidentiality.* No State or local agency, participant, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this Part because that person has made a complaint or formal allegation, or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purposes of this Part, including the conducting of any investigation, hearing, or judicial proceeding.

Subpart G—Miscellaneous Provisions

§ 249.20 Claims and penalties.

(a) *Claims against State agencies.* (1) If FNS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any SFMNP funds provided to a State agency for food or administrative purposes were, through State agency negligence or fraud, misused or otherwise diverted from SFMNP purposes, a formal claim will be assessed by FNS against the State agency. The State agency must pay promptly to FNS a sum equal to the amount of the administrative funds or the value of coupons and/or eligible foods so misused or diverted.

(2) If FNS determines that any part of the SFMNP funds received, coupons printed, and/or eligible foods otherwise lost by a State agency were lost as a result of theft, embezzlement, or unexplained causes, the State agency must, on demand by FNS, pay to FNS a sum equal to the amount of the money or the value of the SFMNP funds or coupons/eligible foods so lost.

(3) The State agency will have full opportunity to submit evidence, explanation or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

(4) FNS is authorized to establish claims against a State agency for unreconciled SFMNP coupons, and/or for failure to comply with the terms of duly executed CSA program contracts or agreements. When a State agency can demonstrate that all reasonable management efforts have been devoted to reconciliation and 99 percent or more of the SFMNP coupons issued, or of the eligible foods contracted for delivery by the CSA program, have been accounted for by the reconciliation process, FNS may determine that the reconciliation process has been completed to satisfaction.

(b) *Interest charge on claims against State agencies.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit within 30 days from the date of the first demand letter from FNS, FNS will assess an interest (late) charge against the State agency. Interest accrual shall begin on the 31st day after the date of the first demand letter, bill or claim, and shall be computed monthly on any unpaid balance as long as the debt exists. From a source other than the SFMNP, the State agency shall provide the funds necessary to maintain SFMNP operations at the grant level authorized by FNS.

§ 249.21 Procurement and property management.

(a) *Requirements.* State agencies must comply with the requirements of part 3016 of this title for procurement of supplies, equipment and other services with SFMNP funds. These requirements are adopted for use by FNS to ensure that such materials and services are obtained for the SFMNP in an effective manner and in compliance with the provisions of applicable laws and executive orders.

(b) *Contractual responsibilities.* The standards contained in part 3016 of this title do not relieve the State agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the SFMNP. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State agency may use its own procurement regulations provided that:

(1) Such regulations reflect applicable State and local regulations; and

(2) Any procurements made with SFMNP funds adhere to the standards set forth in part 3016 of this title.

(d) *Property acquired with program funds.* State and local agencies shall observe the standards prescribed in part 3016 of this title in their utilization and disposition of real property and equipment acquired in whole or in part with SFMNP funds.

§ 249.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.

The State agency must ensure compliance with the requirements of FNS' regulations governing nonprocurement debarment/suspension (part 3017 of this title) and drug-free workplace (part 3021 of this title), as well as FNS' regulations governing restrictions on lobbying (part 3018 of this title), where applicable.

§ 249.23 Records and reports.

(a) *Recordkeeping requirements.* Each State agency must maintain full and complete records concerning SFMNP operations. Such records must comply with part 3016 of this title and the following requirements:

(1) Records must include, but not be limited to, information pertaining to certification, financial operations, SFMNP coupon issuance and redemption, authorized outlet (farmers, farmers' markets, and CSA program) agreements, authorized outlet monitoring, CSA program agreements, invoices, delivery receipts, equipment purchases and inventory, nutrition education, fair hearings, and civil rights procedures.

(2) All records must be retained for a minimum of 3 years following the date of submission of the final expenditure report for the period to which the report pertains. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the 3-year period, the records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later. If FNS deems any of the SFMNP records to be of historical interest, it may require the State agency to forward such records to FNS whenever the State agency is disposing of them.

(3) Records for nonexpendable property acquired in whole or in part with SFMNP funds must be retained for three years after its final disposition.

(4) All records must be available during normal business hours for representatives of FNS of the Comptroller General of the United States to inspect, audit, and copy. Any reports resulting from such examinations shall not divulge names of individuals.

(b) *Financial and participant reports.* State agencies must submit financial and SFMNP performance data on a yearly basis as specified by FNS. Such information must include, but shall not be limited to:

(1) Number of participants served with Federal SFMNP funds;

(2) Value of coupons issued and/or eligible foods ordered under CSA programs;

(3) Value of coupons redeemed and/or eligible foods provided to participants under CSA programs; and

(4) Number of authorized outlets by type; i.e., farmers, farmers' markets, roadside stands, and CSA programs.

(c) *Source documentation.* To be acceptable for audit purposes, all financial and SFMNP performance reports must be traceable to source documentation.

(d) *Certification of reports.* Financial and SFMNP reports must be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(e) *Use of reports.* FNS will use State agency reports to measure progress in achieving objectives set forth in the State Plan, and this part, or other State agency performance plans. If it is determined, through review of State agency reports, SFMNP or financial analysis, or an audit, that a State agency is not meeting the objectives set forth in its State Plan, FNS may request additional information including, but not limited to, reasons for failure to achieve these objectives.

§ 249.24 Data safeguarding procedures.

FNS and SFMNP State agencies will take reasonable steps to keep applicant and participant information/records private to the extent provided by law. Such steps include a requirement for each State agency to restrict the use or disclosure of information obtained from SFMNP applicants and participants to:

(a) Persons directly connected with the administration or enforcement of the SFMNP, including persons investigating or prosecuting violations in the SFMNP under Federal, State or local authority;

(b) Representatives of public organizations designated by the chief State agency officer (or, in the case of Indian Tribal governments acting as

SFMNP State agencies, the governing authority) that administer food, nutrition, or other assistance programs that serve persons categorically eligible for the SFMNP. The State agency must execute a written agreement with each such designated organization:

(1) Specifying that the receiving organization may employ SFMNP information only for the purpose of establishing the eligibility of SFMNP applicants and participants for food, nutrition, or other assistance programs that it administers and conducts outreach to SFMNP applicants and participants for such programs; and

(2) Containing the receiving organization's assurance that it will not, in turn, disclose the information to a third party.

(c) The Comptroller General of the United States for audit and examination authorized by law.

§ 249.25 Other provisions.

(a) *No aid reduction.* Any programs for which a grant is received under this part shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 as amended (7 U.S.C. 2011, *et seq.*) and to any other Federal or State food or nutrition assistance program.

(b) *Statistical information.* FNS reserves the right to use information obtained under the SFMNP in a summary, statistical or other form that does not identify particular individuals.

§ 249.26 SFMNP information.

(a) Any person who wishes information, assistance, records or other public material must request such information from the State agency, or from the FNS Regional Office serving the appropriate State as listed below:

(1) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, Northeast Region, 10 Causeway Street, Room 501, Boston, Massachusetts 02222–1066.

(2) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, New Jersey, 08691–1598.

(3) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 61 Forsyth Street, SW., Room 8T36, Atlanta, Georgia 30303.

(4) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FNS, Midwest Region, 77 West Jackson Boulevard—20th floor, Chicago, Illinois 60604–3507.

(5) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, Room 555, Dallas, Texas 75242.

(6) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S. Department of Agriculture, FNS, Mountain Plains Region, 1244 Speer Boulevard, Suite 903, Denver, Colorado 80204.

(7) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, Washington: U.S. Department of Agriculture, FNS, Western Region, 550 Kearny Street, Room 400, San Francisco, California 94108.

(b) Inquiries pertaining to the SFMNP administered by a federally recognized Indian tribal organization (ITO) should be addressed to the FNS Regional Office responsible for the geographic State in which that ITO is located.

§ 249.27 OMB control number. [Reserved]

Dated: December 1, 2006.

Nancy Montanez Johner,

Under Secretary, Food, Nutrition, and Consumer Services.

Note: This appendix will not be published in the Code of Federal Regulations.

Appendix—Regulatory Impact Analysis

1. *Title:* 7 CFR 248: Senior Farmers' Market Nutrition Program (SFMNP).

2. *Statutory Authority:* Farm Security and Rural Investment Act of 2002 (Pub. L. 101–171).

3. *Need and Program History:* Congress established the Senior Farmers' Market Nutrition Program (SFMNP) in Public Law 101–171, Sect. 4401 to (1) provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agriculture programs (CSAs) to low-income seniors; (2) increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and CSA programs; and (3) develop or aid in the development of new and additional farmers' markets, roadside stands, and CSA programs. This final rule provides operating guidelines for the SFMNP, consistent with legislative intent.

The requirements of the final USDA rule for the SFMNP are similar to two USDA interventions: (1) The WIC Farmers' Market Nutrition Program (FMNP), for individuals participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and those individuals on a waiting list for WIC benefits; and (2) the Senior Farmers' Market Nutrition Pilot Program (SFMNPP), administered by USDA as a pilot program in 2001. The SFMNP has been administered by USDA as a competitive grant program since FY 2001. Establishing rules for the SFMNP similar to the FMNP and SFMNP eases the administrative burden for USDA, State agencies, farmers, and program recipients.

Special Nutritional Needs of Seniors

Seniors are a rapidly increasing segment of the population, accounting for 30 percent of the nation's healthcare costs.[1] [2] The health and well-being of the nation's seniors has a substantial impact on the economy. Low-income seniors are at a particularly high nutritional risk. For instance, obesity rates for older adults with lower incomes are much higher than other population groups.[3] Additionally, low-income seniors are found to consume fewer recommended foods from the Food Guide Pyramid and fewer nutrients.[4] Further, in the general elderly population, not taking income into account, a study using USDA's 1994–1996 Continuing Survey of Food Intakes by Individuals (CSFII) found that average intakes of food energy, dietary fiber, vitamins B_6 and E, calcium, magnesium and zinc were lower than recommendations for older Americans.[5]

Consumption of fresh fruits and vegetables is important for all Americans and especially for the elderly who have additional health concerns.[6] ''Scientific evidence shows that consuming the recommended 5 to 9 daily servings of fruits and vegetables helps protect against heart disease and cancer. While there is no estimate for disease-related costs or numbers of deaths attributable to low fruit and vegetable consumption, medical experts, including the Surgeon General, have noted that physical inactivity and poor diet—of which low consumption of fruits and vegetables is a key component—cause diseases that result in the death of more than 300,000 Americans each year.'' [7]

[1] Administration on Aging (AOA), U.S. Department of Health and Human Services. 2000. A Profile of Older Americans: 2000. Washington, DC: USDHHS.

[2] United States Department of Agriculture, Economic Research Service (USDA/ERS) 1998. Factors Affecting Nutrient Intake of the Elderly. Agricultural Economic Report Number 769. Washington, DC: USDA/ERS.

[3] Georgetown University, Center on an Aging Society. ''Obesity Among Older Americans At Risk for Chronic Conditions.'' *http://www.aging-societ.org,* number 10, July 2003.

[4] Guthrie, JF and BH Lin. Overview of the diets of lower- and higher-income elderly and their food assistance options. *Journal of Nutrition Education Behavior, Supplement 1,* March–April 2002.

[5] Gerrior, Shirley A. Dietary Changes in Older Americans from 1977 to 1996: Implications for Dietary Quality. Center for Nutrition Policy and Promotion, *Family Economics and Nutrition Review,* Vol. 12 No. 2, 1999.

[6] Gerrior, Shirley A., 1999.

[7] United States General Accounting Office. Fruits and Vegetables: Enhanced Federal Efforts to Increase Consumption Could Yield Health Benefits for Americans. GAO–02–657, July 2002 (p. 4).

Fruits and vegetables comprise two of the five major food groups in the food guide pyramid. However, the cost of fresh fruits and vegetables may be a barrier for many. In addition to cost constraints, seniors face other obstacles to achieving good health; many seniors live in social isolation, and have limited mobility.[8] [9] [10]

Farmers, Farmers' Markets, Roadside Stands, and Community Supported Agriculture Programs (CSAs)

In addition to increasing seniors' fresh fruit and vegetable consumption, the intent of Congress is also to increase the consumption of agricultural commodities and increase the number of farmers' markets, roadside stands, and CSAs.

The number of farmers' markets in the United States has grown dramatically, increasing 111 percent from 1994 to 2004.[11] According to the National Farmers' Market Directory, in 2004 there were over 3,700 farmers' markets operating in the United States; all 50 States and the Virgin Islands operate farmers' markets. The number of farmers' markets operating in States varies widely, from 6 in Delaware to 444 in California.[12] According to the 2000 USDA Farmers Market Study Statistics, 19,000 farmers reported selling their produce only at farmers' markets.[13] Further, 58 percent of markets participate in WIC FMNP, food stamps, local and/or State nutrition programs.[14]

Programs Intended to Feed the Low-Income Elderly Population

The SFMNP will operate alongside several other food assistance programs funded by the federal government that provide benefits to seniors. The commonality of the programs is that they provide food in some capacity, for example, a Food Stamp Electronic Benefits Transfer (EBT) Card or a home-delivered meal from Meals on Wheels.

Child and Adult Care Food Programs (CACFP)

CACFP reimburses day care providers for making healthy meals and snacks available to children and adults in day care. Adult participants must be functionally impaired or age 60 or older, and enrolled in an adult care center where they may receive up to two meals and one snack each day. The total cost of the elderly component of the program in FY 2005 was $80.3 million; average daily adult attendance in CACFP was 103,386.[15] In FY 2005, institutions caring for seniors received $64.81 per senior in monthly CACFP benefits.[16]

Commodity Supplemental Food Program (CSFP)

Another program addressing the special needs of the low-income elderly population is the CSFP, operating in 32 States, the District of Columbia, and on two Indian reservations. USDA purchases food and makes it available to CSFP State agencies and Indian Tribal Organizations (ITOs), along with funds for administrative costs. State agencies that administer CSFP are typically departments of health, social services, education, or agriculture. State agencies store the food and distribute it to public and non-profit private local agencies. Local agencies determine the eligibility of applicants, distribute the foods, and provide nutrition education. Local agencies also provide referrals to other welfare, nutrition, and health care programs such as the Food Stamp Program, Medicaid, and Medicare. The food package for the elderly is designed for their specific nutritional needs and includes such nutritious foods as canned fruits and vegetables, juices, meats, fish, peanut butter, cheese, cereal and grain products, and dairy products. In FY 2005, the program, on average, served almost 460,000 elderly per month. Food costs totaled $67.2 million and the elderly received approximately $12.17 in food benefits per month.[17]

Food Stamp Program (FSP)

While the Food Stamp Program is available to alleviate hunger in the low-income senior population by providing EBT cards redeemable for food in approved food retail stores (and some farmers' markets), many seniors do not participate. In 2003, approximately 28 percent of eligible seniors used the program compared to a 56 percent participation rate in the total Food Stamp eligible population.[18] Low participation rates by seniors are attributed to (1) A lack of information; (2) a perceived lack of need; (3) low expected food stamp program benefits; (4) burdensome program administration; and (5) stigma and other psychological reasons.[19] [20] In FY 2004, the most recent year for which data is currently available, 1.92 million seniors participated in the Food Stamp Program (8.2 percent of the total FSP caseload). At that time, the average monthly senior benefit was $65 and the USDA spent about $1.5 billion on elderly participants.[21]

Food Distribution Program on Indian Reservations (FDPIR)

FDPIR provides commodity foods to low-income households living on Indian reservations, and to American Indian households residing in approved areas near reservations or in Oklahoma. Many households participate in FDPIR as an alternative to the Food Stamp Program because they do not have easy access to food stamp offices or authorized food stores. Each month, participating households receive a food package to help them maintain a nutritionally balanced diet. No recent data exists on the number of elderly participating in the program. However, in 1990, the elderly constituted 14.8 percent of total program participation.[22] If this has remained unchanged, the number of seniors participating in FY 2005 would have been about 14,638 at a cost of about $11.3 million.[23] At that time, FDPIR recipients received an average of $37 a month in commodities.[24]

The Elderly Nutrition Program

The Administration on Aging's (AoA) Elderly Nutrition Program, authorized under Title III, Grants for State and Community Programs on Aging, and Title VI, Grants for Native Americans, under the Older Americans Act, provides grants to support congregate and home delivered (Meals on Wheels) meals and nutrition services to older people throughout the country. Meals served under the program must provide at least one-third of the daily-recommended dietary allowances established by the Food and Nutrition Board of the National Academy of Sciences—National Research Council (now the Institute of Medicine). In practice, elderly individuals participating in the Elderly Nutrition Program receive an estimated 40 to 50 percent of many required nutrients.[25] In FY 2002 (the most recent year that data is available), the ENP served 3.1 million elderly, costing the federal government $604 million.[26] If the same number of participants were served in FY 2005, the cost of the ENP would have been about $650 million.[27]

While there is no means test among Elderly Nutrition Program participants, 80 to 90 percent have incomes below 200 percent of poverty.[28] More than twice as many Title III participants live alone; and two-thirds of participants are either over or under their desirable weight, placing them at risk for nutrition and health problems. Title III home-delivered meals participants have twice as many physical impairments compared with the overall elderly population.[29]

[8] Administration of Aging (AOA), U.S. Department of Health and Human Services. 1996. Aging in the 21st Century. Washington, DC:USDHHS.

[9] United States Department of Agriculture, Economic Research Service (USDA/ERS) 1998.

[10] United States Department of Agriculture, Food and Nutrition Service (USDA/FNS). 1999. Reaching the Working Poor and Poor Elderly Study: What We Learned and Recommendations for Future Research. Washington, DC: USDA/FNS.

[11] *http://www.ams.usda.gov/farmersmarkets/facts.htm,* April 5, 2006.

[12] *http://www.ams.usda.gov/farmersmarkets/map.htm,* April 5, 2006.

[13] *http://www.ams.usda.gov/farmersmarkets/FMstudystats.htm,* April 5, 2006.

[14] *http://www.ams.usda.gov/farmersmarkets/FMstudystats.htm,* April 5, 2006.

[15] FNS, National Data Bank, May 1, 2006.

[16] FNS, National Data Bank, May 1, 2006.

[17] FNS, National Data Bank, May 1, 2006.

[18] United States Department of Agriculture, Food and Nutrition Service. Food Stamp Program Participation Rates: 2003. July 2005.

[19] USDA, 1999.

[20] Gabor, Vivian, *et al.* Seniors' Views of the Food Stamp Program and Ways To Improve Participation—Focus Group Findings in Washington State: Final Report. USDA/ERS, 2002.

[21] USDA/FNS. Characteristics of Food Stamp Households: FY 2004, September 2005.

[22] Evaluation of the Food Distribution Program on Indian Reservations, Volume 1: Final Report, Research Triangle Institute (prepared for USDA, Food and Nutrition Service), 1990.

[23] FNS National Data Bank, May 1, 2006.

[24] FNS National Data Bank, May 1, 2006.

[25] *http://www.aoa.gov/press/fact/alpha/fact_elderly_nutrition.asp,* April 10, 2006.

[26] *http://www.aoa.gov,* March 19, 2004.

[27] *http://www.bls.gov* (FY 2002 cost inflated by

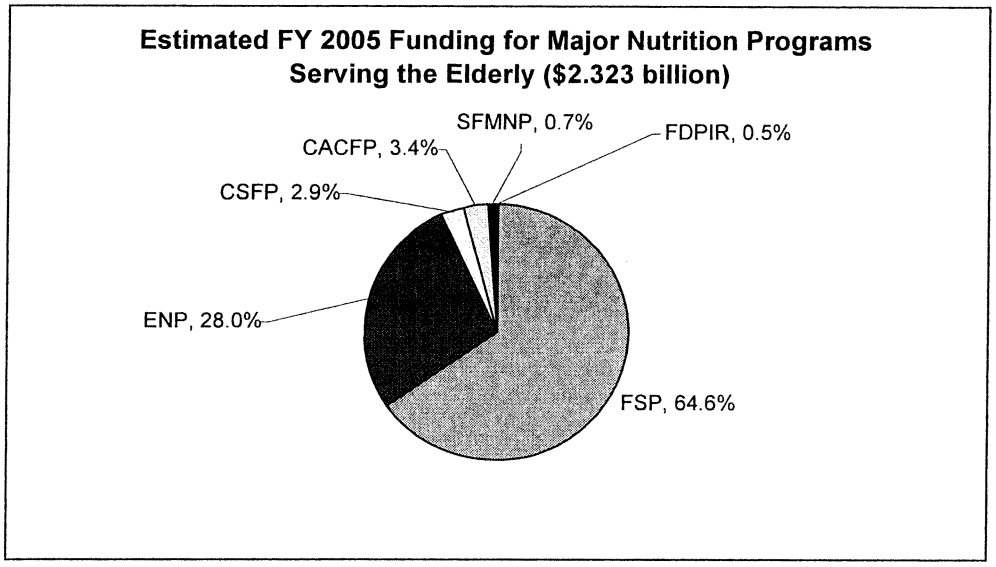
In 1995 Mathematica Policy Research, Inc. conducted an evaluation of the Elderly Nutrition Program for the Administration on Aging. Key findings included:

- People who receive ENP meals have higher daily intakes of key nutrients than similar nonparticipants.
- ENP meals provide approximately 40 to 50 percent of participants' daily intakes of most nutrients.
- Participants have more social contacts per month than similar nonparticipants.
- Most participants are satisfied with the services the ENP provides.[30]

Summary

The following chart depicts total nutrition assistance funding currently available for low-income seniors and the percent of total funding the SFMNP represents.

Figure 2.



[30] *http://www.mathematica-mpr.com/3rdLevel/enphot.htm.* Serving Elders at Risk, The Older Americans Act Nutrition Programs, National Evaluation of the Elderly Nutrition Program, 1993–1995, Mathematica Policy Research, Inc., 1995.

Nutrition assistance program	FY 2005 funding for seniors (in millions)
FSP	*$1500
ENP	650
CSFP	67
CACFP	80
SFMNP	15
FDPIR	11
Total	2,323

*Food Stamp funding for seniors reflects the FY 2004 cost, which is the most recent year for which data is currently available.

SFMNP Program Models

The final rule draws from a variety of other programs, specifically, the WIC FMNP and the Senior Farmers' Market Nutrition Pilot Program and the SFMNP under the competitive grant process. The following section describes these programs in an effort to provide an understanding of the framework and provisions of the final rule.

WIC Farmers' Market Nutrition Program (FMNP)

In 1992, Congress established the WIC Farmers' Market Nutrition Program to provide WIC participants with additional benefits to purchase fresh, unprepared, locally grown fruits and vegetables, recognizing the importance of the nutritional benefits of fresh produce. The program also assists farmers by increasing sales, use and awareness of farmers' markets.

The WIC FMNP provides grants to State agencies. Administrative funds are available; however, State agencies are required to match 30 percent of the total administrative cost of the program.

By law, the federal benefit level provided to FMNP recipients (WIC participants and those on a waiting list for WIC services) must be not less than $10 and not more than $30 per year.[31] State agencies may supplement this amount with State funds.

Forty-five State agencies currently operate the WIC FMNP. In FY 2005, almost 2.7 million or about 33 percent of WIC Program participants participated in the WIC FMNP. Farmers redeemed over $23 million in coupons.[32]

Seniors Farmers' Market Nutrition Pilot Program 2001

In an effort to extend FMNP services to other segments of the population and to promote farmers' markets, roadside stands and CSAs, USDA instituted the Seniors Farmers' Market Nutrition Pilot Program (SFMNPP) using Commodity Credit Corporation (CCC) funds in 2001. This program provided grants to State agencies to use to distribute coupons to eligible seniors. Coupons were redeemed at a value established by each State agency for fresh fruits and vegetables at farmers' markets, roadside stands and CSAs.

The pilot program was closely aligned to the WIC FMNP, as is the final rule. In 2001 USDA provided $15 million to 36 grantees (45 State agencies applied for grants) using CCC funds. Grant awards ranged from $9,000 to $1.2 million, enabling participating States, tribes and the District of Columbia to serve 420,000 low-income seniors. Benefits to seniors differed by State agency, ranging from $10 to $540 per recipient per year. Approximately 8,508 farmers, 1,205 farmers' markets, 886 roadside stands, and 49 CSAs participated in the SFMNPP in 2001. State agencies spent 83 percent of available funds.[33]

Subsequent to its first year of operation, the USDA's Economic Research Service (ERS) conducted an in-house analysis of the pilot program. ERS found the pilot program to be highly popular among stakeholders, including Congress, income-eligible seniors and farmers. Early findings also suggest that the coupons increased low-income seniors' ability to purchase fruits and vegetables, as seniors reported that produce at farmers' markets was less expensive than the produce at grocery stores. Additionally, ERS found that seniors are more inclined to redeem SFMNP coupons in contrast to food stamps where there is a stigma attached with redemption.[34]

While ERS did not find the SFMNPP effective in developing farmers' markets or expanding existing markets, they did suggest that if the program continues to grow, it is possible that these goals will be realized as well. ERS also noted that State agencies wanted Federal funds to support administrative expenses. The final rule addresses this issue by allowing State agencies to use up to 10 percent of Federal grant dollars to fund the administration of the program.

Senior Farmers' Market Nutrition Program 2002

Congress continued to fund the SFMNP in 2002 and provided $15 million to the program ($10 million from the Agriculture Appropriations Act of 2002 and $5 million from the Commodity Credit Corporation). In addition, Pub. L. 101–171 established the permanent SFMNP and authorized the SFMNP to be funded at $15 million for each year from FY 2003 to FY 2007 from CCC funds. USDA was authorized to promulgate regulations implementing the program. In 2002, USDA awarded 36 grants that enabled State agencies to serve 500,000 low-income seniors. Approximately 10,000 farmers participated in 2002. Nearly 89 percent of program funds were spent.[35]

Senior Farmers' Market Nutrition Program 2003

In 2003, the USDA grandfathered-in State agencies that had participated in the SFMNP in the previous year. After the original 36 State agencies were awarded 2002 Federal grant funds, there was enough funding available from unspent carryover funds to award grants to 4 new State agencies and to provide additional grant money to 13 current grantees.[36] USDA awarded a total of $16.8 million in grants to State agencies; 800,000 low-income seniors participated. Over 85 percent of the total available program funds were spent.

Senior Farmers' Market Nutrition Program 2004

In FY 2004, USDA awarded State agencies a total of $16.7 million for SFMNP grants; over 802,000 low-income seniors participated. All 40 State agencies that participated in the SFMNP in 2003 received funding. In addition, 4 new State agencies and 3 new ITOs received SFMNP funding in 2004. Nearly 86 percent of the total available program funds were spent.

Senior Farmers' Market Nutrition Program 2005

In FY 2005, no carryover funds from FY 2004 were available and an across-the-board reduction of just over 10 percent was applied to the current grantees' base grants. One State agency that participated in FY 2004 did not participate in FY 2005. A total of $15 million was awarded to current State agencies and ITOs to fund their Programs; 94 percent of the SFMNP funds were spent in FY 2005.

TABLE 1.—SUMMARY OF THE 2005 SENIOR FARMERS' MARKET NUTRITION PROGRAM

	State agency grant amount	Income eligibility (% of poverty)[37]	Age eligibility "elderly"	Average benefit level per participant	Recipients per state	Farmers' markets per state	Roadside stands per state	CSAs per state
Mean	$326,087	172%	60	$33	17,505	58	44	5
Median	130,811	185%	60	27	7,185	31	1	0
Minimum	7,918	100%	55	10	148	0	0	0
Maximum	1,366,229	All elders	65	165	175,914	370	704	169

[31] The 2004 Child Nutrition and WIC Reauthorization Law increased the maximum benefit from $20 to $30 in July 2004.

[32] FNS National Data Bank, May 1, 2006.

[33] USDA/FNS Administrative Data, 2001.

[34] "The Seniors Farmers' Market Nutrition Pilot Program: A Preliminary Assessment." Unpublished staff paper. USDA/ERS. October 10, 2001.

[35] USDA/FNS Administrative Data, 2002.

[36] USDA/FNS Administrative Data, 2003.

TABLE 1.—SUMMARY OF THE 2005 SENIOR FARMERS' MARKET NUTRITION PROGRAM—Continued

	State agency grant amount	Income eligibility (% of poverty) [37]	Age eligibility "elderly"	Average benefit level per participant	Recipients per state	Farmers' markets per state	Roadside stands per state	CSAs per state
Total	15,000,000	.....	.....	.....	771,285	2,663	2,001	237

Note: CSAs are Community Supported Agriculture Programs.

TABLE 2.—2005 PARTICIPATING STATE AGENCIES

State agency	Benefit level
Alabama Farmers' Market Authority	$20.00
Alaska Department of Health and Social Services	30.00
Arkansas Department of Human Services, Division of Aging	50.00
California Department of Aging	20.00
Chickasaw Nation of Oklahoma	100.00
Colorado	20.00
Connecticut Department of Agriculture	15.00
District of Columbia Department of Health	30.00
Five Sandoval Indian Pueblos	20.00
Florida Department of Elder Affairs	60.00
Grand Traverse Band of Ottawa & Chippewa Indians	50.00
Hawaii Department of Labor & Industrial Relations	165.00
Illinois Department of Human Services	15.00
Indiana Department of Health	18.00
Iowa Department of Agriculture & Land Stewardship	28.00
Kansas Department of Aging	30.00
Kentucky Department of Agriculture	40.00
Louisiana Department of Agriculture	16.00
Maine Department of Agriculture	67.00
Maryland Department of Agriculture	15.00
Massachusetts Department of Food and Agriculture	10.00
Michigan Office of Services to the Aging	40.00
Minnesota Department of Agriculture	20.00
Mississippi Department of Agriculture	28.00
Mississippi Band of Choctaw Indians	45.00
Montana Department of Public Health and Human Services	40.00
Nebraska Department of Agriculture	48.00
Nevada Department of Administration	30.00
New Hampshire Department of Health and Human Services	18.00
New Jersey Department of Health and Senior Services	20.00
New York Department of Agriculture and Markets	18.00
North Carolina Department of Health & Human Services	15.00
Ohio Department of Aging	65.00
Oregon Department of Human Services	40.00
Osage Tribal Council	25.00
Pennsylvania Department of Agriculture	20.00
Pueblo of San Felipe	40.00
Puerto Rico Department of Agriculture	16.00
Rhode Island Division of Agriculture	15.00
South Carolina Department of Social Services	25.00
Tennessee Department of Health	30.00
Vermont Department of Aging and Disabilities	61.00
Virginia Department for the Aging	40.00
Washington Department of Social and Health Services	31.00
West Virginia Department of Agriculture	20.00
Wisconsin Department of Agriculture, Trade, and Consumer Protection	30.00

4. *Summary [37] of Key Provisions:* Following is a summary of key provisions of this rule and their impact on USDA, State and local agencies, farmers and recipients. Effects describe how the program will change compared to policies in place for the current SFMNP.

[37] The Grand Traverse Band of Ottawa and Chippewa Indians allows all elders to be income eligible; the Grand Traverse Band of Ottawa and Chippewa Indians is excluded from the calculation of the mean and median.

TABLE 3

Final rule:	Final rule effect on:
§ 249.3 Administration:	USDA
(a) Delegates the responsibility within USDA to administer the SFMNP to FNS.	The Supplemental Food Programs Division and FNS Regional Offices will need to use resources to provide assistance to State agencies and to assess and/or monitor all levels of Program operations to ensure that the goals of the Program are effectively and efficiently achieved.
(b) Delegates the responsibility for direct administration of the SFMNP, in accordance with program regulations, to State agencies. Allows State agencies to operate the SFMNP at the local level through written agreements with nonprofit organizations or local government entities.	*State/Local Agencies:* State agencies will need to use resources to meet administrative requirements. However, State agencies that participated in the SFMNP have administrative structures in place, mitigating the need for resources to develop new administrative structures, which can be supplemented if needed to meet any new responsibilities from this rule.
(c) Requires each State agency to ensure that sufficient staff is available to administer the SFMNP efficiently and effectively, and to include in the State Plan an outline of administrative staff and job descriptions for staff who will be paid out of SFMNP funds.	
§ 249.5 Selection of new State agencies:	USDA
All current SFMNP State agencies are grandfathered into the proposed program. The amount of the grant would be equal to the total Federal funds received in the prior fiscal year, contingent upon the availability of sufficient funds for the SFMNP and an approved State Plan.	There will be some impact on FNS Regional Office resources in the review and approval of State plans submitted by State agencies, including those not currently participating in the SFMNP.
	State/Local Agencies: Congress has authorized $15 million per year for the SFMNP through FY 2007. Modest program expansion has been funded by unspent funds that have carried over into the next fiscal year. Therefore, it is unlikely that many additional State agencies will have the opportunity to participate in the program. Further, participating State agencies cannot expect to see their programs expand much. An appropriation not indexed to inflation will decrease in real dollars over time.
	Farmers: Grandfathering in State agencies that currently participate in the SFMNP, combined with limited funding is likely to limit the program primarily to farmers, markets, and CSAs in State agencies already participating.
	Recipients: Grandfathering in State agencies that currently participate in SFMNP, combined with limited funding is likely to limit the program to recipients in States currently participating.
§ 249.6 Participant eligibility:	USDA
(a) Sets out criteria for eligibility for certification	
1. Categorical Eligibility. Participants must not be less than 60 years of age. ITOs have the option to deem Native Americans who are 55 years or older as categorically eligible. State agencies may, at their discretion, also deem disabled individuals less than 60 years of age who currently reside in housing facilities occupied primarily by older individuals where congregate nutrition services are provided, as categorically eligible. States have the option to establish a higher age limit.	Most SFMNP participants are likely to be income eligible based on documentation of their eligibility to participate in another means-tested assistance program. However, because some State agencies may not require documentation of income for other participants, it is possible that some participants may not be eligible, thus barring eligible seniors from participating and potentially resulting in some erroneous payments. State agencies have the authority to require income documentation from applicants, which would help alleviate the potential loss of funds due to erroneous payments.
2. Residency requirement. States are allowed to establish a residency requirement.	*State/Local Agencies:* State agencies have latitude in defining the eligible population, enabling State agencies to tailor the program to their needs. The final rule also provides State agencies with the flexibility of not requiring income documentation from applicants who are not deemed automatically income eligible based on certification for or participation in another means-tested assistance program for which the income eligibility standard is not more than 185% of the Federal poverty income level. If State agencies choose to unilaterally require income documentation, they will face an increase in the administrative burden placed upon them. If income documentation is instead required on a case-by-case basis, State agencies would be expected to provide guidance to local agencies on when such documentation might be needed and local agencies will need to collect and review the documentation. It is not expected that these activities will impose a significant administrative burden upon State and local agencies.
3. Income eligibility is set at 185% of poverty.	
(b) The State or local agency must require applicants to either provide documentation of their eligibility to participate in another means-tested assistance program as designated by the State agency, sign a statement attesting to the participation in or certification for another means-tested program as designated by the State agency, or sign a statement affirming that their household income does not exceed the maximum income eligibility standard in use by the State agency. State agencies have the option of requiring income documentation as they deem necessary.	*Recipients:* The final rule allows State agencies to continue serving those currently participating and provides for expansion of the program, based on the availability of funds.

TABLE 3—Continued

Final rule:	Final rule effect on:
§ 249.8 Level of benefits and eligible foods: (a) Eligible foods are fresh, nutritious, unprepared fruits, vegetables and herbs. States must specifically identify in the State Plans those foods that may be purchased. (b) Establishes that the SFMNP benefit received by each recipient may not be less than $20 or more than $50 each year, except that State agencies that provided an annual SFMNP benefit of less than $20 in FY 2006 may continue, at their discretion, to issue less than the $20 minimum after the program becomes permanent. Participants served by a State agency that operated the SFMNP through a CSA program model in FY 2006 may, at the State agency's discretion, continue to receive the same CSA benefit levels. New States may issue higher benefits up to $50 per year to participants who are participating through a CSA program, as long as that level is consistent for all Senior CSA program participants. (c) Establishes that all SFMNP recipients living in the areas served by the State agency must be offered the same amount of SFMNP benefits, regardless of the program model used by that State agency. Benefits may be allocated on an individual or on a household basis.	USDA Instituting a minimum and maximum benefit level ensures a certain level of participation is possible, given cost constraints. Requiring a Statewide benefit level eases administrative burdens and promotes equity within the program. *State/Local Agencies:* Maximum and minimum benefit levels reduce flexibility. Grandfathering CSA program models into the permanent program by current State agencies will allow current State agencies to maintain successful Programs by maintaining its economic viability for authorized farmers. *Recipients:* The eligible food requirement increases access to fresh fruits and vegetables for participating seniors. If State agencies are unable to maintain current funding levels, State agencies will have to reduce benefits, reduce the number of seniors served, or both.
§ 249.9 Nutrition education: (a) Defines the goal of nutrition education in the SFMNP, i.e., to emphasize the relationship of proper nutrition to the total concept of good health, including the importance of consuming fresh fruits and vegetables. a. Requires the State agency to integrate nutrition education into SFMNP operations, and provides guidance on coordinating the delivery of nutrition education through other agencies within the State.	USDA FNS will have to monitor State's provision of nutrition education. *State/Local Agencies:* All State agencies currently provide nutrition education. Only the new State agencies would experience an increase in burden; however, the final rule allows State agencies to use up to 10% of their Federal grant to offset this burden. *Recipients:* Nutrition education could have a positive impact on the health of seniors. However, the manner in which it is provided, and its accessibility will determine the success of the education to improve eating and physical activity levels. Nutrition Education can be funded out of State agencies' administrative funds (up to 10% of the total grant), which could reduce (1) the amount of funds spent on program administration; and (2) the amount spent on food benefits.
§ 249.12 SFMNP costs: (a) Defines allowable and unallowable costs for the SFMNP ..... 1. States are permitted to use their grant of up to 10 percent for administrative costs. 2. Food costs are the costs of eligible foods provided to SFMNP recipients. 3. Administrative costs are those costs associated with providing benefits and services to recipients.	*State/Local Agencies:* The Program has been operating since 2001. Administrative funds have not been available to State agencies since the program was established. ERS found in its 2001 in-house evaluation of the program that most State agencies wanted additional funds to support program administration.[38] It is therefore likely that State agencies will use the administrative funds allowed under the final rule. Additionally, State agencies have more administrative requirements under the program regulations in the final rule than they do under the current program (e.g. State Plan, racial/ethnic participation data collection and reporting, specific minimum and maximum benefit levels, management evaluation requirements for both FNS and each State agency, regular and routine participation and expenditure reports, audit requirements, and specific contractual requirements for authorized outlets.) There is no maintenance of effort requirement in the final rule, so it is unlikely that State agencies will continue to use the resources that they were using during the pilot programs. Because future funding levels are based on funding provided to current State agencies, administrative funding was not previously available, and the provisions in the final rule allow State agencies to use up to 10% of their total grant for administrative purposes, the actual dollar amount available for food benefits will likely be lower than the total food funds currently provided to State agencies. *Farmers:* The reduction in total benefits to seniors due to allocating funds for program administration will impact farmers authorized to redeem SFMNP coupons. As food benefits decrease there may be some decrease in recipients' demand for farmers' market produce.

TABLE 3—Continued

Final rule:	Final rule effect on:
	Recipients: Unless States augment federal funding, which they are encouraged to do, they will have to reduce SFMNP benefits, reduce the number of seniors served, or both. For instance, utilizing the total $15 million, the program could provide benefits to about 4.9% of the eligible population in 2007. Assuming State agencies use 10% of grant funds for administration, the percentage of the eligible population served decreases by about 10 percent to 4.4% in 2007.
§ 249.14 Distribution of funds: (a) Establishes a base grant level (prior fiscal year's grant) for previously participating State agencies. (b) Provides for a ratable reduction of all SFMNP grants in the event that appropriated funds in any fiscal year are not sufficient to cover the base grants at the prior fiscal year's grant level. (c) Establishes a funding formula for the allocation of any remaining SFMNP funds (after base grants are met) for expansion of participating State agencies (75 percent) and introduction of new State agencies (25 percent). (d) Sets out factors to be considered in approving requests for expansion from participating State agencies. (e) Provides for the reallocation by FNS of any unspent SFMNP funds.	USDA Basing grants on prior year grant levels eases the administrative burden for FNS. *State/Local Agencies:* Basing grant money on prior year grant levels would help State agencies plan and better manage their programs. The funding formula allows State agencies to maintain their programs and, if funds are available, for current and new State agencies to expand or start a SFMNP. *Farmers:* Basing current funding levels on prior year levels provides stability within the Program. The funding formula establishes a method to distribute funds, when available, to allow current State agencies to expand their Program and to allow new State agencies to start operating the SFMNP. As current and new State agencies expand or start Programs, new program outlets (farmers' markets, roadside stands, and CSAs) will be added to the SFMNP. *Recipients:* Basing current funding levels on prior year levels provides stability within the Program. The funding formula establishes a method to distribute funds, when available, to allow current State agencies to expand their Program and to allow new State agencies to start operating the SFMNP. As current and new State agencies expand or start programs, the SFMNP will be able to serve a larger share of the eligible elderly population.

5. *Cost/Benefit Analysis of Proposed Rule:* Federal Cost. The SFMNP was authorized to be funded at $15 million annually through FY 2007. This analysis assumes that the Program will continue to be funded at $15 million per year throughout the 5-year period of analysis. The real cost of the program will be less than the nominal cost of $15 million because the program is not indexed to inflation.[39] The FNS administrative cost associated with program implementation is assumed to be less than 1.5 percent of the total federal grant to State agencies.

Benefits to Seniors

Low-income seniors will be afforded nutrition education as well as a coupon benefit ranging in value from $20 to $50 per annum,[40] which will be used to purchase fresh, unprepared fruits, vegetables, and herbs intended to improve seniors' diets. Seniors, and ultimately participating farmers, in each State agency will benefit from the total Federal grant to the State agencies minus the amount that State agencies spend on administration—up to 10 percent of the total grant.

It is possible that seniors will not eat additional fresh fruits and vegetables, but rather will substitute the fruits and vegetables that they would have purchased with their own funds with fruits and vegetables purchased with SFMNP coupons. You *et al.* (1998) found that the demand for fresh fruits and vegetables in the United States was responsive to price changes, but not changes in income.[41]

Benefits to Farmers

Farmers will collect revenue from redeemed coupons up to the total Federal grants to State agencies for food costs (the total amount of revenue collected will depend also on the amount of the grant State agencies use to cover administrative costs). Additional revenue may be reaped as seniors might spend their own money (and in some States, food stamps) to purchase additional goods at the farmers' markets. Farmers will also benefit from the exposure of new populations to farmers' markets, roadside stands and CSAs, which could lead to increased revenues.

In FY 2005, the SFMNP operated at 2,663 farmers' markets, 2,001 roadside stands and 237 CSAs.[42] ERS reported in 2001, that ''the SFMNPP has not been as effective in developing new farmers' markets, produce stands, and community supported agricultural programs or in expanding existing ones.''[43] Nevertheless, ERS suggests that given evidence from the WIC FMNP, the SFMNP could increase the number of farmers' markets, roadside stands, and CSAs in the long run.

Limitations

Benefits to seniors and farmers will be limited by the authorized funding for the program, which will go primarily to already participating State agencies. The use of the Federal grant money to cover administrative costs will also limit the benefits realized by seniors and farmers. FNS recognizes the tradeoffs involved in these decisions, but feels that they are necessary to maintain strong infrastructure for the program.

Uncertainties

It is unclear what level of benefits State agencies will provide under this rule. The rule provides State agencies the flexibility to make tradeoffs between possibly making a larger difference in diet quality for a few seniors and providing some level of benefits for many. Growing seasons are also likely to have an impact; State agencies with longer growing/market seasons may be more likely to issue higher benefit levels so that seniors can take advantage of the season.

It is also unclear who will be served—anyone meeting age/residency and income requirements is eligible, but the program has not been funded at levels that come close to providing benefits to all who are eligible. State agencies will need to consider carefully their individual outreach and service priorities to ensure that the SFMNP,

[38] USDA/ERS, 2001.

[39] Inflation rate based on 2005 CPI–U data for fresh fruits and vegetables.

[40] This does not include those seniors participating in states that grandfathered a benefit level lower than $20 or a CSA program model into the permanent SFMNP.

[41] You *et al.* ''Consumer Demand for Fresh Fruits and Vegetables in the United States.'' The Georgia Agricultural Experiment Stations, College of Agricultural and Environmental Sciences, The University of Georgia. *Research Bulletin,* number 431 (January 1998).

[42] USDA/FNS Administrative Data, 2006.

[43] ''The Seniors Farmers' Market Nutrition Pilot Program: A Preliminary Assessment.'' Unpublished (internal) staff paper. USDA/Economic Research Service. October 10, 2001.

consistent with other FNS nutrition assistance programs, targets those most in need.

Estimate of Costs and Benefits of the Proposed Rule

The following table provides an estimate of the costs and benefits described above as well as the number of program recipients during 2007–2011. Key assumptions include:

- Funding for 2007–2011 is maintained at the current authorized level of $15 million annually (assumes no carryover funds are available in 2007–2011);
- State agencies use 10 percent of the Federal grant for administration in 2007–2011;
- State agencies provide an average benefit level of $17.50 to recipients (as shown in Table 4); and
- The poverty rate among seniors remains constant over the period of analysis.

This analysis also assumes that total funding and benefit levels will not be indexed for inflation; therefore, their value has been deflated using projections of the Consumer Price Index—Urban index for fresh fruits and vegetables (1989 baseline). Based on these assumptions, we estimate there will be little change in the percent of SFMNP eligibles served in the analysis period, due to the large number of eligibles nationally.

TABLE 4.—PROJECTED COSTS AND BENEFITS OF PROPOSED RULE IN CONSTANT DOLLARS [44]

[Figures in millions unless otherwise noted]

	2005	2007	2008	2009	2010	2011
Total Federal Grants to State Agencies	$15,000,000	$15,000,000	$14,995,800	$14,992,300	$14,988,510	$14,984,720
Federal Administrative Costs	$180,000	$180,000	$180,000	$180,000	$180,000	$180,000
Administrative Funds for State Agencies	$0	$1,500,000	$1,499,580	$1,499,230	$1,498,850	$1,498,470
Benefits Paid to Participants/ Farmers	$15,000,000	$13,500,000	$13,496,220	$13,493,070	$13,489,660	$13,486,250
Number of Recipients	771,285	771,285	771,285	771,285	771,285	771,285
Average Benefit Per Participant [45] Per Year	$19.45	$17.50	$17.50	$17.49	$17.49	$17.49
Number of Eligibles [46]	16,620,000	17,470,000	17,975,000	18,476,000	19,180,000	19,451,000
Percent of Eligibles Served	4.64%	4.41%	4.29%	4.17%	4.02%	3.97%

6. *Alternatives:* USDA considered a variety of alternatives when constructing the regulation for the Senior Farmers' Market Nutrition Program. Primarily, the proposed regulation is modeled after the FMNP, the SFMNPP, and the SFMNP under the competitive grant process. Consistency provides administrative ease among the State agencies, localities, and USDA as well as continuity to beneficiaries and farmers who have been participating in the FMNP and/or the SFMNPP. However, USDA carefully reviewed six alternatives with regard to: Grant structure, eligible grantees, provision of administrative funding, eligibility requirements, and benefit levels. An analysis of these alternatives was included in the regulatory impact analysis for the proposed rule. In response to comments on the proposed rule, USDA further considered additional alternatives to the final rule regarding participant eligibility, benefit levels, and SFMNP costs.

The Department received numerous comments in opposition to the requirement that if an applicant was not automatically income eligible for the SFMNP that he/she must provide documentation of income at the time of certification. Commenters expressed concern over the administrative burden that would be placed upon State agency personnel in order to obtain proof or documentation of income given the benefit eligible applicants would receive. It was suggested that self-identification of need for food assistance, self-declaration of participation in another means-tested assistance program, or self-declaration of income should be the minimum requirement for accessing SFMNP benefits. As such, USDA removed the requirement that proof of income be provided by applicants not deemed income-eligible based on certification for or participation in another means-tested program that uses a maximum income level of not more than 185% of the Federal poverty income; however, the final rule continues to give State and local agencies the option to verify reported income.

The proposed rule put forth annual minimum and maximum SFMNP benefit levels of $20 and $50, respectively. All of the State agencies with benefit levels below $20 as well as many other interested State and local SFMNP agencies opposed a $20 minimum stating that it would require reducing the number of eligible seniors they were currently serving in order to comply with the $20 minimum benefit. Commenters also strongly opposed the proposed $50 maximum benefit level. Numerous farmers stated that if the maximum CSA benefit level were reduced to $50, they would no longer be willing or able to participate in the SFMNP. USDA considered a variety of alternatives put forth by commenters, which included eliminating the benefit cap, increasing the maximum benefit to $80 or $100, allowing State agencies the option of setting their own minimum and maximum benefits, either for all programs or only for CSAs, or allowing current State agencies to continue issuing benefits at their FY 2004 level. USDA recognizes the importance of farmer participation, particularly in CSA program models, to the success of the SFMNP. As such, the Department has revised the maximum benefit level requirements put forth in the proposed rule.

The final rule retains the minimum benefit level at $20, as set forth in the proposed rule, but allows State agencies that issued a lower benefit in FY 2006 and that are grandfathered into the SFMNP when it becomes a permanent program to continue issuing benefits at the lower level. New State agencies who begin operating the SFMNP after FY 2006 must comply with the $20 benefit minimum and the $50 benefit cap put forth in the proposed rule. Current SFMNP State agencies that are grandfathering a CSA program model into the permanent program may continue to issue benefits at their current, FY 2006, levels. Any State whose annual CSA participant benefit level is greater than $50 will not be eligible to receive expansion funds until the $50 benefit cap in the CSA program model is implemented, and must require each SFMNP applicant to provide documentation that his/her household income does not exceed the 185% standard set forth in the final rule. State agencies will have the option of providing a higher benefit level out of funding sources other than the Federal SFMNP grant. The Department believes these changes will allow State agencies to maintain their current caseload while adhering to our principle of serving as many eligible senior participants as possible with limited available funds.

In addition, commenters suggested that the modified CSA program model in which bulk quantities of certain produce is purchased directly from authorized farmers by the State agency and then equitably divided among and distributed to SFMNP participants be retained in the permanent SFMNP. The Department did not address this type of program model in the proposed rule. Therefore, the final rule proposes and sets forth that SFMNP participants may also

[44] Baseline is 1989 for all tables.

[45] Weighted average benefit offered by states.

[46] Eligibles are calculated using Census projections of the total number of seniors (60+) in 2007–2011. The total number of seniors was adjusted to account for those in poverty by using the March 2004 CPS Supplement. The poverty rate is held constant at the 2004 level.

receive benefits through a bulk purchase program model. Commenters found this type of program model to be very successful and the Department is committed to maintaining the success of the SFMNP. Because the final rule requires that each participant receive an equitable value of fruits and vegetables and that the total benefit provided to each participant fall within the minimum and maximum levels set forth in this final rule, this addition will not change the estimated costs or benefits of the final rule.

7. *Impact of the Final Rule on Current SFMNP Benefit Levels and Participation:* Given the changes to the minimum and maximum benefit levels made from the proposed rule to the final rule, which gives State agencies more flexibility in establishing benefit levels, the Department expects that States will adjust benefits to a level that would allow them to maintain their current participation. This analysis assumes that State agencies will try to serve the same number of people in FY 2007 as they did in FY 2005. In doing so, it is expected that the weighted average benefit will decrease from approximately $19.45 in FY 2005 to about $17.50 in FY 2007. Because it is expected that State agencies will use 10 percent of their Federal grant to cover administrative costs, the estimated $1.95 reduction in the average benefit level is the result of the 10 percent reduction in food funds.

If States choose to use a portion of their Federal grant to pay for the administrative costs of operating the SFMNP and do not adjust their benefit levels to capture the reduction in food funds, they may not be able to serve as many eligible elderly individuals in FY 2007 as they did in FY 2005. For example, in FY 2007, if State agencies continue to issue an average benefit of $19.45 and use 10 percent of their Federal grant for administration, there could be a decrease in the number of recipients served in FY 2007 of about 77,000 seniors. As a means of mitigating the effects of decreased food funds, State agencies could continue to cover administrative costs. This would allow States to maintain their FY 2005 participation and benefit levels in FY 2007.

Summary

Because the resources devoted to the SFMNP are likely to be small in comparison to the size of the eligible population, the permanent Program will not enable State agencies to reach the majority of those eligible. However, the minimum and maximum benefit levels put forth in this final rule will help enable State agencies to serve as many eligible individuals as possible. While the program is not currently fully funded, the final rule allows for future growth, should additional funds be made available.

Appendix A—Calculation of Eligibles

A. U.S. States
1. Used Census 1995 State Projection Series for 2007–2011, broken out by race and age (60+)
2. Multiplied State projection data by poverty rate, 185% and 130%, (broken out by race and age, seniors 60+); Poverty rate data found in Census' Current Population Survey March Supplement, 2004
3. Added all State eligibles to get total U.S. State eligibles at both 185% and 130% of poverty

B. U.S. Territories
1. Used Census' International Data Base
2. Used ''Other Demographic Aggregation'' (2004–2011), population by age and sex (by each territory)
3. Multiplied population projections by 1999 Census poverty level estimates (by territory); 130% of poverty was not available (used 124% poverty)

C. Total
1. Added eligibles from U.S. States and U.S. Territories
2. Did not calculate eligibles in Indian Tribal Organizations (very small number and data not readily available)
3. Did not calculate the disabled population living in senior facilities (very small number and data not readily available)

Note: Assumed constant poverty rate over 2007–2011 period (held constant at 2004 level as calculated from CPS data)

[FR Doc. 06–9569 Filed 12–11–06; 8:45 am]

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Federal Register

Tuesday,

December 12, 2006

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1, et al.

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR—2006–0023, Sequence 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–15; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–15. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov*.

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–15 and specific FAR case number(s). For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–15

Item	Subject	FAR case	Analyst
I	Payments Under Time-and-Materials and Labor-Hour Contracts	2004–015	Olson.
II	Additional Commercial Contract Types	2003–027	Olson.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–15 amends the FAR as specified below:

Item I—Payments Under Time-and-Materials and Labor-Hour Contracts (FAR Case 2004–015)

This final rule revises and clarifies policies related to award and administration of noncommercial item Time-and-Materials (T&M) and Labor-Hour (LH) contracts and the policies regarding payments made under those contracts. The objectives of the changes are to ensure fair and reasonable prices under T&M and LH contracts and to eliminate confusion related to payment amounts for subcontractor provided labor.

Item II—Additional Commercial Contract Types (FAR Case 2003–027)

This final rule implements section 1432 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Title XIV of the Act, referred to as the Services Acquisition Reform Act of 2003 (SARA), amended section 8002(d) of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355, 41 U.S.C. 264) to expressly authorize the use of Time–and–Materials (T&M) and Labor–Hour (LH) contracts for commercial services under specified conditions.

Dated: December 4, 2006.

Linda K. Nelson,

Deputy Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-15 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-15 is effective February 12, 2007.

Dated: November 22, 2006.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: November 22, 2006.

Roger D. Waldron,

Acting Senior Procurement Executive, General Services Administration.

Dated: November 21, 2006.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 06–9611 Filed 12–11–06; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 16, 32, and 52

[FAC 2005–15; FAR Case 2004–015; Item I; Docket 2006–0020, Sequence 23]

RIN 9000–AK32

Federal Acquisition Regulation; FAR Case 2004–015, Payments Under Time-and-Materials and Labor-Hour Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify payment procedures for Time-and-Materials (T&M) and Labor-Hour (LH) Contracts.

DATES: *Effective Date:* February 12, 2007.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2005–15, FAR case 2004–015. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 70 FR 56314 on September 26, 2005. The amendments made under this case are intended to be applicable primarily to non-commercial item contracts. Policies primarily applicable to commercial item T&M or LH contracts are being addressed separately under FAR case 2003–027.

The proposed amendments to FAR 16.307, 16.601, 16.602, 32.111, and 52.232–7 are intended to amend the underlying policies and increase the clarity of the affected FAR language. The FAR amendments address the areas related to payments made under T&M and LH contracts for non-commercial items, as described below.

1. **FAR 16.307 - Contract clauses.**

The Councils amended FAR 16.307(a)(1) to specify that the Allowable Cost and Payment Clause is included in T&M contracts. The clause is only applicable to the portion of the contract that provides for reimbursement of materials at actual cost and related indirect costs. This change is being made to ensure that appropriate rights and responsibilities are provided in T&M contracts with respect to reimbursement for material cost.

2. **FAR 16.601 - Time-and-materials contracts.**

The Councils revised the language at FAR 16.601(a) to provide a description of ''materials'' as used in ''time-and-materials contract.'' FAR 16.601(a) currently describes a T&M contract as a contract that provides for acquiring supplies or services on the basis of—

•Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and

• Materials at cost, including, if appropriate, material handling costs as part of material costs.

The prior FAR description did not address subcontract costs, even though such costs are often a significant part of the work performed and are provided for under the payments clause at 52.232–7. Also, that description did not address other direct costs and applicable indirect costs other than material handling (*e.g.*, general and administrative expenses) that may be appropriate for the acquisition.

3. **General structure of FAR 52.232–7 – Payments under Time-and-Materials and Labor-Hour Contracts.**

The Councils amended the current paragraph (b) of the clause at FAR 52.232–7 to specify that the term ''materials,'' as used in the clause, includes direct materials, subcontracts for supplies and ancillary services, other direct costs, and applicable indirect costs (this is consistent with the proposed changes to FAR 16.601). Materials also include supplies and ancillary services transferred between divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control.

Although the proposed rule had proposed to revise ''materials'' to include all subcontracts for services, the final rule defines subcontracts for labor as part of the definition of labor, if the subcontracted labor meets the requirements of the prime contract for labor hours. The prior FAR language had caused significant confusion because it did not adequately describe what is included in ''labor'' or ''materials.''

4. **Contractor furnished material – Alternate I.**

The Councils moved and amended the prior Alternate I of the clause at FAR 52.232–7. When a contractor furnishes its own materials that meet the definition of a commercial item at 2.101, the price to be paid for such materials shall be the contractor's established catalog or the market price. The ability of the contractor to bill at such prices should not be dependent on a contracting officer decision as to whether an alternate clause should be included in the contract.

5. **Profit or fee on materials.**

The Councils amended FAR 52.232–7(b)(7) to specifically state that the Government does not pay profit or fee to the *prime contractor on materials (except for commercial* items discussed in item 4, above or as otherwise provided for in FAR 31.205–26). The Councils believe this is consistent with the historical intent of the clause and the concept of a T&M contract. The recovery of profit or fee is accomplished as part of the labor hour portion of the T&M/LH contract.

6. **Billing subcontracts and interdivisional transfers for incidental supplies or services.**

For subcontracts, the Councils clarified that subcontracts for incidental services are to be reimbursed at the actual subcontract price, plus allowable indirect costs, per the requirements of FAR 52.216–7, Allowable Cost and Payment. For interdivisional transfers, the Councils revised the language to limit reimbursement to the actual rates or commercial prices of the division performing the work and specified that only one division may obtain profit. No profit pyramiding within a company is to be permitted.

7. **Billing subcontracts and interdivisional transfers for services that comply with the labor hour requirements.**

For services performed by employees of subcontractors, the proposed rule had included a process under which that labor would be reimbursed at actual cost (plus related indirect costs) unless it was included on a list in the prime contract. If it were included on the list, it was to be paid at the labor hour rate.

The final rule eliminates that proposed approach. The final rule provides that all labor hours that qualify under the labor hour requirements of the contract are to be paid at the labor hour rate specified in the contract. This applies regardless of whether an individual is an employee of the prime contractor, a subcontractor or an affiliate of the prime contractor.

8. **Solicitation provisions.**

The final rule incorporates three new solicitation provisions that direct how proposals address subcontract labor.

The first provision applies to acquisitions of noncommercial items that are to be based on adequate price competition. This provision requires each offeror to indicate for each labor rate in the proposal whether it is a rate that applies to employees of one company or if it is a blended rate that applies to employees of more than one company. The offerors must show for each labor rate if it applies to employees of the prime contractor, employees a particular subcontractor or affiliate, or if it is a blended rate that applies to employees of more than one subcontractor or employees of the prime contractor or any subcontractor. Agency procedures may authorize contracting officers to select one of three options in the provision as mandatory, and/or to require each offer to identify individual subcontractors in the proposal.

The second provision applies to acquisitions of noncommercial items not based on adequate price competition. This provision requires the offeror to establish separate individual labor hour rates for prime contractor employees, employees of each subcontractor and employees from affiliates of the offeror.

The third provision applies to acquisitions of commercial items and it requires each offeror to identify for each proposed labor hour rate whether the rate applies to prime contractor employees, subcontractor employees or employees from affiliates of the offeror.

9. **Application of the Prompt Payment Act.**

The Councils amended FAR 52.232–7(i) to include application of the Prompt Payment Act for interim payments

under T&M and LH contracts for services. The Prompt Payment Act has applied to fixed-price contracts for services for many years. Congress also recently amended the Prompt Payment Act to include cost reimbursement contracts for services. The Councils believe that since the Prompt Payment Act is applicable to both fixed-price and cost reimbursement contracts for services, it should also be applicable to T&M and LH contracts for services.

Discussion and Analysis

Payment for labor performed by subcontractors is treated differently depending on whether a contract action is awarded under adequate price competition or not. If a contract is not awarded on the basis of adequate price competition, the contract must separately identify labor rate categories for each subcontractor, in addition to the labor rates for the contractor. If the price of a contract is based on adequate price competition, the CO is not required to include separate rates for subcontractors, but may use blended rates that apply to any labor meeting the qualifications of the contract, regardless of whether provided by the contractor or a subcontractor.

The Councils adopted the philosophy on treatment of subcontractor labor that was developed under FAR Case 2003–027 and applied it to noncommercial T&M contracts awarded on the basis of adequate price competition. That is, FAR case 2003–027 requires no special treatment of labor provided by subcontractors. Any labor that meets the labor hour qualifications of the contract is to be paid at the labor hour rate specified in the contract, regardless if it provided by individual working for the prime contractor or a subcontractor. This approach was developed under FAR case 2003–027 for commercial items because it was felt that competitive pressure would produce fair and reasonable prices and eliminate potential abuses related to subcontractor labor. Competition for commercial items is the same as competition for noncommercial items and the approach should be the same for both FAR cases.

However, for noncommercial T&M contracts awarded without adequate price competition, competitive pressures are substantially diminished and the Government must take a much more cautious approach with respect to labor provided by subcontractors. Labor hour rates for these types of actions are largely based on cost information provided by the prime contractor. In order to avoid potential for issues arising after award of a noncompetitive T&M contract, each subcontractor must have its labor hour rates specified in the prime contract. This will be required in FAR Part 16 and offerors will be required to include such rates in their offer by a solicitation provision.

The FAR amendment includes three new solicitation provisions to be used for noncommercial T&M/LH solicitations. These provisions serve several purposes. First, they communicate plainly that labor hour rates for subcontractors are a potential major issue that must be addressed by the CO and by the offerors. Second, they communicate that contracts awarded on the basis of adequate price competition may be approached in a much more flexible way than may be used for contracts not awarded competitively. Finally, they provide a structure to CO's that can be used to eliminate issues related to potential abuse of subcontract labor hour rates.

FAR 52.216–29, Time-and-Material/Labor-Hour Proposal Requirements—Noncommercial Item Acquisitions without Adequate Price Competition, instructs offerors that they may identify the labor rates they are proposing in either one of three different manners. First, offerors may propose blended rates under which labor hours will be paid at the same rate, regardless of whether the individual performing the labor works for the prime contractor or a subcontractor. Second, offerors may offer labor hour rates that include two sets of rates, one set for individuals employed by the offeror and a second set for individuals employed by subcontractors. Third, offerors may offer multiple sets of labor hour rates, one set for individuals employed by the offeror and additional sets for each subcontractor for individuals employed by different subcontractors. If CO's are authorized by agency procedures, the contracting officer may amend this provision to pre-select a single method from among those three methods that every offeror must use.

FAR 52.216–30, Time-and-Material/Labor-Hour Proposal Requirements—Noncommercial Item Acquisitions without Adequate Price Competition, instructs offerors that they must offer multiple sets of labor hour rates, one set for individuals employed by the offeror and a additional sets for each subcontractor for individuals employed by different subcontractors. The purpose of this solicitation provision is to enforce the policy in Part 16 which requires acquisitions awarded on the basis other than adequate price competition to include individual labor hour rates for each subcontractor.

FAR 52.216–31, Time-and-Material/Labor-Hour Proposal Requirements—Commercial Item Acquisitions, instructs offerors that they must identify for each labor hour rate if the rate applies to only the offeror, a subcontractor, and affiliate of the offeror, or any combination.

Disposition of Public Comments

Comments were received from 17 respondents in response to the proposed rule. The Councils considered all of the comments and recommendations in developing the final rule. The Councils made the following changes to the proposed rule as a result of the public comments and deliberations:

(1) *Definition of ''Hourly Rate.''* Established a definition for ''hourly rate'' to permit reimbursement of subcontracts for services and services transferred between divisions, subsidiaries, or affiliates under a common control at the hourly rates in the schedule when the employee meets the labor qualification specified in the contract (see comment (4)(c)(3)).

(2) *Definition of ''Materials.''* Revised the definition for ''materials ''to (1) exclude subcontracts for services and services transferred between divisions, subsidiaries, or affiliates under a common control from the definition of ''materials'' because these services are included in the ''hourly rate'' when the services meet the labor qualifications specified in the contract (2) add incidental services to the examples of other direct costs (see comment (4)(c)(3)). Subcontracts for services and services transferred between divisions, subsidiaries, or affiliates under a common control that do not meet the labor qualifications specified in the contract are incidental services but see (3)(ii) below.

(3) *Reimbursement for Subcontract and Interdivisional Transfers of Services.* Eliminated the provisions in the proposed rule that only permitted reimbursement of subcontract costs at the hourly rates in the contract when the subcontractors were listed in the contract. (see comment (4)(c), (4)(e)). Added provisions that—

(i) Require reimbursement of subcontracts for services and services transferred between divisions, subsidiaries, or affiliates under a common control of at the hourly rates in the schedule that include profit when the employees performing the work meet the qualifications specified in the contract.

(ii) Address reimbursement for subcontracts for services and services transferred between divisions, subsidiaries, or affiliates under a common control when the employees performing the work do not meet the qualifications specified in the contract.

Payment for such services is at the sole discretion of the Government.

(iii) Require separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor. When the contract is awarded without adequate price competitions, the rule also requires a separate set of rates for labor performed by the contractor, each subcontractor, and each division, subsidiary, or affiliate of the contractor under a common control that will perform on the contract.

(4) *Solicitation Provisions.* Added three solicitation provisions to ensure contractors understand the methodology for reimbursing subcontract costs (see comment (4)(c),(11)(c)).

(5) *Timecards.* Revised the rule to recognize that companies use both paper-based and electronic timecards (see comment (4)(c), (9)).

(6) *Commercial Item Materials.* Revised the prescription for reimbursing commercial items to clarify the commercial catalog or market prices are subject to negotiation (see comment (4)(c)(4)(b)).

(7) *Assignment and Release of Claims.* Re-titled the paragraph previously title ''Assignment'' to ''Assignment and Release of Claims'' to clarify both topic are covered in the paragraph (see comment (4)(c), (7)).

(8) *Refunds.* Deleted the current provision on refunds from the clause because the provisions duplicate coverage in the Allowable Cost and Payment clause (see comment (4)(c), (4)(d)).

Discussion of Public Comments

(1) **Restrict Use of T&M Contracts.** *A respondent commented*: Revise FAR 16.601(c) to also restrict the use of T&M contracts when the costs other than direct labor are incidental to the work. If a contract requires substantial direct materials, interdivisional transfers, subcontracts, and other direct costs, or the costs are so high that they warrant the submission, auditing, and settlement of final indirect rates, the contract type should not be a T&M contract.

Response: When substantial direct materials, interdivisional transfers, subcontracts, and other direct costs are anticipated, a T&M contract type may not be appropriate. However, selecting the appropriate contract type is generally a matter for negotiation and requires the exercise of sound judgment. The objective is to negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor the greatest incentive for efficient and economical performance. There are many factors the contracting officer must consider in selecting the appropriate contract type. T&M contracts are the least preferable contract type that can only be used when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

(2) **Allowable Cost and Payment Clause.** *A respondent commented*: Clarify which provisions of the Allowable Cost And Payment clause apply to the material portion of T&M contracts. Recommend either repeating the applicable portions of the clause in the T&M clause or identifying the Allowable Cost and Payment clause as a required clause in FAR Subpart 16.6.

Response: As prescribed in FAR 16.307(a), the Allowable Cost and Payment clause is a required clause for all cost-reimbursement contracts. All provisions of the clause are applicable to the material portions of T&M contracts. The rule clearly specifies that the Allowable Cost and Payment clause is included in T&M contracts and that it is only applicable to the portion of the contract that provides for reimbursement of materials at actual costs. The change is being made to ensure that the appropriate rights and responsibilities are provided in T&M contracts. The Councils see no reason to repeat the clause in the T&M clause. Multiple clauses will be included in T&M contracts.

(3) **Definition of Materials.** *A respondent commented*: The proposed definition of material that includes direct materials, subcontracts for supplies and services, other direct costs, and applicable indirect costs adds certainty to the process and will eliminate significant issues that arise during the audit process. *A respondent commented*: The proposed definition of materials is contrary to the common business meaning of the word. Instead of defining materials to include subcontracted services, the rule should exclude the word materials from the contract type. The Government routinely reimburses travel, equipment, communication, and other direct costs under T&M contracts. Recommend instead establishing a time-and-other-direct-cost contract type. *A respondent commented*: Do not include subcontracts in the definition of materials. Instead, separately address subcontracts and interdivisional transfers to clarify the payment policies for these elements of cost and to avoid inevitable disputes over whether the subcontract for supplies and services was ''material consumed directly in connection with furnishing the service'' that is reimbursed at the fixed contract rates or another type of subcontract for supplies and services that would be reimbursed at actual costs. *A respondent commented*: Including services transferred between divisions, subsidiaries, or affiliates of the contractor under a common control and subcontracts for services in the definition of materials is contrary to the traditional, and common sense, definition of the term ''materials.'' Prime, subcontract, and interdivisional labor should be included in the ''time'' element. A respondent commented: Including subcontract services and incidental expense in ''materials'' is contrary to common usage and to the language of FAR 31.205–26 and 45.301. Instead, recommend separately addressing the elements of costs as follows:

- Direct labor (time) means prime and subcontractor labor devoted to the performance of the tasks in the statement of work (SOW).
- Materials mean products, including raw materials, parts, subassemblies, components, and manufacturing supplies, whether manufactured or purchased by the contractor, and including such collateral items as inbound transportation and in transit insurance.
- Incidental services means services performed or purchased solely for the support of contract direct labor, such as travel, printing, or computer usage.
- Indirect costs.

Response: While the definition for materials in the rule is different from the referenced definitions at FAR 31.205–26 and 45.301, reimbursing subcontracts for services and other costs as materials is not contrary to common usage for T&M contracts. Currently, FAR 16.601(a) only identifies ''direct labor'' and ''materials'' as elements of T&M contracts. However, the associated payment clause at FAR 52.232–7, Payments Under T&M/LH Contracts addresses payment of ''materials and subcontracts.'' In addition, the Government routinely pays contractors for other direct costs (ODC) and G&A incurred in performance of a T&M contract even though ODC and G&A are not mentioned in FAR 16.601 or 52.232–7. In addition, contractors commonly record subcontracts for services, like subcontracts for supplies, as elements of ''materials'' for accounting purposes. There are no known problems with the longstanding practice of reimbursing these other costs as materials. Therefore, the Councils see no reason to revise ''time-and-materials'' contracts to ''time-and-other-direct-

cost'' or ''time-and-material-and-subcontract-and-interdivisional transfers'' or ''time-and-material-and-incidental services-and-indirect costs'' contracts as recommended by the various commenters. The Councils did, however, establish a definition for ''hourly rate'' to clarify that subcontract and interdivisional labor will be reimbursed at the ''hourly rate'' whenever the employee satisfies the labor qualifications specified in the contract. The Councils also revised the definitions of ''materials'' to— (1) exclude subcontracts for services and interdivisional transfers of services that meet the labor qualifications specified in the contract from the definition of material because these elements of cost are now included in the definition of ''hourly rate'' for the purposes of reimbursing the subcontracts; and (2) add incidental services to the examples of other direct costs.

(4) **Methodology for Reimbursing Materials.**

(a) *A respondent commented*: Strongly support the proposed methodology for reimbursing commercial materials and the deletion of the ''most favored customer''provisions.

(b) *A respondent commented*: Revise the prescription for reimbursing commercial materials from ''*shall be* the contractor's established catalog or market price ''to '' *shall not exceed* the contractor's established catalog or market price'' because the proposed language could be interpreted to mean contracting officers cannot negotiate better pricing.

Response: While the proposed language did not preclude negotiating better prices, the recommended change more clearly establishes that the prices are subject to negotiation. Therefore, the Councils revised the rule as recommended.

(c) *A respondent commented*: Pay the catalog or market price for materials of the prime's own production that are commercial items (excluding the products of its affiliates) and reimburse the cost of other materials at actual costs, including properly allocable indirect costs, but no profit or fee.

Response: When a contractor furnishes its own material that meets the definition of a commercial item at FAR 2.101, the contractor will be paid the established catalog or market price for the item. Product of its affiliates will be reimbursed on the basis of costs incurred except when the supplies are sold or transferred between divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control and it is the established practice of the transferring organization to price interdivisional transfers at other than cost and the other conditions of 31.205–26 are met. Profit or fee will not be paid on materials that are reimbursed at cost.

(d) *A respondent commented*: Delete the current provision on refunds from FAR 52.232–7, Payments Under Time-and-Materials and Labor-Hour Contracts, because the provision duplicates the provision in FAR 52.216–7, Allowable Cost and Payment.

Response: The Councils revised the rule to eliminate redundant coverage.

(e) Methodology for Reimbursing Subcontracts. *A respondent commented*: Concept of reimbursing subcontract labor at the hourly rates in the contract or the actual cost to the prime contractor is sound but do not permit blended prime and subcontractor labor rates. Establish separate hourly rates in the contract for subcontract labor not reimbursed based on actual costs. The subcontract rates should include prime contractor indirect costs allocable to subcontract costs and profit. *A respondent commented*: Reimburse all subcontract labor at the contract rates when the subcontracts satisfies all contract labor qualifications is appropriate, fair, and in the Government's best interest. Requiring subcontracts to be listed in the contract in order to be reimbursed at the contract labor rates will make it extremely difficult for the Government to acquire ''on-call'' or ''on-demand'' services that sometimes require a prime contractor to take responsibility for hundred or even thousands of subcontractors often interspersed across a wide geographic area. Requiring contract modifications for every change in subcontractor poses an excessive administrative burden on both parties. Reimburse subcontract labor at the schedule labor rates without listing the subcontractors in the contract when the contractor's proposal indicates that some of the work may be performed by subcontractors that meet the contract's qualification requirements and that the price for that ''type of work'' will be the prime contract's labor rate which may be blended or other rate. T&M/LH contracts specify the required labor qualifications. Whether the person filling the position is an employee of the prime or a subcontractor, the qualifications must be met. The Government has already determined through adequate price competition or otherwise the pricing is fair and reasonable for the ''type of work.'' The subcontract consent provisions are unduly burdensome. Absent the contracting officer's approval and the resulting contract modification to add new subcontractors, contractors will not be paid profit on the subcontract costs even though the contractor remains responsible for the subcontractor's performance. Lack of profit will discourage the use of subcontractors. *A respondent commented*: Allowing contracting officers to identify the subcontracts to be reimbursed at the contract rates is a positive step since the rule clearly allows prime to be paid profit on subcontracts. Recommend also allowing reimbursement for subcontracts at the contract rates when the prime proposal includes subcontracted services, the contractor is in a teaming relationship with the subcontractor, or when the acquisition has opportunities for small and small disadvantaged businesses. Small and small disadvantaged businesses rely heavily on subcontracting with prime contractors on T&M contracts. If primes are not paid profit on the subcontracts, the primes will be motivated to perform all the work themselves which could hurt small businesses and may not result in the best technical solution for the Government. Contractors establish large teams of large and small businesses to meet the requirements of indefinite-delivery contracts. If they are not allowed to recover profit on subcontracts, competition will be reduced and the Government may not get competition or the best technical solution. When the subcontracts are reimbursed at the contract rates, the prime assumes the risk of subcontractor labor rate changes. The Government is assured fair and reasonable prices based on competition or price analysis. Reimbursing subcontracts at actual costs shifts the risk of subcontract labor escalation to the Government. *A respondent commented*: Reimburse subcontract labor under the labor portion of the contract and do not treat subcontracts as an element of ''material.'' If the work qualifies for the hourly rate in the schedule, the Government should not care if the work was performed by a subcontractor or another division of the contract. It is not always feasible to establish hourly rates for specific subcontractors at the time of contract award. In some cases, the fixed hourly rates are a blend of anticipated prime and subcontractor hourly rates. This approach yields more competitive hourly rates for the Government and promotes using all categories of small businesses to achieve price advantage. Requiring separate fixed hourly rates for individual subcontractors would further complicate an already complex invoicing and payment process. Further, the bargain agreed upon at the time of contract award must be maintained

throughout contract performance unless revised by mutual agreement. Some contractors have priced blended prime and subcontract rates but were subsequently reimbursed on their actual costs for subcontracts which is inequitable because it unilaterally changed the terms of the contract. *A respondent commented*: Requiring additional rates and approvals add an unnecessary layer of administration that is not commensurate with the level of risk or cost benefit. Additional controls that restrict a contractor's use of proven subcontractors greatly reduce a contractor's ability to efficiently support the Government. Recommend revising the rule to properly place the responsibility for performing and providing qualified staff on the prime. The rule should allow prime contractors to provide competent staff, including subcontractors when a business need exists, and only designate key personnel when the criticality of the work dictates a need to do so. Change the rule to only require a notification instead of the proposed requirement for consent to subcontract. Use the proposed audit provisions as the monitoring device for excessive profit or fee. The Government can reject the work provided by a subcontractor using the inspection and acceptance clauses. *A respondent commented*: It is not always feasible to establish hourly rates for specific subcontractors at the time of contract award. T&M contracts are only used when it is not possible at the time of award to estimate accurately the extent or duration of the work. It may be difficult to identify at the time of award all the subcontractors that ultimately will be needed to perform the work. For ''on-call'' or ''on-demand'' services, contractors are not able to predict which subcontractors will be called on to fulfill each requirement. The restriction on subcontract profit will reduce the use of qualified subcontractors, especially small and small disadvantaged business. In addition, contractors will not be paid the appropriate compensation for administrative cost and financial risk that accompany the use of subcontracts unless the subcontractors are identified in advance. Any final rule should allow contractors to be paid profit on all subcontract labor that is not incidental to performance. The Government should focus on the value of the hours worked instead of the name of the subcontractor performing the work to allow the prime contractor to identify and retain the best people available for contract performance. A more flexible approach should be used that does not require formal contract modification. The flexibility in performance and selection of subcontractors is particularly critical to the prime contractor. *A respondent commented*: Prime contractors will only use subcontractors that are less expensive than the prime if blended prime and subcontract labor rates are used. This will limit the use of small business subcontractors since few small businesses achieve T&M rates that are competitive with large businesses because their overhead bases are smaller. Also, requiring each subcontract to be identified in the contract in order to be reimbursed at the contract rates will serve as a barrier to adding new subcontractors during contract performance. The requirement to list each subcontractor in the contract is significantly more cumbersome that the consent to subcontract requirements that are currently required for T&M contracts. Contractors will have to develop new blended rates that will be subject to audit and approval and formally modify the contract to add new subcontractors. Prime contractors will only use small businesses to the extent they are required to do so by their small business subcontracting plans and maybe not even then if the small businesses rates are sufficiently higher than the blended rates. *A respondent commented*: Not paying profit or fee on subcontracts is extremely detrimental to small businesses. Many small business prime contractors get much of their annual revenues from contracts with large amounts of materials and minor labor hour or T&M costs to support integration, deployment, or maintenance of the materials. Not paying profit on these materials would erode potential earnings for these small businesses. In addition, large businesses often subcontract out work that could be performed by the large business to meet small business subcontracting goals on Government contracts. If large businesses are no longer paid profit on subcontracts, large businesses will be far less likely to subcontract out work. An objective of the rule is to ensure fair and reasonable prices. Fair and reasonable must be applied to both the Government and the contractor. Not paying profit on materials is not a ''fair'' policy. Market forces will act competitively to keep the Government's price fair and reasonable. *A respondent commented*: The Government pays profit on materials and subcontracts on cost-plus-fixed-fee contracts. The existing prohibition on paying profit on materials and subcontracts on T&M contracts stems from the fact that such costs were incidental to the contract. Contrary to statements in the proposed rule, the Government's use of T&M contracts has changed over time and other factors have significantly changed. Large businesses are now required to subcontract out to small and small disadvantaged subcontractors to meet their subcontracting goals. This requirement did not exist when the prohibition on paying profit on materials and subcontracts was adopted. Small businesses— (1) use consultants and subcontractors to supplement their capabilities and effectively compete for potential contracts; (2) need the flexibility to change subcontractors during contract performance; and (3) need to make profit on subcontracted services or they will not bid on contracts if they do not have the employees with the required expertise. The need for subcontracts and consultants is driven by the requirement of the contract. The contracts are not personal services contracts. The Government and prime contractors contract for services at specified prices and they negotiate the price for the work in terms of the effort required by the contract. When small businesses do not have the in-house staff to perform the work, they use salary surveys and their indirect cost structure to estimate the cost of employees they will ultimately subcontract with to perform the work which may or may not be disclosed to the Government. On large procurement, this may be the only way to be responsive. The small businesses takes the risk that they will be able to find subcontract labor at their estimated rate and there are times when the small businesses' actual cost for the labor exceeds their estimated price and the small business does not recover its cost of subcontracting. For many small businesses, subcontract labor may be used to perform the majority of the work. If the small business will not be paid profit on these subcontracts, the small business would not be adequately compensated and would have no incentive to bid on the effort. As a result, competition would decrease and some services would not be available in the small business community. In addition, placing too many limitations on subcontracting for large businesses will ultimately reduce the subcontracting opportunities for small businesses. It is in the best interest of the Government to encourage subcontracting. The Government should have the right to know when subcontractors are being replaced for quality assurance purposes and should be able to review and approve subcontractor's qualifications. Finally, listing only the known subcontracts in

the contract will not help small businesses and will discourage prime contractors from finding and using small businesses. Contract modifications to add subcontractors after contract award could take significant time and could significantly disrupt or delay the federal procurement process. When there is adequate competition or GSA schedule prices, the Government should have the right to approve new subcontractors for quality but not the right to automatically negotiate a new hourly rate which implies the right of contractors to increase the hourly rates after contract award. The administrative costs for T&M contracts will increase significantly and competition among small businesses will significantly decrease. The Government should focus on disclosure and verification of qualifications and not prohibitions or restrictions on subcontracting and renegotiating prices when adequate competition exists. Instead of limiting reimbursement to subcontractors listed in the contract, recommend also permitting subcontractors and consultants to be reimbursed at the contract rates if the labor categories are listed that that will be subcontracted out and simply adding the subcontractors name to the list when the subcontract is awarded. *A respondent commented*: The inability to make profit, coupled with the inherent prime contractor oversight requirements will have a negative affect on subcontracting. Prime contractors will be motivated to use their own employees in order to earn profit. The negative affect will fall disproportionately on small businesses which is contrary to current procurement policy. *A respondent commented*: Reimburse subcontract at the prime's actual cost because contractors are being reimbursed for subcontract at the prime's rates but are using lower costs, and less qualified, subcontracts to perform the work. *A respondent commented:* Restrict reimbursement of subcontract costs to actual costs because the prime contractor could subsequently negotiate lower rates with subcontractors that were authorized to be paid at the schedule rates and the Government would pay excessive prices for subcontracted effort that may be of a level less than that envisioned by the Government. Reimbursing at the schedule rates encourages contractors to maximize profit by subcontracting out more of the effort at lower subcontract rates. The Government will expend additional resources to monitor the quality and efficiency of the subcontract labor since the subcontract effort will not be readily apparent when billed at the schedule rates.

Response: Limiting reimbursing of subcontract labor to actual costs is not consistent with the treatment on all other flexibly priced Government contracts where prime contractors are paid profit on subcontract costs. In addition, requiring subcontractors to be listed in the contract in order to be reimbursed at the hourly rates could have a negative impact on small businesses and was administratively burdensome to contractors. Upon further consideration, the Councils believe it is appropriate to reimburse subcontracts on competively awarded T&M contracts at the schedule labor rates without listing the subcontracts. The Councils revised the rule accordingly. However, the Councils do not believe it is appropriate to eliminate the traditional consent and advance notification requirements for non-commercial T&M. These same consent and advance notification requirements are not new for T&M contracts. The Councils are unaware of any systemic issues relating to their applicability on T&M contracts. Therefore, the final rule does not change the standard consent and advance notification requirements for non-commercial T&M contracts. In addition, the Councils revised the rule to require separate labor rates for each subcontract and interdivisional transfer of services when adequate price competition is not obtained. There may be circumstances when it is appropriate to use blended prime and subcontract labor rates when the prices are based on adequate competition. Therefore, the rule permits use of blended prime and subcontract labor rates when the prime contract is awarded with adequate competition. However, nothing in the rule prevents the Government from establishing separate labor rates for each subcontract when the prime contract is awarded based on competition. Also, the rule provides for payment of profit on subcontract labor paid at the hourly rates in the contract.

(f) **Interdivisional Transfers.** *Coalition Comment*: Imposing FAR Part 31 on interdivisional transfers should be avoided.

Response: The rule provides that interdivisional transfers of labor that meet the qualifications specified in the contract will be reimbursed at the ''hourly rates'' in the contract. For these interdivisional transfers, FAR Part 31 is not imposed. For all other interdivisional transfers, contractors will be reimbursed on the basis of cost incurred in FAR Subpart 31.2.

(g) *A respondent commented*: Pay allowable indirect costs allocable to subcontracts, either by inclusion in stipulated hourly rates for specific contractors or by addition to subcontract direct costs, (b) materials, and (c) incidental services.

Response: The rule permits payment of indirect costs either by inclusion in the hourly rates in the contract when the subcontract labor meets the labor qualifications specified in the contract or at actual costs as recommended by the commenter.

(h) *A respondent commented:* Reimburse the prime contractor for the cost of incidental services, including properly allocable indirect costs, but no profit or fee.

Response: Refer to Comment 3 above. The Councils did not adopt the recommendation to establish a new ''incidental services'' category. The rule does, however, result in reimbursement of these elements of costs, including properly allocable indirect costs, with no profit or fee.

(5) **Total Cost and Ceiling Price**. *A respondent commented*: Consolidate the ''Total Cost'' and ''Ceiling Price'' paragraphs.

Response: The ''Total Cost'' paragraph addresses contractor responsibilities. The ''Ceiling Price'' paragraph addresses the Government's responsibility to pay or not pay. Therefore, the Councils believe it is appropriate to separately address total cost and the ceiling price.

(6) **Assignment and Release of Claim**. *A respondent commented*: Change the title of paragraph (f) of the FAR clause at 52.232–7, Payments Under Time-and-Materials and Labor-Hour Contracts from ''Assignment'' to ''Release of Claims,'' which is what the paragraph is really about.

Response: The Councils revised the title of the paragraph to ''Assignments and Release of Claims'' because both topics are discussed in the provision.

(7) **Withhold**. *A respondent commented*: Revise the rule to clarify the payment withhold is limited to five percent or $50,000 and that the withhold is applied at the contract level instead of the task order level.

Response: The Payments under Time-and-Materials and Labor-Hour Contracts clause (52.232–7) was modified as suggested by the contractor in FAR Case 2004–003 which was published in the **Federal Register** at 71 FR 43576 on July 27, 2005.

(8) **Timecards**. *A respondent commented*: Delete the requirement to validate the individual daily job timecards to provide contractors the flexibility to use electronic time keeping systems.

Response: The Councils revised the final rule to require access to the timekeeping records instead of job timecards to recognize electronic timekeeping systems.

(9) **Prompt Payment**. *A respondent commented*: Revise the rule to permit Prompt Payment Act interest also on the material portion of T&M contracts. The Prompt Payment Act was revised to make prompt payment interest applicable to interim payments on cost reimbursement contracts for services. T&M contracts are not equivalent to cost reimbursement contracts and it is not logical to apply interest to labor without including the material resources required to provide the labor. However, the impact of excluding interest on the material portion is probably negligible since most of the payments on T&M contracts are for labor. Restricting prompt payment interest to labor will certainly make more work for Government disbursing official who will have to segregate labor from material to compute the interest penalties. Any amount the Government saves from only paying prompt payment interest on labor will likely be more than offset by the administrative costs of computing the interest on only the labor portion of the invoice.

Response: The Prompt Payment Act applies to fixed-price contracts and interim payments on cost-reimbursable contracts for services. The Councils lack the authority to extend the Act to interim payments for supplies.

(10) **Miscellanous.**

(a)*A respondent commented*: Strongly request the Councils to hold additional public meetings to provide the public the opportunity to further explain the comments submitted.

Response: The Councils determined that the FAR changes are within the scope of changes contemplated by the proposed rule and that no further public meetings or proposed rule are appropriate. Further public meetings or public comments would not result in comments that are substantially different from those already submitted.

(b) *A respondent commented*: Recommend having the effective date for the rule be 60 days after publication in the **Federal Register** so agencies can develop implementing guidance and update the associated training.

Response: The effective date for FAR changes is generally 30 days after publication in the **Federal Register**. However, the Councils agree agencies may need additional time to implement guidance and update the associated training. Therefore, the rule will have an effective date 60 days after publication in the **Federal Register**.

(c) *A respondent commented*: Recommend the Councils take steps to ensure the solicitation process clearly addresses the method for reimbursing subcontract costs, *i.e.*, only at actual costs unless the subcontractor is listed in the contract.

Response: The rule no longer requires listing subcontracts in the contract in order for the costs to be reimbursed using the fixed hourly rates in the contract. The rule includes two solicitation provisions to ensure contractors understand the methodology for reimbursing subcontract costs.

(d) *A respondent commented*: Urge the Councils to also remove the ''most favored customer'' provisions from FAR 31.106–3.

Response: The provisions at FAR 31.106–3 are outside the scope of this rule. However, the Councils are considering the recommended change.

(e) *A respondent commented*: The Supplementary Information in the proposed rule said that subcontracted labor paid at the LH rate must *be accounted for* and *substantiated* under the same standards as labor hours provided by the prime contractor. This could be interpreted to mean prime contractors are required to include the subcontractor costs in the prime's overhead base for direct labor. Clarify how prime contractors should allocate overhead to subcontract labor. Also, address the potential inconsistency of bidding/billing some subcontractor labor at contract rates and others at cost with respect to Cost Accounting Standards (CAS) compliance.

Response: The Supplementary Information in the proposed rule did include this statement. However, nothing in the proposed or final rule require prime contractors to include subcontractor costs in the overhead base for direct labor. Contractors should continue to allocate overhead to subcontract labor consistent with their disclosed or established procedures. CAS relate to allocation issues. The costs allocable to T&M contracts may differ significantly from the costs billed and paid for the T&M contract. The same is true for fixed-price contracts.

(f) *A respondent commented*: Replace the term ''voucher'' with ''invoice''.

Response: The term ''voucher'' refers to interim payments on cost reimbursement contracts. The term ''invoice'' refers to delivery payments and payments on fixed-price contracts. Therefore, the Councils did not revise the terminology as recommended.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA) as follows:

1. Statement of need for, and objectives of, the rule.

This rule revises the Federal Acquisition Regulation to amend underlying policies and increase the clarity of payments made under T&M and LH contracts for non-commercial items. The objectives of the amendment are to ensure fair and reasonable prices under T&M contracts and to eliminate the ambiguity in T&M contracts that has been responsible for confusion over payment amounts for subcontractor provided labor.

2. Summary of significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

Comments were received from 17 respondents in response to the proposed rule. The Councils considered all of the comments and recommendations in developing the final rule. The Councils made the following changes to the proposed rule as a result of the public comments and deliberations:

(a) *Definition of ''Hourly Rate.''* Established a definition for ''hourly rate'' to permit reimbursement of subcontracts for services and services transferred between divisions, subsidiaries, or affiliates under a common control at the hourly rates in the schedule when the employee meets the labor qualification specified in the contract (see comment (4)(c)(3)).

(b) *Definition of ''Materials.''* Revised the definition for ''materials'' to— (1) exclude subcontracts for services and services transferred between divisions, subsidiaries, or affiliates under a common control from the definition of ''materials'' because these services are included in the ''hourly rate'' when the services meet the labor qualifications specified in the contract; and (2) add incidental services to the examples of other direct costs (see comment (4)(c)(3)). Subcontracts for services and services transferred between divisions, subsidiaries, or affiliates under a common control that do not meet the labor qualifications specified in the contract are incidental services but see (3)(ii) below.

(c) *Reimbursement for Subcontract and Interdivisional Transfers of Services.* Eliminated the provisions in the proposed rule that only permitted reimbursement of subcontract costs at the hourly rates in the contract when the subcontractors were listed in the contract (see comment (4)(c)(4)(e)). Added provisions that—

(i) Require reimbursement of subcontracts for services and services transferred between divisions, subsidiaries, or affiliates under a common control of at the hourly rates in the schedule that include profit when the

employees performing the work meet the qualifications specified in the contract.

(ii) Address reimbursement for subcontracts for services and services transferred between divisions, subsidiaries, or affiliates under a common control when the employees performing the work do not meet the qualifications specified in the contract. Payment for such services is at the sole discretion of the Government.

(iii) Require separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor. When the contract is awarded without adequate price competitions, the rule also requires a separate set of rates for labor performed by the contractor, each subcontractor, and each division, subsidiary, or affiliate of the contractor under a common control that will perform on the contract.

(d) *Solicitation Provisions.* Added two solicitation provisions to ensure contractors understand the methodology for reimbursing subcontract costs (see comment (4)(c)(11)(c)).

(e) *Timecards.* Revised the rule to recognize that companies use both paper-based and electronic timecards (see comment (4)(c)(9)).

(f) *Commercial Item Materials.* Revised the prescription for reimbursing commercial items to clarify the commercial catalog or market prices are subject to negotiation (see comment (4)(c)(4)(b)).

(g) *Assignment and Release of Claims.* Re-titled the paragraph previously title ''Assignment'' to ''Assignment and Release of Claims'' to clarify both topic are covered in the paragraph (see comment (4)(c)(7)).

(h)*Refunds.* Deleted the current provision on refunds from the clause because the provisions duplicate coverage in the Allowable Cost and Payment clause (see comment (4)(c)(4)(d)).

3. Description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available.

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because T&M contracting is a common method of acquiring services from small entities. However, it is not feasible to estimate the number of small entities impacted.

4. Description of projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The prior FAR policies required contractors to maintain records to support invoices presented to the Government for payment. Such records included original timecards, the contractor' timekeeping procedures, distribution of labor, invoices for material, and so forth. These are standard records maintained by any company, large or small, and the fact that the contract would require that these records be made available to the Government should not place any additional record keeping burden on the entity.

5. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Significant alternatives to the final rule include:

- Not permitting any subcontractor to be paid at the labor hour rate and reimbursing all subcontractors at actual cost.
- Requiring any subcontractor to be listed in the prime contract as the sole means of authorizing payments of labor for that subcontractor to be at the labor hour rate specified in the contract.
- Incorporating a list of each Other Direct Cost (ODC) into each T&M contract that would be authorized for reimbursement under that contract and prohibiting reimbursement of any other ODC.
- Not requiring a list of each Other Direct Cost (ODC) authorized for reimbursement and permitting any ODC to be reimbursed.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 16, 32, and 52

Government procurement.

Dated: December 4, 2006.

Linda K. Nelson,

Deputy Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 16, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 16, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 16–TYPES OF CONTRACTS

■ 2. Amend section 16.307 by revising paragraph (a)(1) to read as follows:

16.307 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.216–7, Allowable Cost and Payment, in solicitations and contracts when a cost-reimbursement contract (other than a facilities contract) or a time-and-materials contract (other than a contract for a commercial item) is contemplated. If the contract is with an educational institution, modify the clause by deleting from paragraph (a) the words ''Subpart 31.2'' and substituting for them ''Subpart 31.3.'' If the contract is with a State or local government, modify the clause by deleting from paragraph (a) the words ''Subpart 31.2'' and substituting for them ''Subpart 31.6.'' If the contract is with a nonprofit organization other than an educational institution, a State or local government, or a nonprofit organization exempted under OMB Circular No. A–122, modify the clause by deleting from paragraph (a) the words ''Subpart 31.2'' and substituting for them ''Subpart 31.7.'' If the contract is a time-and-materials contract, the clause at 52.216–7 applies only to the portion of the contract that provides for reimbursement of materials (as defined in the clause at 52.232–7) at actual cost.

* * * * *

■ 3. Revise section 16.601 to read as follows:

16.601 Time-and-materials contracts.

(a) Definitions for the purposes of Time-and-Materials Contracts.

Direct materials means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

(1) Performed by the contractor;

(2) Performed by the subcontractors; or

(3) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

Materials means—

(1) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(2) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(3) Other direct costs (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and

(4) Applicable indirect costs.

(b) *Description.* A time-and-materials contract provides for acquiring supplies or services on the basis of—

(1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and

(2) Actual cost for materials (except as provided for in 31.205–26(e) and (f)).

(c) *Application.* A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the

extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

(1) *Government surveillance.* A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

(2) *Fixed hourly rates.* (i) The contract shall specify separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor (see 16.601(e)(1)).

(ii) For acquisitions of noncommercial items awarded without adequate price competition (see 15.403–1(c)(1)), the contract shall specify separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor to be performed by—

(A) The contractor;

(B) Each subcontractor; and

(C) Each division, subsidiary, or affiliate of the contractor under a common control.

(iii) For contract actions that are not awarded using competitive procedures, unless exempt under paragraph (c)(2)(iv) of this section, the fixed hourly rates for services transferred between divisions, subsidiaries, or affiliates of the contractor under a common control—

(A) Shall not include profit for the transferring organization; but

(B) May include profit for the prime contractor.

(iv) For contract actions that are not awarded using competitive procedures, the fixed hourly rates for services that meet the definition of commercial item at 2.101 that are transferred between divisions, subsidiaries, or affiliates of the contractor under a common control may be the established catalog or market rate when—

(A) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary or affiliate of the contractor under a common control; and

(B) The contracting officer has not determined the price to be unreasonable.

(3) *Material handling costs.* When included as part of material costs, material handling costs shall include only costs clearly excluded from the labor-hour rate. Material handling costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures consistent with Part 31.

(d) *Limitations.* A time-and-materials contract may be used— (1) only after the contracting officer executes a determination and findings that no other contract type is suitable, and (2) only if the contract includes a ceiling price that the contractor exceeds at its own risk. The contracting officer shall document the contract file to justify the reasons for and amount of any subsequent change in the ceiling price. Also see 12.207(b) for further limitations on use of Time-and-Materials or Labor Hour contracts for acquisition of commercial items.

(e) *Solicitation provisions.* (1) The contracting officer shall insert the provision at 52.216–29, Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisitions With Adequate Price Competition, in solicitations contemplating use of a Time-and-Materials or Labor-Hour type of contract for noncommercial items, if the price is expected to be based on adequate price competition. If authorized by agency procedures, the contracting officer may amend the provision to make mandatory one of the three approaches in paragraph (c) of the provision, and/or to require the identification of all subcontractors, divisions, subsidiaries, or affiliates included in a blended labor rate.

(2) The contracting officer shall insert the provision at 52.216–30, Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisitions without Adequate Price Competition, in solicitations for noncommercial items contemplating use of a Time-and-Materials or Labor-Hour type of contract if the price is not expected to be based on adequate price competition.

(3) The contracting officer shall insert the provision at 52.216–31, Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisitions, in solicitations contemplating use of a Commercial Time-and-Materials or Labor-Hour contract.

PART 32—CONTRACT FINANCING

■ 4. Amend section 32.111 in paragraph (a)(7) by removing (a)(7)(i) and redesignating paragraphs (a)(7)(ii) and (iii) as (a)(7)(i) and (a)(7)(ii), respectively; and by revising the newly designated paragraph (a)(7)(i) to read as follows:

32.111 Contract clauses for non-commercial purchases.

(a) * * *

(7) * * *

(i) If a labor-hour contract is contemplated, the contracting officer shall use the clause with its Alternate I.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add sections 52.216–29, 52.216–30, and 52.216–31 to read as follows:

52.216–29 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition With Adequate Price Competition.

As prescribed in 16.601(e)(1), insert the following provision:

TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—NON-COMMERCIAL ITEM ACQUISITION WITH ADEQUATE PRICE COMPETITION (FEB 2007)

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

(1) The offeror;

(2) Subcontractors; and/or

(3) Divisions, subsidiaries, or affiliates of the offeror under a common control;

(c) The offeror must establish fixed hourly rates using—

(1) Separate rates for each category of labor to be performed by each subcontractor and for each category of labor to be performed by the offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the offeror under a common control;

(2) Blended rates for each category of labor to be performed by the offeror, including labor transferred between divisions, subsidiaries, or affiliates of the offeror under a common control, and all subcontractors; or

(3) Any combination of separate and blended rates for each category of labor to be performed by the offeror, affiliates of the offeror under a common control, and subcontractors.

(End of provision)

52.216–30 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition without Adequate Price Competition.

As prescribed in 16.601(e)(2), insert the following provision:

TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—NON-COMMERCIAL ITEM ACQUISITION WITHOUT ADEQUATE PRICE COMPETITION (FEB 2007)

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify separate fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit for each category of labor to be performed by—

(1) The offeror;

(2) Each subcontractor; and

(3) Each division, subsidiary, or affiliate of the offeror under a common control.

(c) Unless exempt under paragraph (d) of this provision, the fixed hourly rates for services transferred between divisions, subsidiaries, or affiliates of the offeror under a common control—

(1) Shall not include profit for the transferring organization; but

(2) May include profit for the prime Contractor.

(d) The fixed hourly rates for services that meet the definition of commercial item at 2.101 that are transferred between divisions, subsidiaries, or affiliates of the offeror under a common control may be the established catalog or market rate when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the offeror or any division, subsidiary or affiliate of the offeror under a common control.

(End of provision)

52.216–31 Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition.

As prescribed in 16.601(e)(1), insert the following provision:

TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—COMMERCIAL ITEM ACQUISITION (FEB 2007)

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

(1) The offeror;

(2) Subcontractors; and/or

(3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

(End of provision)

■ 6. Revise section 52.232–7 to read as follows:

52.232–7 Payments under Time-and-Materials and Labor-Hour Contracts.

As prescribed in 32.111(a)(7), insert the following clause:

PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (FEB 2007)

The Government will pay the Contractor as follows upon the submission of vouchers approved by the Contracting Officer or the authorized representative:

(a) *Hourly rate.* (1) *Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

(i) Performed by the Contractor;

(ii) Performed by the subcontractors; or

(iii) Transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control.

(2) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed.

(3) The hourly rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(4) The hourly rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.

(5) Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or authorized representative. The Contractor shall substantiate vouchers (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment and by—

(i) Individual daily job timekeeping records;

(ii) Records that verify the employees meet the qualifications for the labor categories specified in the contract; or

(iii) Other substantiation approved by the Contracting Officer.

(6) Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of paragraph (e) of this clause, pay the voucher as approved by the Contracting Officer or authorized representative.

(7) Unless otherwise prescribed in the Schedule, the Contracting Officer may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interests. The Contracting Officer may require a withhold of 5 percent of the amounts due under paragraph (a) of this clause, but the total amount withheld for the contract shall not exceed $50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (f) of this clause.

(8) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) *Materials.* (1) For the purposes of this clause—

(i) *Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) *Materials* means—

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and

(D) Applicable indirect costs.

(2) If the Contractor furnishes its own materials that meet the definition of a commercial item at 2.101, the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the—

(i) Quantities being acquired; and

(ii) Actual cost of any modifications necessary because of contract requirements.

(3) Except as provided for in paragraph (b)(2) of this clause, the Government will reimburse the Contractor for allowable cost of materials provided the Contractor—

(i) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(ii) Ordinarily makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(4) Payment for materials is subject to the Allowable Cost and Payment clause of this contract. The Contracting Officer will determine allowable costs of materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(5) The Contractor may include allocable indirect costs and other direct costs to the extent they are—

(i) Comprised only of costs that are clearly excluded from the hourly rate;

(ii) Allocated in accordance with the Contractor's written or established accounting practices; and

(iii) Indirect costs are not applied to subcontracts that are paid at the hourly rates.

(6) To the extent able, the Contractor shall—

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.

(7) Except as provided for in 31.205–26(e) and (f), the Government will not pay profit or fee to the prime Contractor on materials.

(c) If the Contractor enters into any subcontract that requires consent under the clause at 52.244–2, Subcontracts, without obtaining such consent, the Government is not required to reimburse the Contractor for any costs incurred under the subcontract prior to the date the Contractor obtains the required consent. Any reimbursement of subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of the Government.

(d) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(e) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(f) *Audit.* At any time before final payment under this contract, the Contracting Officer may request audit of the vouchers and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding vouchers, that are found by the Contracting Officer or authorized representative not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher designated by the Contractor as the ''completion voucher'' and supporting documentation, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of paragraphs (f) and (g) of this clause), the Government shall promptly pay any balance due the Contractor. The completion voucher, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(g) *Assignment and Release of Claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(h) *Interim payments on contracts for other than services.* (1) Interim payments made prior to the final payment under the contract are contract financing payments. Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act.

(2) The designated payment office will make interim payments for contract financing on the _____ [*Contracting Officer insert day as prescribed by agency head; if not prescribed, insert ''30th''*] day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(i) *Interim payments on contracts for services.* For interim payments made prior to the final payment under this contract, the Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(End of Clause)

Alternate I (FEB 2007). If a labor-hour contract is contemplated, the Contracting Officer shall add the following paragraph (i) to the basic clause:

(i) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

[FR Doc. 06–9610 Filed 12–6–06; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 10, 12, 16, and 52

[FAC 2005–15; FAR Case 2003–027; Item II; Docket 2006–0020, Sequence 22]

RIN 9000–AK07

Federal Acquisition Regulation; FAR Case 2003–027, Additional Commercial Contract Types

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement section 1432 of the National Defense Authorization Act for Fiscal Year 2004. Title XIV of the Act, referred to as the Services Acquisition Report Act of 2003 (SARA), amended section 8002(d) of the Federal Acquisition Streamlining Act of

1994 (FASA) to expressly authorize the use of time-and-materials (T&M) and labor-hour (LH) contracts for certain commercial services under specified conditions.

DATES: *Effective Date*: February 12, 2007.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Jeremy Olson, at (202) 501–3221. Please cite FAC 2005–15, FAR case 2003–027. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to implement section 1432 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Title XIV of the Act, referred to as the Services Acquisition Reform Act of 2003 (SARA), amended section 8002(d) of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355, 41 U.S.C. 264) to expressly authorize the use of time-and-materials (T&M) and labor-hour (LH) contracts for commercial services under specified conditions.

Section 8002(d)(3) of the Act limits use of T&M and LH contracts to the following categories of commercial services:

- Commercial services procured for support of a commercial item, as described in 41 U.S.C. 403(12)(E).
- Any other category of commercial services that is designated by the Administrator of Office of Federal Procurement Policy (OFPP) on the basis that—

1. The commercial services in such category are of a type of commercial services that are commonly sold to the general public through use of T&M or LH contracts; and

2. It would be in the best interests of the Federal Government to authorize use of T&M or LH contracts for purchase of the commercial services in such category.

In furtherance of its statutory responsibilities, OFPP worked in coordination with the Councils on a series of questions for the advance notice of proposed rulemaking (ANPR), the proposed rule, and the notices of public meeting published in the **Federal Register** at 69 FR 56316 on September 20, 2004 and at 70 FR 56318 on September 26, 2005, to obtain information describing how T&M and LH contracts are used commercially. In particular, the questions elicited information on the types of services that are commonly acquired on this basis and the circumstances under which these arrangements are used. Interested parties offered a variety of written observations in response to the ANPR and proposed rule. See the **Federal Register** at 70 FR 56320 on September 26, 2005. In addition, a number of interested parties provided oral comments during the public meetings that were held on October 19, 2004 and October 18, 2005, to facilitate an open dialogue with Government procurement policy officials.

OFPP and several Council staff members also received a briefing from the Government Accountability Office (GAO) on a survey the GAO conducted late last year to determine how often commercial companies use T&M and LH contracts in their commercial practices, either as a buyer or a provider. The GAO received 23 responses to its survey. Some of the responses came from Fortune 500 companies. Although responses were limited, the GAO indicated that they represented buying practices from a relatively wide range of industries, including airline, automotive and truck manufacturers, automotive and truck parts, business services, communications equipment, computer hardware, computer services, electric utilities, insurance, major drugs (pharmaceutical), money center bank, non-profit financial services, oil and gas, regional bank, retail (grocery and technology), scientific and technical instruments, and semiconductor.

Finally, OFPP reviewed testimony offered to the Acquisition Advisory Panel established pursuant to section 1423 of SARA to evaluate commercial practices and other acquisition-related issues. The Panel specifically sought input regarding industry's use of T&M and LH contracts. See *http://www.acquisition.gov/comp/aap/index.html*.

OFPP made three main findings from these inputs. First, commercial services are commonly sold on a T&M and LH basis in the marketplace when requirements are not sufficiently well understood to complete a well-defined scope of work and when risk can be managed by maintaining surveillance of costs and contractor performance. Second, these same services are also commonly sold on a fixed-price basis. Third, a few types of services are sold predominantly on a T&M and LH basis—specifically, emergency repair services. By their nature, emergency repair services are difficult to capture in a well-defined scope of work and therefore are not generally conducive to purchase on a fixed-price basis. Industry associations, representing a wide range of service industries, supported these findings in their comments in response to the ANPR, proposed rule, public meetings, and SARA Panel hearings.

OFPP advised the Councils that it is designating all categories of services (*i.e.*, any service) as being available for acquisition on a T&M and LH basis because the findings made in conjunction with the rulemaking indicate that: (1) services under any general categorization of services, such as those examined by the GAO, are *commonly* sold to the general public on a T&M and LH basis *under certain conditions*; and (2) use of T&M and LH contracts under these conditions may be in the Government's best interest. However, OFPP further advised that its designation is limited to the same circumstances that exist when T&M and LH contracting is commonly used to sell services to the general public and where the other prerequisites set forth in section 8002(d) have been met. OFPP concluded, in view of the findings, that the identification of effective boundaries for the use of T&M and LH contracts is a function of the specific circumstances surrounding the acquisition rather than the specific type of service being sold. OFPP requested that the Councils reflect its designation in the final FAR rule.

Specifically, OFPP requested that the rule allow an agency to purchase any commercial service on a T&M or LH basis if it has completed a determination and findings (D&F) containing sufficient facts and rationale to justify that a firm-fixed pricing arrangement is not suitable. With respect to the contents of the required D&F, OFPP advised the Councils that the rationale supporting use of a T&M or LH contract for commercial services must establish that a T&M or LH contract is being used under the same conditions where the private sector would commonly rely on these arrangements—namely, where it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty. In addition, if the need is of a recurring nature and is being acquired through a contract extension or renewal, OFPP expects, consistent with FAR 7.103(r), that the D&F reflect why knowledge gained from the prior acquisition could not be used to further refine requirements and acquisition strategies in a manner that would enable purchase on a fixed-price basis.

OFPP reminded the Councils that agencies will also need to comply with the other limitations set forth in 8002(d)—*i.e.*, the service is acquired under a contract awarded using competitive procedures, the contract or

order includes a ceiling price that the contractor exceeds at its own risk, and any subsequent change in the ceiling price is authorized only upon a determination, documented in the contract file, that it is in the best interest of the procuring agency to change the ceiling price. Finally, OFPP requested that the rule include appropriate additional mechanisms that help agencies manage risk by maintaining surveillance of costs and contractor performance, since effective surveillance is emphasized in commercial use of T&M and LH contracts.

The Councils concur with OFPP's findings and conclusions and have shaped the rule accordingly.

DoD, GSA, and NASA published an advance notice of public rulemaking (ANPR) in the **Federal Register** at 69 FR 56316 on September 20, 2004 and a proposed rule at 70 FR 56318 on September 26, 2005. Comments were received from 13 respondents in response to the proposed rule. The Councils considered all of the comments and recommendations in developing the final rule. The Councils made the following changes to the rule as a result of the public comments and deliberations:

(1) 16.601(d)—Added a requirement for the head of contracting activity to approve any D&Fs that would extend the period of performance beyond five years for both commercial and non-commercial T&M contracts to help ensure T&M contracts are only used when no other type of contract is suitable, to maximize the use of fixed price commercial contracts consistent with the statute, and to avoid protracted use of non-commercial time-and-materials contracts after experience provides a basis for firmer pricing.

(2) Clause 52.212–4 Alternate I—

(a) Paragraph (i)(1)(ii)(B)—Eliminate the provisions that only permitted reimbursement of subcontract costs at the hourly rates in the contract schedule when the subcontractors are listed in contract because the provisions were problematic and contrary to standard commercial practice (see Comment 4.b.(6)(a)). Instead added provisions that require the subcontract to be reimbursed at the hourly rates prescribed in the contract except when the employees performing the work do not meet the qualifications specified in the contract.

(b) Paragraph (i)(1)(ii)(C)(2)—Eliminated the provisions that required commercial contractors to give the Government credit for rebates, refunds, or discounts that ''accrued to'' the contractor because the provision could have imposed unique Government accounting requirements on commercial T&M contracts (see Comment 4.b.(7)(b)).

(c) Paragraph (i)(1)(ii)(C)—Excluded indirect costs as a type of cost that could be reimbursed at actual costs since the indirect costs will be reimbursed at the fixed amount in the schedule(see Comment 4.b.(8)(a)).

(d) Paragraph (i)(1)(ii)(D)(1)—Revised the rule to allow contracting officers to establish the types of other direct costs (ODC) that will be reimbursed at actual costs and the fixed amounts for indirect costs at the order level on indefinite delivery indefinite quantity (IDIQ) contracts. The type of ODC that will be needed to perform an order and any fixed amount for indirect costs may need to be established on an order-by-order basis (see Comment 4.b.(8)(a)).

(e) Paragraph (i)(4)(ii)(A)—Revised the rule to recognize that companies use both paper-based and electronic timecards (see Comment 4.b.(9)(b)).

(f) Paragraph (u)—Eliminated the subcontract consent provisions because the provisions were unduly restrictive, inappropriate, and the provisions could have permitted the Government to inappropriately impact a company's commercial reputation (see Comment 4.b.(6)(a)).

Public Comment

The public comments are discussed below:

Comment: Commercial Item Definition. Agree with deleting the exclusion of ''services that are sold based on hourly rates without an established catalog or market price for a specific service performed or a specific outcome to be achieved'' from the definition of a commercial item to be consistent with SARA.

Comment: Market Research. Agree with adding ''type of contract'' to the examples provided for determining practices of firms engaged in producing, distributing, and supporting commercial items because it assists with the implementation of SARA.

Appropriate Use

Comment: Support OFPP's decision to restrict commercial T&M/LH contracts to circumstances where no other contract type is suitable instead of developing a list of commercial services commonly sold on a T&M/LH basis. The conditions for using commercial T&M/LH contracts (*i.e.*, the contracting officer executes a determination and finding that no other contract type is suitable, the contract includes a ceiling price that the contractor exceeds at its own risk, and subsequent changes in the ceiling price only authorized upon a determination that it is in the best interest of the Government) implement the statute in a clear and concise manner.

Comment: Support OFPP's conclusion that the use of T&M/LH contracts should not be limited to a list of specific categories of services. Many types of commercial services are sold and purchased on both T&M/LH and firm fixed-price (FFP) basis depending on the circumstances of the particular project. There are no general rules or practices that restrict use of T&M/LH to any specific service categories. Regardless of the service type, there are often times when work cannot be sufficiently defined at contract award to provide for meaningful firm-fixed prices.

Comment: Limit as much as possible the types of services eligible to be procured on a commercial T&M/LH basis. A list of the types of services commonly sold using commercial T&M vehicles would help contracting officers chose the appropriate contract type and draft the required D&F.

Response: As discussed above, OFPP's decision is based on its findings that— (a) commercial services are commonly sold on a T&M and LH basis in the marketplace when requirements are not sufficiently well understood to complete a well-defined scope of work and when risk can be managed by maintaining surveillance of costs and contractor performance; (b) these same services are also generally offered on a fixed-price basis; and (c) a few types of services are sold predominantly on a T&M and LH basis—specifically, emergency repair services. Based on these findings, OFPP recommended to the Councils that the rule allow an agency to purchase any commercial service on a T&M or LH basis if it has completed a determination and findings (D&F) containing sufficient facts and rationale to justify that a firm-fixed pricing arrangement is not suitable. OFPP stated that this conclusion is consistent with the statutory requirement in section 8002(d) that contracting officers must execute a D&F that establishes that no contract type is suitable before pursuing one of these arrangements. The Councils agree with OFPP's finding and shaped the rule accordingly. The Councils do not believe it is practical or feasible to develop and maintain a comprehensive list of services sold on a T&M/LH basis because many services may be sold on both a T&M/LH and fixed price basis depending on the circumstances of the acquisition. The rule clearly provides that commercial T&M/LH contracts can only be used when the other commercial services' contract types are not suitable.

Comment: Clarify whether competitive procedures means ''full and open competition'' or ''limited competition'' when the competition is conducted with as many sources as practicable under one of the authorities listed in FAR 6.302.

Response: Sole source commercial T&M/LH contracts are not authorized. Commercial T&M/LH contracts may be awarded under the statutory authorities that permit contracting without providing for full and open competition. When these authorities are used, contracting officers are required to solicit offers from as many potential sources as is practicable under the circumstances. Nothing in this rule requires ''full and open'' competition.

Comment: Restrict the use of T&M contracts to when it is not ''practicable'' instead of not ''possible'' at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty. It may be ''possible'' to estimate the duration and cost of work but impracticable given the time and effort that would be required, the urgency of the work, and the agencies competing priorities.

Response: T&M contracts comprise the highest contract type risk to the Government. As such, they should only be used when it is not possible at the time of award to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. Also, restricting the use of T&M contracts to when it is not ''possible'' is consistent with the requirements for non-commercial T&M contracts.

Determination and Finding (D&F)

Comment: Delete the minimum D&F requirements for justifying no other contract type is suitable because specifying the minimum requirements imposes a potentially greater burden on contracting officers than the corresponding provisions for non-commercial T&M/LH contracts. Delete the requirement to execute a D&F for each order when the indefinite-delivery contract is priced on a T&M/LH or FFP basis because it is inconsistent with FAR 1.602–2 which stipulates ''contracting officers should be allowed wide latitude to exercise business judgment.'' SARA requires a D&F to justify the contract type, not the use of the contract once justified.

Comment: Eliminate the requirement for approval one level above the contracting officer for a commercial T&M/LH IDIQ contract that only allows for issuance of orders on a T&M/LH basis to be consistent with non-commercial T&M/LH contracts. Commercial T&M/LH contracts pose no greater risk to the Government than non-commercial T&M/LH contracts.

Comment: The rule contradicts and goes beyond the intent of SARA by potentially creating, in practice and effect, a prohibition on the use of T&M contracts. Specifically, the rule adds administrative burden and procedural complication to the use of T&M contracts which would inhibit the use of these contracts as a practical contracting tool, *e.g.*, requiring a D&F for each T&M task order is beyond the intent of Section 1432 and appears to show little confidence in the business judgment of contracting officers.

Comment: Develop an approval level for D&Fs commensurate with the risk to the Government.

Response: The Councils acknowledge that the rule contains additional requirements for commercial T&M/LH IDIQ D&Fs than those required for noncommercial T&M/LH IDIQ D&Fs. While the Councils recognize these additional requirements may be more burdensome, the Councils believe the additional requirements are needed to encourage the preference for the use of fixed price contracts for commercial items. In addition, the Councils believe additional controls are needed to ensure both commercial and non-commercial T&M contracts are only used when no other type of contract is suitable. The Councils revised the rule to require head of contracting activity approval for any D&Fs that extend the performance period beyond five years for both commercial and non-commercial T&M contracts.

Comment: Establish a $100,000 threshold for D&F to recognize a reasonable level at which tangible deliverable would be expected.

Comment: Exempt small purchases at or below the five million dollar commercial item threshold at FAR 12.203 from the D&F requirements. This threshold allows agencies to use simplified acquisition procedures up to five million dollars for commercial item acquisitions. The Councils have discretion to implement the statutory provisions addressing D&Fs. See Chevron, U.S.A. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844 (1984).

Response: When a statute is silent or ambiguous with respect to a certain issue, agencies have discretion to interpret the statute in a reasonable manner, consistent with its legislative history. However, the statute is not ambiguous and the legislative history contains nothing which would support an interpretation that the D&F condition can be limited to a dollar threshold. The statute requires a D&F for T&M/LH contracts regardless of the dollar amount.

Nonconforming

Comment: Paying for reperformance, excluding profit, is a significant improvement over the ANPR and properly reflects commercial practices. The parties will be permitted to tailor the provision pursuant to FAR 12.302 when customary commercial practices provide different warranty terms.

Comment: Except for the default 10 percent profit rate, the proposed provisions are the same as those used for non-commercial T&M contracts. These provisions contain significant departures from terms typically found in the commercial marketplace. The proposed 10 percent default profit rate is irrelevant if the contracting officer knows the contractor's profit rate. Contracting officers could terminate the contract or retain another contractor to complete the work as provided in FAR 52.246–6(f) and (g) if a contractor is expending best efforts and still not performing properly. Require contracting officers to better focus on the requirements of FAR 7.105, Contents of Written Acquisition Plans, rather than adopting the proposed inspection and acceptance clause.

Comment: Contractors are under less budgetary pressure to perform under a T&M contract than a FFP contract and should be held to as stringent quality standards as FFP contracts. Paying for rework will not discourage ''shoddy work'' since the contractor will be reimbursed, without profit, for its costs. Develop an appropriate profit percentage based on historical data or some other measure to avoid a potential unintended consequence of establishing a 10 percent profit standard for T&M contracts. A 10 percent profit may be excessive for low risk T&M contracts.

Response: The comments reflect a varying set of commercial practices for nonconforming supplies and services. The ANPR required contractors to repair or replace rejected supplies or reperform rejected services at no cost to the Government. Public commenters on the ANPR said requiring contractors to repair or replace rejected supplies or reperform rejected services at no cost to the Government imposed more contract risk on the contractor than the non-commercial clause. The Government is essentially imposing a fixed-price level of risk. Combining a ceiling price that contractors exceed at their own risk and a requirement that the contractor use ''best efforts'' to perform within the

ceiling price means contractors are required accomplish a certain result (*i.e.*, performance of the work specified in the Schedule) within a specified dollar amount (*i.e.*, the ceiling price). The Councils agreed that contractors are generally only required to use ''best efforts'' to accomplish the desired results within the established ceiling price on both commercial and non-commercial T&M contracts as opposed to FFP contracts which requires contractors to accomplish stated results within the fixed price. Therefore, the Councils revised the proposed rule to be consistent with the non-commercial T&M requirements. The 10 percent default profit rate will only be used when the contracting officer does not know the contractor's actual profit rate, which may be commonplace in competitive awards. Contractors are under less budgetary pressure to perform under a T&M than a FFP contract. However, it is not appropriate to hold contractors to the same standards used on FFP contracts. The risk of ''shoddy work'' is inherent to all ''best efforts'' type contracts. Accordingly, T&M/LH contracts are only authorized when no other contract type is suitable. The 10 percent default profit rate is arbitrary, not necessarily representative of the actual profit rates. However, the rate is intended to protect the Government by helping to ensure profit is not paid for replacement or reperformance.

Comment: The proposed rule does not address reimbursement of costs for providing accommodations to the Government for testing and inspections at contractor and subcontractors' facility. Fairness dictates that the Government reimburse contractors and subcontractors for reasonable costs incurred for the required accommodations.

Response: The costs for providing accommodations to the Government for testing and inspecting at contractor and subcontractors' facilities are generally included in the fully burdened labor rate.

Subcontracts and Interdivisional Labor

Comment: Reimburse subcontract labor at the schedule labor rates without listing the subcontractors in the contract for standard commercial services, *e.g.*, ''on-call'' IT installation and repair services in support of commercial IT products. Reimburse subcontract labor at the schedule labor rates without listing the subcontractors in the contract when the contractor's proposal indicates that some of the work may be performed by subcontractors that meet the contract's qualification requirements and that the price for that ''type of work'' will be the prime contract's labor rate which may be blended or other rate. Reimburse subcontract labor at the schedule labor rates without subcontract consent when the subcontractor personnel satisfy the qualification and other requirements for the labor categories for which the contractor is seeking compensation. T&M/LH contracts specify the required labor qualifications. Whether the person filling the position is an employee of the prime or a subcontractor, the qualifications must be met. The Government has already determined the price for the ''type of work'' to be fair and reasonable by competition. Include interdivisional transfers and subcontracted labor costs as elements of ''time'' instead of ''materials'' to allow prime contractors to recover adequate compensation for the time and resources it expends on administering subcontracts and for the financial exposure is assumes for its subcontractor's performance.

Comment: Appreciate the Councils efforts to clarify the treatment for subcontracts and interdivisional transfers but recommends reimbursing all subcontract labor at the schedule labor rates to avoid confusion over whether the costs are reimbursable as ''material'' or ''labor.'' Separately address the proper treatment for subcontracts and interdivisional labor to avoid inevitable disputes over whether the costs should be treated as ''labor'' or ''material.'' Contractors frequently require use of subcontractors for any number of reasons included to:

(a) Secure specific skill sets;

(b) Augment an existing workforce;

(c) Use small and/or small, disadvantaged businesses to meet socioeconomic goals;

(d) Incorporate small business innovative solutions; and

(e) Replace subcontractors during contract performance for failure to achieve the prime contractor's performance standards.

Prime contractors may not know which subcontractors will be used to perform the work since T&M contracts are used when it is not possible to estimate accurately the extent or duration of work at the time of award. Contractors will not know at the time of award which subcontractors may be used to fulfill ''on call'' or ''on demand'' services. It is unfair to require contractors to perform services without knowing in advance whether the necessary subcontractors can be brought to task and how the contractor will be reimbursed. Expand the definition of ''subcontract'' to clarify that subcontracts on commercial contracts includes ''transfers of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor'' to be consistent with FASA which specified interdivisional transfers for commercial items are to be treated as subcontracts (see FAR 12.001). Clarify the provisions that allow contractors to be reimbursed for its own material at the contractor's established catalog or the market price includes services that meet the definition of a commercial item at FAR 2.101. Do not object to appropriate subcontractor disclosure requirements when the contractor does not have an approved purchasing system and the subcontract will be cost-reimbursement, time-and-materials, labor-hour, or letter contract (see FAR 44.201(b)(1)) but the Government should not interject its authority over the prime contractor's determination of how to accomplish the work being bid and awarded. Recommend the Councils instead consider a notification requirement without the need for formal contract amendment. In the commercial world, sellers are generally free to delegate their duties to subcontractors as they see fit. In the Government world, agencies make these determinations in the evaluation of a contractor's proposal and through oversight of awarded work. The Government could be exposed to claims for delay or disruption when the contractor is attempting to substitute one qualified subcontractor for another and approvals are improperly denied or unreasonable delayed. The Councils concerns that the basis for ''best value'' determination used to award the contract may be altered by contractors adding or substituting subcontractors after award do not justify the provisions that limit reimbursement of subcontract costs to those listed in the contract or those subsequently approved by the contracting officer. The question is not one of reimbursement but of Government payment for services rendered. The attendant administrative procedures in the proposed rule might impede the contractor's ability to deliver services in accordance with the terms of the contract. The ''consent to subcontract'' provisions and payment limitations significantly increase the risk to contractors for meeting contract deliverables. The administrative and financial burden of establishing and maintaining a list of subcontractors that can be reimbursed at the hourly schedule rates increases contract execution risk.

Comment: Consent to subcontract is inconsistent with the underlying intent of commercial acquisitions.

Coalition and Comment: Reimburse interdivisional transfers at the schedule hourly rates like subcontract labor. The proposed rule restricts reimbursement for interdivisional transfers (*e.g.*, transfers from divisions, subsidiaries, and affiliates under the common control of the commercial contractor) to cost, without profit or fee, unless the interdivisional transfer meets the definition of a commercial item at FAR 2.101. Commercial contractors will be required to identify the actual costs, potentially subjecting their allowability to a determination under the cost principles. Commercial contractors should have the ability to use any of their resources without penalty of profit erosion. These contracts have commercial market reference points and disallowing profit discourages vendors from using their best employees to meet the Government's needs.

Comment: Revise the instructions for reimbursing subcontracts at the schedule rate to clearly permit the listing of actual or ''potential'' subcontractor name(s) since the subcontractors listed for reimbursement at the schedule hourly rates may reflect a pool of ''potential'' subcontractors that may or may not actually work on the contract.

Comment: Reimburse all subcontract costs at the schedule hourly rates without requiring contracting officer consent to be consistent with commercial practices.

Comment: Reimburse subcontract efforts requiring consent only if proper advance consent is obtained. Do not allow contracting officers to retroactively grant consent for subcontracts.

Comment: Restrict reimbursement of subcontract costs to actual costs because the prime contractor could subsequently negotiate lower rates with subcontractors that were authorized to be paid at the schedule rates and the Government would pay excessive prices for subcontracted effort that may be of a level less than that envisioned by the Government. Reimbursement at the schedule rates encourages contractors to maximize profit by subcontracting out more of the effort at lower subcontract rates. Government will expend additional resources to monitor the quality and efficiency of subcontract labor since the subcontract effort will not be readily apparent when billed at the schedule rates.

Comment: Restrict reimbursement of subcontract costs to actual costs as long as those costs do not exceed the prime's rates. Subcontractors have reported primes charging prime contractor labor rates for the subcontractor's labor while paying the subcontractors significantly lower rates. Vendors should make a reasonable profit on services provided to the Government but there is no justification for unduly enriching contractors by allowing them to charge their own higher rates for subcontract effort. Permitting contractors to bill their established rates for work they subcontract out will likely have the unintended consequence of creating new vendor organizations developed solely to extract higher profits from Government projects. Contractors that believe the Government is best served by permitting the wide use of subcontracts are free to do so in FFP agreements. Revise or restate in a clearer fashion the provisions regarding reimbursement for subcontract efforts at proposed FAR 52.212–4(i)(1)(ii)(B) because the provisions are difficult to follow.

Response: The methodology in the proposed rule was problematic and contrary to standard commercial practice.

First, the rule permitted reimbursement of commercial materials, including subcontracts and interdivisional transfers, at the contractor's established catalog or market price. At the same time, the rule limited reimbursement of qualifying commercial subcontracts to actual costs unless the subcontracts were listed in the contract for reimbursement at the hourly schedule rates. For some commercial companies, the established catalog or market price for its commercial material (including subcontracts and interdivisional transfers) is the prime contractor's established catalog or market price for labor. Reimbursing commercial materials at actual cost is inconsistent with commercial practices and contrary to the statutory preference for acquisitions of commercial items and the intent of FASA, *i.e.*, established acquisition policies more closely resembling those of the commercial marketplace. In addition, subcontracts under FAR Part 12 include transfers of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor. While the actual costs for subcontracts other than interdivisional transfers can be easily determined from an independent third party invoice, actual costs for interdivisional transfers can only be determined using the procedures of FAR Part 31. Imposing FAR Part 31 requirements on commercial interdivisional transfers is contrary to commercial practices and the intent of FASA. Further, the proposed rule failed to fully consider the implications of subsequently altering the elements included in the catalog or market prices. The catalog or market prices will be determined fair and reasonable based on competition. Subsequent modifications to the elements of those prices could impact the overall pricing integrity and the fair and reasonable determination. Finally, limiting reimbursement to actual costs discourages subcontracting and would have a negative impact on small businesses. Small businesses traditionally receive approximately 35 percent of subcontracts on Government prime contracts and only 24 percent of prime Government contracts. Reimbursing subcontracts at actual costs is not consistent with the treatment on all other flexibly priced Government contracts where prime contractors are paid profit on subcontract costs. Restricting reimbursement of subcontract costs to actual costs ''as long as those costs do not exceed the prime's rates'' is not equitable or fair. Upon further consideration, the Councils believe it is appropriate to reimburse commercial subcontracts at the schedule labor rates without listing the subcontracts when the contractor's established catalog or market price includes the price of its subcontracts for the reasons discussed above. The Councils revised the rule accordingly. In addition, the Councils believe imposing subcontract consent requirements on these commercial subcontracts is unduly restrictive and inappropriate and revised the rule accordingly. If a contracting officer failed to provide a timely consent or disagreed with the subcontract award, the Government could wrongly affect contract performance and potentially impact a company's commercial reputation. The Councils also revised the rule to recognize that subcontracts under FAR Part 12 include transfers of commercial items between divisions, subsidiaries, and affiliates of a contractor or subcontractor to be consistent with FAR 12.001. Finally, the Councils did not believe it was necessary to clarify that qualifying services are commercial items since the definition of commercial items at FAR 2.101 clearly identifies the services that meet the definition of commercial services.

Comment: Agree subcontract consent applies only to costs that are directly charged to the contract and not overhead expenses and G&A but recommend explicitly stating so in the final rule to avoid future questions about the application of this provision.

Response: As noted above, the final rule does not require subcontract consents.

Material Costs

Comment: Agree there should be no ''most favored customer'' pricing requirement because it is a barrier for market entry and inconsistent with the Government pricing policies at FAR Subpart 15.4.

Comment: Refunds. Reimbursement of material at actual costs less any rebates, refunds, or discounts received by or accrued to the contractor is contrary to commercial practice which does not rely on cost accounting information. If an accrual entry is made at all, the accrual is typically identified to more global considerations (*e.g.*, total volume of purchases), not individual contract actions. The reference to accruals and other cost accounting data is not appropriate.

Comment: Delete the requirement for commercial companies to give the Government credit for rebates from interdivisional labor since the divisions will likely have little visibility into the other business units.

Comment: Delete the requirement to provide the Government credit for rebates on commercial T&M contracts. Vendors typically provide some services (*e.g.*, maintenance on standard equipment) through the organizational resources of their commercial business. Federal entities have little visibility into those business units, creating a dilemma as to how to account for a rebate.

Response: The Councils do not believe it is appropriate to require unique Government accounting requirements for materials on commercial T&M/LH contracts. The Councils revised the rule to only require contractors to reduce the costs of material for any rebates, refunds, or discounts that are identifiable to the contract.

Comment: Revise the proposed provisions to say modification to items that meet the definition of commercial items at FAR 2.101 are reimbursed at ''price'' instead of ''actual costs'' for to be consistent with FAR Subpart 15.4.

Response: Depending on the circumstance of a particular acquisition, it may be appropriate to pay ''price'' instead of ''costs'' for modifications to commercial items. To provide maximum flexibility to the contracting officer, the Councils revised the rule to permit reimbursement at either price or cost.

Indirect Costs and Other Direct Costs

Comment: Exclude indirect costs from the definition of material costs to eliminate the two contradictory methods for reimbursing indirect costs. The proposed rule permits reimbursement at a fixed amount but also defines indirect costs as an element of material costs that can only be reimbursed at actual costs unless the material meets the definition of commercial item.

Response: The Councils revised the rule to eliminate the contradictory methods. Instead of excluding indirect costs from the definition of materials, the Councils revised the provisions in the alternate clause at FAR 52.212–4, Alternate I (i)(1)(ii)(D)(2) to exclude indirect costs from being reimbursed at actual cost.

Comment: Agree with the provisions that permit reimbursement of indirect costs at a fixed price on a pro-rata basis over the period of contract performance but recommend clarifying that the fixed price could be adjusted as new work is added and also allowing contractors to be reimbursed at the Government approved percentage mark-up for non-commercial contracts. Cost Accounting Standards (CAS) covered contractors are required to allocate material handling in accordance with their approved accounting practices. Material handling rates are well-recognized in Federal and commercial markets. The Councils are proposing to reimburse indirect costs at a fixed price because of concerns over violating the cost-plus-a-percentage-of-cost prohibition. Material handling rates do not add fee or any other price component to cost and therefore could not be considered a cost-plus-a-percentage-of-cost violation. Recommend revising the coverage to permit contractors to recover material handling provided it is excluded from the hourly rates.

Response: If new work is added, a fixed amount may be added for indirect expenses if appropriate. Nothing in the rule prevents contract changes. The approved percentage mark-up for non-commercial contracts is subject to the allowability provisions of FAR Part 31. The Councils believe it is more appropriate to reimburse indirect costs without imposing the requirements of FAR Part 31 to be consistent with commercial practices. While the commenter disagrees, the Councils believe use of a fixed rate violates the cost plus percentage of cost contract prohibition. CAS covered contractors already allocate material handling and other indirect costs to commercial and non-commercial FFP contracts in accordance with their disclosed accounting practices. While the costs are allocated to those FFP contracts, the allocation may be different from the amounts recovered under the contracts for those elements of cost.

Comment: Clarify which contracting officer (the contracting officer who awards the contract or the one that awards the task order) has the authority and ability to make determination on the method for reimbursing subcontract efforts and the allowability of ODC and indirect costs for IDIQ or Multiple Award Schedule (MAS) contracts.

Response: As stated in the alternate clause at (i)(1)(ii)(D)(1) and (2) of 52.212–4, Alternate I, the contracting officer awarding the indefinite delivery contract can authorize other contracting officers to determine how ODC and indirect costs will be reimbursed.

Comment: Revise the rule to clarify ODC and indirect costs will only be recovered as stand alone elements of costs if the amounts are not also included in the loaded labor rates.

Response: ODC and indirect costs should only be recovered as separate elements of costs if they are excluded from the schedule labor rates. However, contracting officers will not always know the elements of costs included in the schedule labor rates since commercial T&M/LH contracts can only be awarded using competitive procedures. Generally, contracting officers are precluded from obtaining detailed cost information on these types of acquisitions. However, contracting officers will know the proposed amount for indirect expenses and the types of ODC proposed to be reimbursed at actual costs for each competing contractor during the proposal evaluation phase.

Government Oversight

Comment: The right to interview contractor employees is unreasonable intrusive and contrary to customary commercial practice. Notwithstanding a statement by the Councils to the contrary, no similar right exists in the FAR for any contract type. The audit clause at FAR 52.215–2 gives the contracting officer the right to examine ''records and other evidence'' to verify claimed costs. Records are not defined to include interviews and it is hard to believe ''other evidence'' includes employee interviews. This new right lacks precedent in the FAR. Not even the Offices of Inspector General under the Inspectors General Act has this authority. The Government does not need this newly created contractual right because the Government already has this right in cases of alleged fraud or wrongdoing pursuant to its subpoena powers under applicable statutes. The Government should rely on the invoices which are required, under penalty of

law, to be accurate. The right to interview employees is not required by SARA or any other law. This authority also conflicts with FASA which requires commercial item contracts contain only those terms and conditions that are required by law or customary in the commercial marketplace. There is no provision in SARA for this approach, a fact recognized by Defense Contract Audit Agency (DCAA) in its April 9, 2004 ''GSA Schedule'' memorandum.

Comment: Commercial T&M/LH contracts are subject to a strict oversight process performed by company project managers that are accountable for the successful completion of the work.

Comment: Oppose the rule because commercial contracts will not be subject to full oversight and audit provisions. To protect taxpayer interests, commercial T&M/LH contracts should be subject to full oversight, audits, and CAS. Additionally, the commercial T&M contracts need clauses for refunds or price reduction so the Government can recoup overages identified in the audit.

Comment: Remove the restriction that limits the Government's access to records to those listed in the contract because the Government should not limit its access to records.

Response: The rule permits, but does not require, contracting officers to have access to contractor employees. While such access may not be a standard commercial practice, the Councils believe employee interviews may be necessary in some cases to verify the hours claimed by the contractor. According to one commenter in response to the ANPR, requiring access to contractor employees is a standard commercial practice for T&M contracting. The provisions for access to contractor employees are no broader than what is currently provided for under non-commercial T&M contracts. FAR 52.215–2, Audit and Records—Negotiation, provides the Government the right to examine and audit all records and other evidence sufficient to reflect properly all cost claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of the contract. The Government routinely conducts employee interviews and other audit procedures to verify that labor costs at contractor locations having fixed-price, cost-reimbursement, incentive, non-commercial time-and-material and labor hour, commercial, or price redeterminable contracts are charged to the correct contract and not inappropriately shifted to the flexibly priced Government contracts. Employee interviews are part of DCAA's normal surveillance of Government contracts and are required by DCAA's Mandatory Annual Audit Requirements (MAARs). The Government should not have to allege wrongdoing to interview contractor employees when their labor hours are included on invoices submitted to the Government. The Councils do not believe that SARA or FASA requires the Government to make payments based on actual hours incurred without being able to verify the employees actually worked the hours charged. The Councils have carefully considered existing requirements for T&M contracts as well as differences between commercial and non-commercial contracts. The Councils believe that the rule provides the proper balance between the need to verify compliance with contract terms and the need to minimize access to contractor records. Finally, the Councils believe the oversight provided in the rule will provide sufficient information to verify the validity of amounts claimed on the contract without the oversight requirements in FAR and CAS that are imposed on noncommercial T&M/LH contracts.

Comment: Define the term ''original timecards'' broadly enough to encompass both paper-based and electronic timecards because many companies use electronic timecards.

Response: The Councils revised the final rule to provide access to original timecards (paper-based or electronic).

Comment: Provide contracting officers specific guidance regarding what prime oversight efforts are adequate for subcontracts listed in the contract and reimbursed at the schedule rates. Contracting officers may lack the expertise or time to assess the existence or quality of a contractor's mechanism to oversee the qualifications and hours worked by subcontractor employees. The only way to substantiate qualifications and hours worked is through examination of payrolls and resumes for each subcontractor.

Response: The prime contractor is responsible for the oversight of its subcontractors. When requested by the Government, the contractors are required to substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract. Contracting officers can seek the advice of the cognizant audit office when needed. Training would be more appropriately addressed in agency training materials.

Withholds

Comment: Explicitly state contracting officers cannot withhold on commercial T&M/LH contracts because some contracting officers may elect to withhold even though the practice is not specifically allowed by the payment clause.

Response: We do not contemplate withholds in commercial contracts but there may be circumstances, at the contracting officer's discretion, where withholds are appropriate.

Contractor Purchasing System Review (CPSR)

Comment: The proposed rule prohibits contractors with firm fixed-price (FFP) or FFP with economic price adjustment (EPA) contracts from obtaining approved purchasing systems thereby creating a ''class of contractor'' that can never obtain an approved purchasing system. This new class of contractors will have more oversight in terms of subcontractor approval and approval of subcontract modifications. These contractors are currently exempt from the subcontract approval process—an exemptions supported by FASA and FARA.

Comment: Do not impose CPSR on commercial contractors because doing so may deter commercial companies from doing business with the Government. Commercial contractors may not perform sufficient Government business to justify the establishment of a CPSR.

Response: The objective of a contractor purchasing system review (CPSR) is to evaluate the efficiency and effectiveness with which the contractor spends Government funds. The review provides the cognizant contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system. Under the existing FAR requirements, the Government does not review a contractor's purchasing system if all the contractor's Governments sales are commercial FFP and FFP EPA contracts. The same is true if all a contractor's Government sales are non-commercial competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts. For these types of contracts, the Government has no reason to evaluate the efficiency and effectiveness with which the contractor spends Government funds since the amounts paid to the contractor are not affected by the efficiency and effectiveness of the contractors' purchasing practices. The

proposed rule did not impose a CPSR requirement but simply recognized that contractors who otherwise have approved purchasing systems require less oversight of their subcontractors because the contractor's overall system provides adequate controls and procedures to protect the Government. However, the Councils revised the rule to eliminate the subcontract consent requirement which means subcontracts for T&M contracts awarded pursuant to FAR Part 12 will be excluded from CPSRs.

Cost Accounting Standards (CAS)

Comment: Do not apply CAS and other onerous Government-only requirements to commercial T&M/LH contracts because doing so is counter to acquisition reform legislation that envisions the Government purchasing more like its commercial counterparts. Congress exempted commercial item contracts from CAS; however, the CAS Board only exempted FFP and FFP EPA contracts. Agree the Councils lack the authority to make CAS changes but recommend the Councils implement the statute and treat T&M contracts as covered by the existing CAS exclusions.

Response: The decision as to whether CAS applies to commercial T&M/LH contracts rests with the CAS Board. The Councils have limited the imposition of other Government-only requirements to the maximum extent practicable. The Councils do not believe commercial T&M/LH contracts are currently exempted by any CAS exemption and therefore cannot simply waive the requirements of CAS.

Total Cost

Comment: The rule establishes a notification procedure much like the limitation of cost and limitation of funds clauses for non-commercial items. Since this rule involves contracts for commercial items, suggest it instead refer to ''Total Price.''

Response: While the rule relates to commercial T&M/LH contracts, some material and ODC will be reimbursed at ''cost'' not ''price.'' Therefore, the Councils did not revise the title as suggested.

General Comments

Comment: Do not support the rule in its present form.

Comment: In a number of areas, the proposed rule simply imports into this commercial items regulation many of the terms and conditions already used by the Government when purchasing non-commercial T&M/LH contracts. This action results in the inclusion of provisions that are significant departures from standard commercial practices, contrary to the spirit of FASA and in violation of FAR 12.301(a)(2) that require commercial item contracts to only include those clauses determined to be consistent with customary commercial practices. Other provisions of the rule extend the Government's audit and oversight inappropriately and unnecessary. Deeply concerned that the proposed rule will undercut the intent of SARA by creating what effectively amounts to a prohibition on the use of T&M contracts. The rule adds significant administrative burden, procedural complications, and certain significant financial disincentives. Recommend the Councils reconsider the entire approach to T&M contracting and the expansive rulemaking in the proposed rule. Also, recommend the Councils hold additional public meetings to provide the public additional opportunities to explain the submitted comments. Recommend delaying issuance of a final rule until the Acquisition Advisory Panel has released its report and recommendations since there may be a conflict between their recommendations and this rule.

Response: The Councils reviewed public comments and held two public meetings, obtaining a very complete picture of the views of interested parties on this rule, and have determined it is appropriate to go forward with a final rule. It is highly unlikely that further comments or public meetings would provide any information or opinions not already provided and evaluated.

Comment: Concur.

Comment: Industry does not prefer T&M contracts and would avoid them for IT work.

Response: T&M/LH contracts represent the highest contract type risk and industry, like the Government, avoids using them to the maximum extent practicable. However, there are circumstances when these contract types are needed and used.

Comment: The main difference between the commercial market and the rule is the rule only requires the contractor to use its ''best efforts'' to perform within the ceiling. There is no consumer in the commercial market that would blindly allow a car repair shop to work on their car for up to $1,000 without any guarantee that the car will be fixed.

Response: T&M/LH contracts, commercial and non-commercial, are ''best effort'' contracts that can only be used when it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty. If it is possible to estimate the extent or duration of work or anticipate costs with a reasonable degree of certainty, T&M/LH contracts should not be used.

Comment: The use of the term ''schedule'' may be confusing to some who understand it to refer to MAS or FSSs contracts. The subcontract reimbursement provisions that permit reimbursement of subcontracts at the hourly rates prescribed in the schedule could be interpreted to mean there are separate subcontract rates on MAS contracts. Clarify the final rule the term is not meant to connote MAS contracts.

Response: The term is used throughout the FAR and widely understood by contracting professionals. The Councils are unaware of any issues with its interpretation and does not believe changing the term could be confusing to contracting professionals.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

1. Statement of need for, and objectives of, the rule.

This final rule revises the Federal Acquisition Regulation to allow contracting officers to award Time and Material and Labor Hour (T&M/LH) contracts when procuring commercial items. This FAR case was initiated to implement Section 1432 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136).

2. Summary of significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

Thirteen (13) comments were received from the public in response to the proposed rule. One of the most significant areas of controversy in the proposed rule issued for public comment concerned the matter of labor provided by subcontractors. The proposed rule required that the prime contractor be reimbursed at actual cost for all subcontractors providing labor under the contract, unless a subcontractor was specifically authorized under the prime contract by inclusion on a list of subcontractors to be reimbursed at the prime contract labor hour rate. Public commenters complained that this procedure created major administrative burdens and, because reimbursement at actual cost did not permit

prime contractors to obtain profit of those subcontracts, it would significantly reduce the use of subcontractors. The commenters pointed out that the subcontractors at issue are commonly small businesses.

The final rule eliminates this feature regarding payment of labor subcontractors at actual cost and use of a list of approved subcontractors. The final rule provides that a prime contractor can provide qualifying labor hours under the contract through use of subcontractors and the government will pay the prime contract labor hour rate, without use of any pre-authorization list in the contract. Prime contractors will be able to include profit on this labor and there will be no special administrative approvals required. The final rule approach eliminates the part of the proposed rule that was most objectionable to small entities.

3. Description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available.

This rule will apply to small and large entities that accept Time-and-Material or Labor-Hour contracts for commercial items. Because this rule is the first FAR authorization for use of these types of contracts for commercial items, no history is available on the number of awards made to small businesses. However, the Federal Procurement Data System (FPDS) data from FY 2004 show that small businesses received approximately 50 percent of the 42,840 noncommercial item T&M/LH awards made and approximately 30% of the $17 Billion obligated under those awards.

4. Description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The rule would require contractors to maintain records to support invoices presented to the Government for payment. Such records would include original timecards, the contractor's timekeeping procedures, distribution of labor, invoices for material, and so forth. These are standard records maintained by any company, large or small, and the fact that the contract would require that these records be made available to the Government should not place any additional record keeping burden on the entity.

5. Description of steps the agency has taken to minimize significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency was rejected.

Public comments submitted in response to the proposed rule were reviewed and substantial policy adjustments to the rule were made as a result. One of the most significant areas of controversy in the proposed rule issued for public comment concerned the matter of labor provided by subcontractors. The proposed rule required that the prime contractor be reimbursed at actual cost for all subcontractors providing labor under the contract, unless a subcontractor was specifically authorized under the prime contract by inclusion on a list of subcontractors to be reimbursed at the prime contract labor hour rate. Public commenters complained that this procedure created major administrative burdens and, because reimbursement at actual cost did not permit prime contractors to obtain profit of those subcontracts, it would significantly reduce the use of subcontractors. The commenters pointed out that the subcontractors at issue are commonly small businesses.

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Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 10, 12, 16, and 52

Government procurement.

Dated: December 4, 2006.

Linda K. Nelson,

Deputy Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 10, 12, 16, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 10, 12, 16, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101 in paragraph (b), in the definition ''Commercial item'', by removing the second sentence in the introductory text of paragraph (6).

PART 10—MARKET RESEARCH

10.001 [Amended]

■ 3. Amend section 10.001 by removing from paragraph (a)(3)(iv) ''as terms'' and adding ''as type of contract, terms'' in its place.

■ 4. Amend section 10.002 by revising paragraph (b)(1)(iii) to read as follows:

10.002 Procedures.

* * * * *

(b) * * *

(1) * * *

(iii) Customary practices, including warranty, buyer financing, discounts, contract type considering the nature and risk associated with the requirement, etc., under which commercial sales of the products or services are made;

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 5. Revise section 12.207 to read as follows:

12.207 Contract type.

(a) Except as provided in paragraph (b) of this section, agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items.

(b)(1) A time-and-materials contract or labor-hour contract (see Subpart 16.6) may be used for the acquisition of commercial services when—

(i) The service is acquired under a contract awarded using—

(A) Competitive procedures (*e.g.*, the procedures in 6.102, the set-aside procedures in Subpart 19.5, or competition conducted in accordance with Part 13);

(B) The procedures for other than full and open competition in 6.3 provided the agency receives offers that satisfy the Government's expressed requirement from two or more responsible offerors; or

(C) The fair opportunity procedures in 16.505, if placing an order under a multiple award delivery-order contract; and

(ii) The contracting officer—

(A) Executes a determination and findings (D&F) for the contract, in accordance with paragraph (b)(2) of this section (but see paragraph (c) of this section for indefinite-delivery contracts), that no other contract type authorized by this subpart is suitable;

(B) Includes a ceiling price in the contract or order that the contractor exceeds at its own risk; and

(C) Authorizes any subsequent change in the ceiling price only upon a determination, documented in the

contract file, that it is in the best interest of the procuring agency to change the ceiling price.

(2) Each D&F required by paragraph (b)(1)(ii)(A) of this section shall contain sufficient facts and rationale to justify that no other contract type authorized by this subpart is suitable. At a minimum, the D&F shall—

(i) Include a description of the market research conducted (see 10.002(e));

(ii) Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty; and

(iii) Establish that the requirement has been structured to maximize the use of firm-fixed-price or fixed-price with economic price adjustment contracts (*e.g.*, by limiting the value or length of the time-and-material/labor-hour contract or order; establishing fixed prices for portions of the requirement) on future acquisitions for the same or similar requirements.

(iv) Describe actions planned to maximize the use of firm-fixed-price or fixed-price with economic price adjustment contracts on future acquisitions for the same requirements.

(3) See 16.601(d)(1) for additional approval required for contracts expected to extend beyond three years.

(c)(1) Indefinite-delivery contracts (see Subpart 16.5) may be used when—

(i) The prices are established based on a firm-fixed-price or fixed-price with economic price adjustment; or

(ii) Rates are established for commercial services acquired on a time-and-materials or labor-hour basis.

(2) When an indefinite-delivery contract is awarded with services priced on a time-and-materials or labor-hour basis, contracting officers shall, to the maximum extent practicable, also structure the contract to allow issuance of orders on a firm-fixed-price or fixed-price with economic price adjustment basis. For such contracts, the contracting officer shall execute the D&F required by paragraph (b)(2) of this section, for each order placed on a time-and-materials or labor-hour basis. Placement of orders shall be in accordance with Subpart 8.4 or 16.5, as applicable.

(3) If an indefinite-delivery contract only allows for the issuance of orders on a time-and-materials or labor-hour basis, the D&F required by paragraph (b)(2) of this section shall be executed to support the basic contract and shall also explain why providing for an alternative firm-fixed-price or fixed-price with economic price adjustment pricing structure is not practicable. The D&F for this contract shall be approved one level above the contracting officer. Placement of orders shall be in accordance with Subpart 16.5.

(d) The contract types authorized by this subpart may be used in conjunction with an award fee and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost (see 16.202–1 and 16.203–1).

(e) Use of any contract type other than those authorized by this subpart to acquire commercial items is prohibited.

■ 6. Amend section 12.301 by adding a sentence after the first sentence in paragraph (b)(3) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b) * * *

(3) * * * Use this clause with its Alternate I when a time-and-materials or labor-hour contract will be awarded. * * *

* * * * *

■ 7. Amend section 12.403 by revising paragraph (d)(1)(i) to read as follows:

12.403 Termination.

* * * * *

(d) * * *

(1) * * *

(i)(A) The percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination for fixed-price or fixed-price with economic price adjustment contracts; or

(B) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule; and

* * * * *

PART 16—TYPES OF CONTRACTS

■ 8. Amend section 16.601 by adding a sentence to the end of paragraph (c) introductory text and revising paragraph (d) to read as follows:

16.601 Time-and-materials contracts.

* * * * *

(c) *Application.* * * * See 12.207(b) for the use of time-and-material contracts for certain commercial services.

* * * * *

(d) *Limitations.* A time-and-materials contract may be used only if—

(1) The contracting officer prepares a determination and findings that no other contract type is suitable. The determination and finding shall be—

(i) Signed by the contracting officer prior to the execution of the base period or any option periods of the contracts; and

(ii) Approved by the head of the contracting activity prior to the execution of the base period when the base period plus any option periods exceeds three years; and

(2) The contract includes a ceiling price that the contractor exceeds at its own risk. The contracting officer shall document the contract file to justify the reasons for and amount of any subsequent change in the ceiling price. Also see 12.207(b) for further limitations on use of Time-and-Materials or Labor Hour contracts for acquisition of commercial items.

* * * * *

■ 9. Revise section 16.602 to read as follows:

16.602 Labor-hour contracts.

Description. A labor-hour contract is a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor. See 12.207(b), 16.601(c), and 16.601(d) for application and limitations, for time-and-materials contracts that also apply to labor-hour contracts. See 12.207(b) for the use of labor-hour contracts for certain commercial services.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Amend section 52.212–4 by—

■ a. Revising the date of the clause;

■ b. Adding a new sentence after the third sentence in the introductory text of paragraph (a); and

■ c. Adding Alternate I;

■ The revised and added text reads as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (FEB 2007)

(a) *Inspection/Acceptance.* * * * If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. * * *

* * * * *

(End of clause)

Alternate I (FEB 2007). When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (i) and (l) for those in the basic clause.

(a) *Inspection/Acceptance.* (1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including

the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the ''hourly rate'' for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the ''hourly rate'' attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. [*Insert portion of labor rate attributable to profit.*]

(5)(i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to—

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(e) *Definitions.* (1) The clause at FAR 52.202–1, Definitions, is incorporated herein by reference. As used in this clause—

(i) *Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) *Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

(C) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(iii) *Materials* means—

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) The following subcontracts for services which are specifically excluded from the hourly rate: [*Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.*]; and

(E) Indirect costs specifically provided for in this clause.

(iv) *Subcontract* means any contract, as defined in FAR Subpart 2.1, entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(i) *Payments.* (1) *Services accepted.* Payment shall be made for services accepted by the Government that have been delivered to the delivery destination(s) set forth in this contract. The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) *Hourly rate.*

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.

(*1*) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.

(*2*) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.

(*3*) If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) *Materials.*

(A) If the Contractor furnishes materials that meet the definition of a commercial item at FAR 2.101, the price to be paid for such materials shall be the contractor's established catalog or market price, adjusted to reflect the—

(*1*) Quantities being acquired; and

(*2*) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor—

(*1*) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(*2*) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall—

(*1*) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(*2*) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) *Other Costs.* Unless listed below, other direct and indirect costs will not be reimbursed.

(*1*) *Other Direct Costs.* The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: [Insert each element of other direct costs (*e.g., travel, computer usage charges, etc. Insert ''None'' if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert ''Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert 'None''.'*]

(*2*) *Indirect Costs (Material Handling, Subcontract Administration, etc.*). The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: [*Insert a fixed amount for the indirect costs and payment schedule. Insert ''$0'' if no fixed price reimbursement for indirect costs will be provided. (If this is an indefinite delivery contract, the Contracting Officer may insert ''Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert 'None').''*]

(2) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—

(A) The original timecards (paper-based or electronic);

(B) The Contractor's timekeeping procedures;

(C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost—

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) *Overpayments/Underpayments.* (i) Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(ii) Upon receipt and approval of the invoice designated by the Contractor as the ''completion invoice'' and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(6) *Release of claim*s. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(7) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(8) *Electronic Funds Transfer (EFT*). If the Government makes payment by EFT, see 52.212–5(b) for the appropriate EFT clause.

(9) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor

plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

[FR Doc. 06–9613 Filed 12–6–06; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR—2006—0023, Sequence 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–15; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–15 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–15 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT Laurieann Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–15

Item	Subject	FAR case	Analyst
*I	Payments Under Time-and-Materials and Labor-Hour Contracts	2004–015	Olson.
*II	Additional Commercial Contract Types	2003–027	Olson.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–15 amends the FAR as specified below:

Item I—Payments Under Time-and-Materials and Labor-Hour Contracts (FAR Case 2004–015)

This final rule revises and clarifies policies related to award and administration of noncommercial item Time-and-Materials (T&M) and Labor-Hour (LH) contracts and the policies regarding payments made under those contracts. The objectives of the changes are to ensure fair and reasonable prices under T&M and LH contracts and to eliminate confusion related to payment amounts for subcontractor provided labor.

Item II—Additional Commercial Contract Types (FAR Case 2003–027)

This final rule implements section 1432 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Title XIV of the Act, referred to as the Services Acquisition Reform Act of 2003 (SARA), amended section 8002(d) of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355, 41 U.S.C. 264) to expressly authorize the use of Time–and–Materials (T&M) and Labor–Hour (LH) contracts for commercial services under specified conditions.

Dated: December 4, 2006.

Linda K. Nelson,

Deputy Director, Contract Policy Division.

[FR Doc. 06–9612 Filed 12–6–06; 8:45 am]

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Federal Register

Tuesday,
December 12, 2006

Part V

Department of State

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Open Competition Seeking: Professional Exchange Programs; Cultural Programs; and School Administrators and Community Leaders in Indonesia; Notice

DEPARTMENT OF STATE

[Public Notice 5636]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Open Competition Seeking: Professional Exchange Programs; Cultural Programs; and School Administrators & Community Leaders in Indonesia

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C–07–01.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates:

Application Deadline: February 16, 2007.

Executive Summary: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for grants that support exchanges and build relationships between U.S. non-profit organizations and civil society and cultural groups in Africa, East Asia, Europe, the Near East, North Africa, South Central Asia and the Western Hemisphere. U.S. public and non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3) may submit proposals that support the goals of The Professional Exchanges and Cultural Program. Projects should promote mutual understanding and partnerships between key professional and cultural groups in the United States and counterpart groups in other countries through multi-phased exchanges taking place over one to two years. Proposals should encourage citizen engagement in current issues, with a particular focus on youth and those who influence them, and promote the development of democratic societies and institutions, with a view toward creating a more stable world. To the fullest extent possible, programs should be two-way exchanges supporting roughly equal numbers of participants from the U.S. and foreign countries.

Proposed projects should transform institutional and individual understanding of key issues, foster dialogue, share expertise, and develop capacity. Through these people-to-people exchanges, the Bureau seeks to break down stereotypes that divide peoples, to promote good governance, to contribute to conflict prevention and management, and to build respect for cultural expression and identity in a world. Projects should be structured to allow American professionals and their international counterparts in eligible countries to develop a common dialogue for dealing with shared challenges and concerns. Projects should include current or potential leaders who will effect positive change in their communities. Exchange participants may include artists, community leaders, elected and professional government officials, religious leaders, educators, and proponents of democratic ideals and institutions, including for example, the media and judiciary, or others who influence the way in which different communities approach these issues. The Bureau is especially interested in engaging socially and economically diverse groups that may not have had extensive contact with counterpart institutions in the United States and *particularly seeks proposals that engage educators or other groups that directly influence youth in innovative ways.* Applicants may not submit proposals that address more than one region or that include countries not eligible under a specific theme designated in the RFGP. For the purposes of this competition, eligible regions are Africa, East Asia, Europe, the Near East, North Africa, South Central Asia, and the Western Hemisphere. No guarantee is made or implied that grants will be awarded in all themes and for all countries listed.

Please refer to section III.3 for information on eligibility requirements.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The competition is based on the premise that people-to-people exchanges encourage and strengthen understanding of democratic values, nurture the social, political, cultural, and economic development of societies and encourage citizen involvement. Exchanges supported by institutional grants from the Bureau should operate at two levels: They should enhance partnerships between U.S. and foreign institutions, and they should establish a common language to develop practical solutions for shared problems and concerns. The Bureau is particularly interested in projects that will create mutually beneficial and self-sustaining linkages between professional communities in the U.S. and their counterpart communities in other countries. Applicants must identify the U.S. and foreign organizations and individuals with whom they are proposing to collaborate and describe previous cooperative activities, if any. Information about the mission, activities, and accomplishments of partner organizations should be included in the submission. Proposals should contain letters of commitment or support from partner organizations for the proposed project. Applicants should clearly outline and describe the role and responsibilities of all partner organizations in terms of project logistics, management and oversight. Proposals linking institutions that have previously collaborated should clearly indicate how projects proposed in response to this RFGP will significantly build on previous work to accomplish specific new outcomes. Proposals for creative new work or designed to achieve significant new outcomes will be deemed more competitive under the Program Planning and Ability to Achieve Objectives review criterion, per item V.1 below. Proposals for continuing activities funded under previous grants will be deemed less so.

Competitive proposals will include the following:

- A brief description of the issue to be addressed and how it relates to the target country or region. (Proposals that request resources for an initial needs assessment will be deemed less competitive under the review criterion Program Planning and Ability to Achieve Objectives, per item V.1 below.);
- A clear, succinct statement of program objectives and expected outcomes that respond to Bureau goals for each theme in this competition. Desired outcomes should be described in qualitative and quantitative terms. (See the Program Monitoring and Evaluation section per item V.1 below, for more information on project objectives and outcomes.);
- A proposed timeline, listing the optimal schedule for each program activity;
- A description of participant recruitment and selection processes;
- Letters of support from foreign and U.S. partners. (*Letters from prospective partner institutions should demonstrate*

a capacity to arrange and conduct U.S. and overseas activities.);

• An outline of the applicant organization's relevant expertise in the project theme and country(ies);

• An outline of relevant experience managing previous exchange programs;

• Resumes of experienced staff who have demonstrated a commitment to implement and monitor projects and ensure outcomes;

• A comprehensive plan to evaluate whether program outcomes achieved the specific objectives described in the narrative. (See the Program Monitoring and Evaluation section [IV.3d.d below] for further guidance on evaluation.);

• A post-grant plan that demonstrates how the grantee plans to maintain contacts initiated through the program. Applicants should discuss ways that U.S. and foreign participants or host institutions will collaborate and communicate after the ECA-funded grant has concluded. (See Review Criterion #5, per item V.1 below for more information on post-grant activities.)

• Successful projects will demonstrate the importance Americans place on community service as an element of active citizenship and may include ideas and projects to strengthen civil society through community service either during participants' stay in the U.S. or upon their return to their countries.

• In addition to addressing the specific themes described below, proposals should develop partner organizations' capacity in such areas as strategic planning, performance management, fund raising, financial management, human resources management, and decision-making.

It is important that the proposal narrative clearly state the applicant's commitment to consult closely with the Public Affairs Section of the U.S. Embassy in the relevant country(ies) to develop plans for project implementation and to select project participants. Proposals should also acknowledge U.S. embassy involvement in the final selection of all participants. Applicants should state their willingness to invite representatives of the embassy(ies) and/or consulate(s) to participate in program sessions or site visits. Narratives should state that all material developed for the project will prominently acknowledge Department of State ECA Bureau funding for the program. Applicants who are awarded assistance awards are encouraged to engage in outreach activities that will promote the goals of the project and increase the visibility of the project activities, including the holding of public events and appropriate media appearances. Grantees and in-country partners are encouraged to consult closely with the relevant Public Affairs Section staff from the U.S. Embassy(ies) and with Washington, DC-based program officers on any such outreach.

All applicants are *strongly* encouraged to consult with the Washington, DC-based State Department contact for the themes/regions listed below and with Public Affairs Officers at U.S. embassies in relevant countries as they develop proposals responding to this RFGP.

Note on Outputs and Outcomes: *All* projects under this RFGP must identify outputs and outcomes for each program phase. Outputs are products and services delivered, often stated as an amount. *Output* information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes* are the impacts on individual participants in the exchanges, the larger beneficiary audience, and changes in institutional structures or behavior. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes. The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the stronger will be the evaluation.

Africa (AF)

Program Contact: Curtis Huff, tel: (202) 453–8159, e-mail: *HuffCE@State.gov.*

I. AF: Active and Responsible Citizenship

• Promote the education of citizens with broad potential to influence their societies, especially women and representatives of marginalized groups, on rights and responsibilities in a democracy, and empower them to participate in the development of public policy, public discussions and debates by developing their knowledge, individual skills and organizational capacity, and the development of self sustaining civil society organizations.

Audience: Primarily women and representatives of marginalized groups who show leadership potential. Secondarily, other community leaders who can create the conditions for more effective citizen participation in public affairs and community organizations.

Eligible Countries: Proposals must focus on one of the following: Kenya, Nigeria, or South Africa. The Office is willing to consider the addition of one or two neighboring countries in the sub-region if the case can be made that such inclusion will strengthen impact of the program.

A successful program will provide participants:

• Practical positive results of citizen engagement in civil society, including an informed and participating citizenry, respect for human rights and the rule of law and concepts such as volunteerism, the idea that citizens can and do act at the grassroots level to deal with social problems.

• Appreciation for American governmental and legal structures, an understanding of the diversity of American society and increased tolerance and respect for others with differing views and beliefs.

• Structured interaction designed to develop enduring professional ties between U.S. and partner organizations.

• Develop leadership capacity to enable participants to initiate and sustain community development and community service activities in their home countries.

Possible program model:

• The U.S. grantee and its African partner identify Africans to be considered for a U.S.-based program.

• A three-to four-week U.S. program is designed that includes orientation, study tour/site visits, internships, and discussions.

• Similar study tours are designed for American participants in Africa, along with workshops and other public programs including media. Such activities will offer American participants the opportunity to join with their African partners in reaching broader audiences in Africa.

• Joint, follow-on projects are designed to be implemented by the American and African partners after the ECA grant has expired, such as online correspondence including Digital Video Conferences, development of informative materials to share, and joint study projects through electronic means.

II. AF: Transparent, Accountable Financial Management

• Engage financial managers with significant responsibility in government or nongovernmental organizations to increase their skills and professional standards.

Audience: Financial managers, both governmental and nongovernmental.

Eligible Countries: To be successful, a proposal must focus on one of the following: Kenya, Nigeria, or South Africa. The Office is willing to consider the addition of one or two neighboring countries in the sub-region if the case can be made that such inclusion will strengthen impact of the program.

A successful program will provide participants:

• An understanding of the professional standards for managing large-scale finances in transparent and accountable fashion to minimize opportunities for unethical or incompetent use of public money.

• Skill in managing money to the highest professional standards.

• Connection to professional associations that support financial managers in striving for best performance.

• Opportunities to observe how capable organizations train and monitor staff in managing finances in order to assure best performance.

Possible program model:

• An American delegation chosen by the grantee travels to the partner country to assess financial management practices with its partner organization and jointly plan for a relevant professional development program to follow.

• U.S. grantee and its African partner identify potential African participants in the proposed program, focusing on financial managers in leadership positions or with leadership potential.

• When approved by the Public Affairs Office of the U.S. Embassy, African participants travel to the U.S. for at least three weeks of learning, site visits, workshops, internships or similar opportunities to learn skills, professional standards, and management of persons with financial responsibilities, through activities designed by the grantee.

• An American delegation travels to the African partner country(ies) to conduct workshops with its partner organization for a broader audience and to plan related activities to be conducted after expiration of the ECA grant.

III. AF: Fostering Economic Growth to Strengthen Democracy

• Educate women and emerging leaders among marginalized groups in entrepreneurial thinking, business leadership, and a community-wide perspective to empower them to engage in business creation.

Audience: Young entrepreneurs, especially women and representatives among marginalized groups, and representatives from government and nongovernmental organizations with positions and interest to foster a climate that encourages new meritorious business creation.

Eligible Countries: To be successful, a proposal must focus on one of the following: Kenya, Nigeria, or South Africa. The Office is willing to consider the addition of one or two neighboring countries in the sub-region if the case can be made that such inclusion will strengthen the impact of the program.

A successful program will provide participants:

• Knowledge and advice to start new businesses.

• Understanding of conditions that foster a free-market economy and how government can promote those conditions.

• Appreciation for the best American business practices and the role of individual entrepreneurial efforts to create growth.

• An understanding of the diversity of American society.

• Enhanced leadership capacity that will enable participants to initiate and support activities in their home country(ies) that foster economic growth in a democratic society.

• Interaction with Americans designed to generate enduring ties.

Possible program model:

• The U.S. grantee and its African partner identify Africans to be considered for the U.S.-based program.

• A three- to four-week U.S. program is designed that includes orientation, study tour/site visits, internships and discussions.

• Similar study tours are designed for American participants in Africa, along with workshops and other public programs including media. Such activities will offer American participants the opportunity to join with their African partners in reaching broader audiences in Africa.

• Design joint, follow-on projects to be implemented by the American and African partners after the ECA grant has expired, such as online correspondence including DVCs, development of informative materials to share, and joint study projects through electronic means.

East Asia and the Pacific (EAP)

Program Contact: Clint Wright, tel: (202) 453–8164, e-mail: *WrightHC@state.gov.*

I. EAP: Active and Responsible Citizenship

• Educate parents, teachers and leaders of youth organizations on rights and responsibilities in a democracy and empower them to participate in the development of public policy, public discussions and debates by developing their individual skills and organizations. Projects should engage government and NGO leaders in dialogue.

• Engage government leaders—national and local—in the importance of citizen participation in governmental decision-making and develop/examine specific practices that promote an effective, accountable, transparent and responsive government and public administration that is crucial to the development of democracy. Projects should engage government and NGO leaders in dialogue.

Audience: Representatives from government and non-governmental organizations, and community leaders.

Eligible Countries: (single-country projects only) China, Indonesia, Malaysia, and the Philippines.

A successful program will provide participants:

• Understanding of important elements of a civil society. This includes concepts such as volunteerism, the idea that citizens can and do act at the grassroots level to deal with social problems, and an awareness of the importance of the rule of law in all societies.

• Appreciation for American governmental and legal structures, an understanding of the diversity of American society and increased tolerance and respect for others with differing views and beliefs.

■ Structured interaction designed to develop enduring professional ties between U.S. and partner organizations.

■ Enhanced leadership capacity that will enable the participants to initiate and support activities in their home countries that focus on civic engagement and community service.

Successful applicants must fully demonstrate a capacity to achieve the following three key activities:

(1) Recruit and select approximately 30 individuals from government, non-governmental organizations, and community leaders throughout the target country, including private business leaders. Program should be designed for two groups of 15 to travel to the U.S. For this phase of the program, partnering with organizations based in the target country is required.

(2) In addition to identifying in-country partner and screening, selecting, and preparing participants prior to departure for the United States, the recipient of this grant will be responsible for building and executing a three to four week informative travel and residency program in the United States.

(3) The final part of the program will be conducting enhancement activities and leadership development opportunities that reinforce program goals after the participants' return to their home country. An essential follow-on component will be a longitudinal assessment of the achievements of the program.

Possible Program Model:

• U.S. grantee identifies U.S. citizens to conduct in-country seminar for citizen leaders, teachers, NGO representatives, responsible media, elected local government officials, and legal professionals to discuss transparency and accountability. In-country partner (a local university or other appropriate professional group) co-hosts the event with the U.S. grantee institution.

• U.S. program that includes a seminar on the role of government/citizen in the U.S.; internships in local elected officials' offices, NGO organizations, and citizen organizations; and a one-day debriefing and evaluation.

• In-country program conducted by U.S. experts that served as internship hosts or seminar leaders. Participants in U.S. program design an in-country seminar and serve as co-presenters. Organizers broaden impact through audience outreach, including media. Project may also support materials translated into target language, small grants for projects designed to expand the exchange experience and support for the development of alumni association.

II. EAP: Creating Economic Growth to Strengthen Democracy

• Engage community and business leaders, including those involved in science and technology, to promote economic growth and prosperity among youth by sharing experiences, practical information, and developing leadership skills in business, including the importance of corporate social responsibility.

• Educate youth and women in entrepreneurial thinking and business leadership skills to empower them to engage in business creation.

Audience: Young entrepreneurs, community leaders, including representatives from governmental and non-governmental organizations.

Eligible Countries: (single-country projects only) China, Indonesia, Malaysia, the Philippines, and Vietnam.

A successful program will provide participants:

• Knowledge of the role learning plays in creating the conditions necessary for a free market economy. This includes awareness among the individuals from the private sector, and to a lesser extent, public sector counterparts who shape the business environment, to develop technically competent and culturally sensitive workers in private sector enterprises and an appreciation of the role of the individual entrepreneur in creating economic growth.

• Appreciation for American business practice and role of individual entrepreneurial efforts to create growth, and an understanding of the diversity of American society.

• Structured interaction designed to develop enduring professional ties between U.S. and partner organizations.

• Enhanced leadership capacity that will enable participants to initiate and support activities in their home countries that focus on development and community service.

Successful applicants must fully demonstrate a capacity to achieve the following three key activities:

(1) Recruit and select approximately 30 individuals from the business associations, banking and regulatory agencies and print media including individual business owners throughout the target country. Program should be designed for two groups of 15 to travel to the U.S. For this phase of the program, partnering with organizations based in target country is required.

(2) In addition to identifying in-country partner and screening, selecting, and preparing participants prior to departure for the United States, the recipient of this grant will be responsible for building and executing a three to four week informative travel and residency program in the United States.

(3) The final part of the program will be conducting enhancement activities and leadership development opportunities that reinforce program goals after the participants' return to their home country. An essential follow-on component will be a longitudinal assessment of the achievements of the program.

Possible Program Model:

• Successful small business entrepreneurs conduct workshops for audiences on effective, practical methods of stimulating entrepreneurial skills in target countries.

• Key participants of in-country workshops invited to U.S. for business facilitation or mentoring to promote innovation and networking skills. Develop action plans for business implementation upon return home.

• Upon return participants implement business action plans with guidance from U.S. mentors utilizing e-mail and other direct communication.

• Business mentors travel to country to evaluate implementation of action plan and offer assistance.

III. EAP: School Administrators & Community Leaders

School Administrators and Community Leaders should be provided with the following:

• Acquire an understanding of important elements of a civil society. This includes concepts such as volunteerism, the idea that American citizens are responsible for acting at the grassroots level to deal with social and educational problems, and an awareness of respect for the rule of law in the U.S.

• Acquire an understanding of the importance of education in creating conditions for a free market economy. This includes awareness of private enterprise and an appreciation of the role of the entrepreneur in economic growth.

• Develop an appreciation for American culture, an understanding of the diversity of American society and increased tolerance and respect for others with differing views and beliefs.

• Structured interaction designed to develop enduring professional ties between U.S. and partner organizations.

• Gain leadership capacity that will enable participants to initiate and support activities in their home countries that focus on development and community service.

Audience: Leaders of boarding schools that focus on teaching Islamic values and on providing basic education to children from several regions in Indonesia. These boarding schools are known as ''pesantren''.

Eligible Country: Indonesia.

A successful program design must accomplish these three key objectives:

(1) Recruit and select approximately 45 individual leaders from Indonesian private secondary schools (known as ''pesantren'') that are administered under the auspices of the Government of Indonesia's Department of Religious Affairs. Program should be designed for three groups of 15 school administrators and community leaders to travel to the U.S. For this phase of the program, partnering with organizations based in Indonesia is required.

(2) In addition to identifying schools and screening, selecting, and preparing participants prior to departure for the United States, the recipient of this grant will be responsible for building and executing a three to four week informative travel and residency program in the United States.

(3) The final part of the program will be conducting enhancement activities and leadership development opportunities that reinforce program goals after the participants' return to Indonesia. An essential follow-on component will be a longitudinal assessment of the achievements of the program.

(4) Program design should focus on offering participants maximum opportunities to develop leadership

skills and raise their awareness of how to develop critical thinking, nurture democratic values, and encourage tolerance for through the classroom and through school-supported community activities and networks.

Possible Program Model:

• A U.S.-based program that includes an orientation to program purposes and to U.S. society; study tour/site visits; professional internships/placements; interaction and dialogue; hands-on training; professional development; and action plan development.

• Capacity-building/training-of-trainer (TOT) workshops to help participants to identify priorities, create work plans, strengthen professional and volunteer skills, share their experience with committed people within each country, and become active in a practical and valuable way.

• Site visits by U.S. facilitators/experts to monitor projects in the region and to encourage further development, as appropriate.

Europe (EUR)

Program Contact: Brent Beemer, tel: (202) 453–8147, e-mail: *BeemerBT@state.gov.*

I. EUR: Foreign Policy Dialogue Among Emerging Leaders

• This project is designed to support the integration of Turkey and Europe and to promote the participation of young Turkish leaders in the transatlantic dialogue on foreign policy issues. The project goal is to encourage emerging leaders to examine foreign policy issues in a context that encourages substantive dialogue on disagreements with other countries. This program will show how democratic nations/governments/citizens can disagree—and very strongly—on specific issues with other countries, but still maintain healthy bilateral and interpersonal relationships. The program should examine how falling back on extremist ideologies and withdrawing from dialogue with other nations can lead to isolationism and political instability, and ultimately weaker democratic systems.

Audience: Emerging leaders age 21–35 involved in international affairs from youth wings of political parties, NGOs with youth focus, universities, business organizations, active politicians, journalists, business people, think tanks, and cultural figures.

Eligible Country: Turkey.

A successful program will provide participants:

• The capacity to engage in serious, important, and productive dialogue on international issues in ways that strengthen civil society and the democratic process.

• New links between emerging leaders and organizations in Turkey and the United States.

• A better understanding of the priority issues, concerns, and ideas that prevail in each society;

• A fuller understanding of American and Turkish foreign policies, political structures, societies, and cultures.

Successful applicants must fully demonstrate a capacity to achieve the following three key activities:

(1) Recruit and select approximately 40 individuals from throughout the target country. Program should be designed for two groups of 20 to travel to the U.S. For this phase of the program, partnering with organizations based in Turkey is required (the Public Affairs Section of the U.S. Embassy in Ankara should be consulted on this).

(2) In addition to identifying in-country partner and screening, selecting, and preparing participants prior to departure for the United States, the recipient of this grant will be responsible for building and executing a three to four week informative travel and residency program in the United States.

(3) The final part of the program will be conducting enhancement activities and leadership development opportunities that reinforce program goals after the participants' return to Turkey. An essential follow-on component will be a longitudinal assessment of the achievements of the program.

Possible Program Model:

• U.S. grantee identifies U.S. citizens to conduct in-country seminars on the theme. Partner in Turkey would co-host the event with the U.S. grantee institution.

• U.S. program that would include seminars; internships in local elected officials' offices, NGO organizations; and a one- or two-day debriefing and evaluation.

• Program in Turkey conducted by U.S. experts that served as internship hosts or seminar leaders. Participants in U.S. program design the seminar and serve as co-presenters. Project would also support materials translated into Turkish, small grants for projects designed to expand the exchange experience and support for the development of alumni association.

II. EUR: Outreach and Integration of Marginalized Populations, Particularly Youth, in Western Europe

• Engage community leaders, educators, youth influencers, journalists, and community-based organizations in examination of programs and practices to facilitate integration, assimilation, and empowerment of minority populations, particularly youth.

Audience: Representatives of non-governmental organizations, community leaders, educators, youth influencers, journalists from minority communities. Note: European Union, national, and regional government officials are welcome to be part of programming, but given funding limitations, they will need to cover all their own expenses.

Eligible Countries: (single-country projects only) Belgium, Denmark, Italy, United Kingdom.

A successful program will provide participants:

• Understanding of issues related to the integration of immigrant and minority populations into a modern democratic society. This includes integration in the political system, economic opportunity, and freedom of expression, education, and social/cultural life, while maintaining ethnic identity within a multi-ethnic society.

• A specific understanding of immigrant and minority youth populations and the special needs/challenges they face in modern society.

• Appreciation for American governmental and legal structures, an understanding of the diversity of American society and efforts over the nation's history to increase tolerance and respect for others with differing views and beliefs. Program content will include an overview of the range of historical and current American experience with integrating various immigrant and minority citizens, examination of what has worked well and what has not, and analysis of the range of actors including government, NGOs, religious organizations, immigrant organizations, educational institutions, and the role of the media and public who are involved in this information.

• Structured interaction designed to develop enduring professional ties between U.S. and partner organizations.

• Enhanced leadership capacity that will enable participants to initiate and support activities in their home countries that focus on integration of minority populations.

Successful applicants must fully demonstrate a capacity to achieve the following key activities:

(1) Recruit and select approximately 15 to 20 individuals throughout the target country. Program should be designed for two groups to travel to the U.S. Partnering with organizations based in target country is required. Also, given resources available in Western

Europe, successful applicants will have West European partners that will cover considerable program costs within the host country and cover all its own administrative costs for this project.

(2) In addition to identifying in-country partner and screening, selecting, and preparing participants prior to departure for the United States, the recipient of this grant will be responsible for building and executing a three to four week informative travel and training program in the United States.

(3) Conducting an in-country workshop(s) to examine the process of integration/assimilation of marginalized populations in Europe and developing strategies to address these issues. The workshop(s) should be designed to engage a broad audience, not just program participants.

(4) The development of enhancement activities and development opportunities that reinforce program goals after the participants' return to their home country. An essential follow-on component will be a longitudinal assessment of the achievements of the program.

Possible Program Model:

- U.S. grantee and in-country partner identifies West European citizens to participate in the U.S.-based program.
- A three to four week U.S. program that includes an orientation, study tour/site visits; possible short-term internships/work shadowing opportunities; hands on training/training-of-trainers; professional development; and the development of action plans.
- In-country workshop(s) for a broad audience to examine the process of integration of minority communities. Program conducted by U.S. experts that served as internship hosts or seminar leaders. Participants in U.S. program design the seminar and serve as co-presenters.
- Enrichment activities that could include support materials translated into target language, small grants for projects designed to expand the exchange experience, and other activities.

Near East Asia and North Africa (NEA)

Program Contact: Thomas Johnston, tel: (202) 453–8162, e-mail: *JohnstonTJ@state.gov.*

I. NEA: Active and Responsible Citizenship

- Educate citizens, with particular focus on educators, leaders of youth organizations, journalists, or community leaders/activists in non-governmental organizations, on the rights and responsibilities of individuals in civil society and a democratic polity.
- Empower these groups to take initiative and to participate in the discussion and the development of policy by providing them information, enhancing their skills, and strengthening their organizations. Projects should emphasize formal and/or informal learning, engagement, dialogue, and collaborative effort.
- Engage young to mid-level professionals in formal and informal leadership positions in an examination of the importance of citizen participation in decision-making and consider specific practices that promote the type of effective, accountable, transparent and responsive institutions that are crucial to the development of democracy. Projects should engage leaders, educators, youth influencers, and/or community/NGO activists in dialogue.

Exchanges may focus on one of more of the following themes: governance, transparency, and fighting corruption; education for participation in civil society; advocacy in democratic process, NGO development, public interest advocacy and information dissemination; public health/public welfare; expanding the role of women and minorities; educating for responsible environmental action; and / or education for responsible preservation of cultural heritage.

Participants: Representatives of government and non-governmental organizations, community leaders/activists, educators, leaders of youth organizations, and/or journalists.

Eligible Countries: (single-country and multi-country projects) Proposals must include one or more of the following seven countries: Morocco, Algeria, Egypt, Jordan, Iran*, Syria, and the countries of the Arabian Gulf. Other countries/entities in the region may be included with one or more of the countries listed above, if the applicant provides a compelling case that the proposed country grouping will significantly enhance project outcomes.

***Note:** Applicants planning to include Iranian participants must meet specific additional eligibility requirements. To assure that planning for the inclusion of Iran complies with guidelines, please contact Mark Larsen, 202–453–8154, or e-mail *larsenm@state.gov.*

A successful program will provide participants:

- An understanding of the important elements of a civil society. This includes the centrality of an informed, engaged, and responsible citizenry; citizens acting at the grassroots level to deal with social problems; volunteerism, and an awareness of the importance of the rule of law in all societies.
- An appreciation for American governmental and legal structures, an understanding of the diversity of American society, and increased tolerance and respect for others with differing views and beliefs.
- Structured interaction designed to develop enduring professional ties between U.S. and partner organizations.
- Enhanced leadership capacity to enable participants to initiate and support activities promoting citizen awareness and engagement, strengthening social development, and community service in their home countries.

Successful applicants must demonstrate a capacity to implement successfully the following key activities:

(1) Develop a multi-phased, community and professional exchange focused on emerging professionals (community leaders; scholars and academics; public policy advocates; non-governmental organization activists; etc.) to promote active and responsible citizenship.

(2) Identify an in-country counterpart organization committed to active involvement in the exchange and engage that partner in the recruitment and selection of participants and the implementation of in-country phases of the exchange.

(3) Promote focused, substantive, and cooperative interaction among counterparts, with particular focus on experiential learning for all participants.

(4) Contribute to the establishment of sustained, international, institutional and individual linkages by providing a context for professional learning and development, skills enhancement, and collaborative problem-solving.

(5) Introduce foreign participants and their American counterparts to one another's political, social, and economic values and systems, facilitating improved communication and enhancing mutual understanding.

(6) Conduct enhancement activities and leadership development opportunities that reinforce program goals after the participants' return to their home countries. An essential follow-on component will be a longitudinal assessment of the achievements of the program.

Possible Program Model:

- American citizens travel under the auspices of the grantee institution to partner country(ies), consult with in-country partner institution(s), contact and identify potential exchange

participants, and define the concept and goals of the project.

• A group of non-American participants engages in dialogue, orientation, site visits, training, workshops, and seminars in the U.S. to gain new skills; develops action plans; conducts shadow internships; and undertakes and other experiential activities.

• A second group of Americans—specialists identified by the non-American participants as having particularly relevant information or skills—travel to the partner country(ies) and work with foreign participants in seminars and workshops to broaden the scope of professional individuals engaged in the exchange.

• A second group of foreign participants, possibly nominated by the original participants, travels to the United States for in-depth internships, to be involved in train-the-trainer activities, or to further pursue the goals of the exchange, returning to their countries to put what has been learned into practice.

South Central Asia (SCA)

Program Contact: Adam Meier, tel: (202) 453–8151, e-mail: *MeierAW@State.gov*.

I. SCA: Active and Responsible Citizenship

• Educate citizens, with particular focus on educators, leaders of youth organizations, journalists, or community leaders/activists in non-governmental organizations, on the rights and responsibilities of individuals in civil society and a democratic polity. Empower them to take initiative and to participate in the discussion and the development of policy by providing them information, enhancing their skills, and strengthening their organizations. Projects should emphasize formal and/or informal learning, engagement, dialogue, and collaborative effort.

• Engage individuals in formal and informal leadership positions in an examination of the importance of citizen participation in decision-making and consider specific practices that promote the type of effective, accountable, transparent and responsive institutions that are crucial to the development of democracy. Projects should engage leaders, educators, youth influencers, and/or community/NGO activists in dialogue.

• Exchanges may focus on one of more of the following themes: governance, transparency, and fighting corruption; education for participation in civil society, including curriculum development and teacher training; advocacy in democratic process, NGO development, public interest advocacy and information dissemination; expanding the role of women and minorities; educating for responsible environmental action; and/or education for responsible preservation of cultural heritage.

Participants: Representatives of government and non-governmental organizations, community leaders/activists, educators, leaders of youth organizations, and/or journalists.

Eligible Countries: Afghanistan*, Bangladesh, India, Nepal, Pakistan, Sri Lanka, Kazakhstan, Tajikistan, and Kyrgyzstan. Priority will be given to projects that are designed to enhance linkages between South Asia and Central Asia; specifically, proposals that include one or more countries from South Asia (Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka) *with* one or more countries from Central Asia (Kazakhstan, Tajikistan, and Kyrgyzstan.)

***Note:** For projects in Afghanistan, proposals must include a description of plans for an alternate location for the in-country portion of the program given the security situation in Afghanistan.

A successful program will provide participants:

• An understanding of the important elements of a civil society. This includes the centrality of an informed, engaged, and responsible citizenry; citizens acting at the grassroots level to deal with social problems; volunteerism, and an awareness of the importance of the rule of law in all societies.

• An appreciation for American governmental and legal structures, an understanding of the diversity of American society, and increased tolerance and respect for others with differing views and beliefs.

• Structured interaction designed to develop enduring professional ties between U.S. and partner organizations.

• Enhanced leadership capacity enabling participants to initiate and support activities in their home countries that focus on citizen awareness and engagement, strengthening social development, and community service.

Successful applicants must demonstrate a capacity to implement successfully the following key activities:

(1) Develop a multi-phased, professional exchange focused on emerging leaders (community leaders; scholars and academics; public policy advocates; non-governmental organization activists; etc.) to address jointly an issue of crucial importance to the United States and to the partner country(ies).

(2) Identify an in-country counterpart organization committed to active involvement in the exchange and engage that partner in the recruitment and selection of participants and the implementation of in-country phases of the exchange.

(3) Promote focused, substantive, and cooperative interaction among counterparts, entailing both theoretical and experiential learning for all participants.

(4) Contribute to the establishment of sustained, international, institutional and individual linkages by providing a context for professional learning and development, skills enhancement, and collaborative problem-solving. Additionally, these projects are intended to introduce foreign participants and their American counterparts to one another's political, social, and economic values and systems, facilitating improved communication and enhancing mutual understanding.

(5) Conduct enhancement activities and leadership development opportunities that reinforce program goals after the participants' return to their home countries. An essential follow-on component will be a longitudinal assessment of the achievements of the program.

Possible Program Model:

• American citizens travel under the auspices of the grantee institution to partner country(ies), consult with in-country partner institution(s), contact and identify potential exchange participants, and introduce the concept and goals of the project. (During this and other phases of the project, grantees and program participants are encouraged to engage in outreach activities that will increase the visibility of the goals and activities of the project, including the holding of public events and appropriate media appearances. Grantees and in-country partners are encouraged to work closely with staff from the U.S. mission on any such in-country outreach, and with Washington, DC-based program officers on any such U.S. outreach.)

• A group of non-American participants travels to the United States to engage in dialogue, orientation, site visits, training, workshops, and seminars to gain and expand skills, develop action plans, conduct shadow internships, and/or undertake other experiential activities.

• A second group of Americans—including internship hosts or seminar leaders—travel to the partner

country(ies) and work with foreign participants in seminars and workshops to broaden the scope of professional individuals engaged in the exchange.

• A second group of foreign participants, possibly nominated by the original participants, but which broadens the scope of the participants involved, travels to the United States for in-depth internships, to be involved in further training activities, or to further pursue the goals of the exchange, returning to their countries to put what has been learned into practice.

• Foreign participants, in conjunction with in-country partners, conduct a small grants competition for projects designed to expand the exchange experience to a broader audience in-country and support the development of alumni association.

Western Hemisphere (WHA)

Program Contact: Laverne Johnson, tel: (202) 453–8160, e-mail: *JohnsonLV@state.gov*.

I. WHA: Active and Responsible Citizenship

• Educate citizens, with particular focus on educators, leaders of youth organizations, journalists, or community leaders/activists in non-governmental organizations, on the rights and responsibilities of individuals in civil society and a democratic polity. Empower them to take initiative and to participate in the discussion and the development of policy by providing information, enhancing skills, and strengthening organizations. Projects should emphasize formal and/or informal learning, engagement, dialogue, and collaborative effort.

• Engage individuals in formal and informal leadership positions in an examination of the importance of citizen participation in decision-making and consider specific practices that promote the type of effective, accountable, transparent and responsive institutions that are crucial to the development of democracy. Projects should engage leaders, educators, youth influencers, and/or community/NGO activists in dialogue.

Projects may focus on one of more of the following themes: Governance, transparency, and fighting corruption; education for participation in civil society, including curriculum development and teacher training; advocacy in democratic process, NGO development, public interest advocacy and information dissemination; expanding the role of women and minorities; educating for responsible environmental action; and/or education for responsible preservation of cultural heritage.

Participants: Representatives of government and non-governmental organizations, community leaders/activists, educators, leaders of youth organizations, and/or journalists.

Eligible Countries: (single-country and multiple-country projects accepted) Bolivia, Ecuador, Nicaragua, Peru, Venezuela.

A successful program will provide participants:

• An understanding of the important elements of a civil society. This includes the centrality of an informed, engaged, and responsible citizenry; citizens acting at the grassroots level to deal with social problems; volunteerism, and an awareness of the importance of the rule of law in all societies.

• An appreciation for American governmental and legal structures, an understanding of the diversity of American society, and increased tolerance and respect for others with differing views and beliefs.

• Structured interaction designed to develop enduring professional ties between U.S. and partner organizations.

• Enhanced leadership capacity enabling participants to initiate and support activities in their home countries that focus on citizen awareness and engagement, strengthening social development, and community service.

Successful applicants must demonstrate a capacity to implement successfully the following key activities:

(1) Develop a multi-phased and mid-level exchange focused on emerging professional and community leaders (scholars and academics; public policy advocates; non-governmental organization activists; etc.) to address jointly an issue of importance to United States and partner country interests.

(2) Identify an in-country counterpart organization committed to active involvement in the exchange and engage that partner in the recruitment and selection of participants and the implementation of in-country phases of the exchange.

(3) Promote focused, substantive, and cooperative interaction among counterparts, focusing especially on experiential learning for all participants.

(4) Contribute to the establishment of sustained, international, institutional and individual linkages by providing a context for professional learning and development, skills enhancement, and collaborative problem-solving.

(5) Introduce foreign participants and their American counterparts to one another's political, social, and economic values and systems, facilitating improved communication and enhancing mutual understanding.

(6) Conduct enhancement activities and leadership development opportunities that reinforce program goals after the participants' return to their home countries. An essential follow-on component will be a longitudinal assessment of the achievements of the program.

Possible Program Model:

• American citizens travel under the auspices of the grantee institution to partner country(ies), consult with in-country partner institution(s), contact and identify potential exchange participants, and introduce the concept and goals of the project.

• A group of non-American participants travels to the United States to engage in dialogue, orientation, site visits, training, workshops, and seminars, in the course of which new skills may be learned and honed, action plans may be developed, shadow internships may be conducted, and/or other experiential activities undertaken.

• A second group of Americans—specialists identified by the non-American participants as having particularly relevant information or skills—travel to the partner country(ies) and work with foreign participants in seminars and workshops to broaden the scope of professional individuals engaged in the exchange.

• A second group of foreign participants, possibly nominated by the original participants, travels to the United States for in-depth internships, to be involved in train-the-trainer activities, or to further pursue the goals of the exchange, returning to their countries to put what has been learned into practice.

II. WHA: Creating Economic Growth To Fight Poverty and Strengthen Democracy

• Engage community business leaders, including those involved in science and technology, to promote local grassroots economic growth and prosperity among emerging youth leaders by sharing practical methods and developing community leadership skills in business, including the importance of diverse outreach through corporate social responsibility.

• Educate youth and women in entrepreneurial thinking and business leadership skills to empower them to engage in business creation.

Audience: Emerging, young entrepreneurs, teachers, community leaders, including representatives from governmental and non-governmental organizations. Programs focus on

engaging indigenous and Afro-Latino communities will be deemed very competitive.

Eligible Countries: (Single-country and multiple-country projects accepted) Bolivia, Brazil, Colombia, Ecuador, Mexico, Nicaragua, Peru, and Venezuela.

A successful program will provide participants:

■ Knowledge of the role learning plays in creating the conditions necessary for a free market economy. This includes awareness among the individuals from the private sector, and to a lesser extent, public sector counterparts who shape the business environment, to develop technically competent and culturally sensitive workers in private sector enterprises and an appreciation of the role of the individual entrepreneur in creating economic growth.

■ Appreciation for American business practice and role of individual grassroots-focused entrepreneurial efforts to create growth, and an understanding of the rich diversity of American society.

■ Structured interaction designed to develop enduring professional ties between U.S. and partner organizations.

■ Enhanced leadership capacity enabling participants to initiate and support activities in their home countries that focus on development and community service.

Successful applicants must fully demonstrate a capacity to achieve the following three key activities:

(1) Recruit and select approximately 30 individuals from the business associations, banking and regulatory agencies and print media. The delegation should include individual business owners from diverse regions of the participating country. Program should be designed for two groups of 15 to travel to the U.S. For this phase of the program, partnering with organizations based in the proposed host-country is required.

(2) In addition to identifying in-country partner and screening, selecting, and preparing participants prior to departure for the United States, the recipient of this grant will be responsible for building and executing a three to four week informative travel and residency program in the United States.

(3) The final part of the program will be conducting enhancement activities and leadership development opportunities that reinforce program goals after the participants' return to their home country. An essential follow-on component will be a longitudinal assessment of the achievements of the program.

Possible Program Model:

• Successful community-engaged small business entrepreneurs conduct workshops for audiences on effective, practical methods of stimulating entrepreneurial skills in target countries.

• Key members of in-country workshops invited to U.S. for business facilitation or mentoring to promote innovation and networking skills. Develop action plans for business implementation upon return home.

• Upon return participants implement business action plans with guidance from U.S. mentors utilizing e-mail and other direct communication.

• Business mentors travel to country to evaluate implementation of action plan and offer assistance.

Cultural Programs (SCU)

Program Contact: Mark Larsen, tel: (202) 453–8154, e-mail: *LarsenM@state.gov* or Jill Staggs, tel: (202) 203–7500, e-mail: *StaggsJJ@state.gov.*

I. Responsible Citizenship and the Arts: Artists Engaging Youth on the Margins of Society

Objective: Projects conducted under this theme will demonstrate how collaborative projects in the performing and visual arts can reach out to the margins of society to engage young people, instilling hope and a sense of self, demonstrating the value of teamwork and pride, encouraging positive attitudes toward education and responsibility for health (HIV/AIDS), and ultimately developing leadership skills and a sense of responsibility toward society. Projects should be designed to compare mechanisms American groups have successfully used to reach out to youth on the margins of society, with the activities of community and cultural activists in other countries; projects should include opportunities to compare and contrast the problems facing youth in the U.S. and in eligible countries, opportunities for collaborative problem solving among project managers (professionals), as well as collaborative artistic work by American youth and those from participating countries.

Participants/audience: Community and cultural leaders, educators, and American and international teen-age youth participating in the programs.

Eligible countries, entities:

AF: Nigeria, Kenya, South Africa
EAP: Indonesia, Malaysia
EUR: Turkey
NEA: Algeria, Egypt, Iran*, Jordan, Lebanon, Morocco, Palestinian Authority, Saudi Arabia, Syria
SCA: Pakistan, Uzbekistan
WHA: Bolivia, Venezuela

***Note:** Applicants planning to include Iranian participants must meet specific additional eligibility requirements. To assure that planning for the inclusion of Iran complies with guidelines, please contact Mark Larsen, 202–453–8154, or e-mail *larsenm@state.gov.*

Possible Program Model:

• American grantee organization visits partner country to identify key community activists/independent arts organizations to be invited to the U.S.

• International group comes to the U.S. to visit 2–3 American cities where innovative cultural outreach projects have successfully engaged American youth on the margins of society, followed by 1–2 week practicum in which international participants join an American group in on-site rehearsals and artistic public, non-commercial presentations in the U.S. This phase of the project should include hands-on experience with outreach to the broader community to establish project credibility and buy-in, including press or other appropriate communication tools.

• Third phase of the project should identify those Americans that have been most effective in working with foreign participants and take them to participating countries for 3–4 week engagement working with local educators/community activists and artists. This phase should focus on developing an actual product or performance with in-country youth. This phase of the project should include plans for appropriate community outreach and communication, including possible press.

• Final phase of the project should create an international tool (Web page or other) to facilitate ongoing communication and exchange of expertise/information.

II. Responsible Citizenship and the Arts: Cultural Institutions as Youth Educators

Objective: Promote an understanding of the role of cultural institutions as educators, particularly to teach children and youth to value and respect their own cultural heritage and, within that context, to examine and learn to appreciate the heritage of other peoples and cultures.

Audience: Managers and administrators of art organizations, museum professionals, community activists, educators, cultural communicators (writers, journalists)

Eligible Countries:
AF: Nigeria, Kenya, South Africa
EAP: China, Vietnam (single country projects only)
EUR: Turkey
NEA: Algeria, Egypt, Jordan, Morocco, Tunisia, Saudi Arabia, Syria
SCA: Pakistan, Uzbekistan
WHA: Bolivia, Peru, Venezuela

Possible Program Model:

• U.S. grantee identifies U.S. citizens to conduct in-country outreach and seminars on the theme. Identifies most promising young leaders in the field to participate in U.S. based follow-on and mentoring opportunity.

• U.S. program offers one-two week overview of innovative U.S. education and community outreach programs in museums and other cultural institutions, followed by 3–4 week internship/mentoring projects with education and outreach programs in U.S. institutions. Internships should include hands on preparation of, and participation in, outreach and education workshops designed to reach children and high school age youth. U.S. program ends with 2-day session to develop concept papers for projects participants would like to implement in their home institutions.

• Period of virtual/distance consultation between U.S. experts and international participants as they develop action plans to implement local projects.

• U.S. teams visit participating country institutions 4–6 months later to evaluate progress in implementing plans, trouble-shoot problems, offer expertise in implementation and design post-grant mechanisms to continue professional dialogue.

III. Responsible Citizenship and the Arts: Creating Cultural Bridges

Objective: Transcend challenging political, cultural and geographic borders through arts exchanges and projects involving cultural figures, artists, art historians, curators, conservators, arts educators and community leaders. Projects should focus primarily on linking young and mid-level professionals, engaging them to explore common cultural and aesthetic values and to identify and build common approaches and/or proposed collaborative projects in which creativity and appreciation for cultural heritage can transcend language and political barriers. Projects funded under this theme may be designed to lay the groundwork for a major artistic presentation or conference. However, funds awarded under this competition may not be used for exchanges of objects/artifacts or for costs associated with staging artistic presentations or major conferences. ECA would welcome proposals that include a commitment (or statement of interest) on the part of the grantee organization to sponsor such activities after the conclusion of the grant, either with its own, or other private-sector, funding. Workshops or symposia designed to promote intellectual exchange among project participants can be considered for funding under this theme if they are one component in a larger two-way exchange. ECA would welcome in particular proposals for exchanges on the following or other, similar, themes: (a) The notion of built and unbuilt space in Islamic and western architectural traditions; (b) textiles as life and art; (c) the global and the local: influences in contemporary painting and sculpture; (d) the word as cultural heritage—preserving the human record.

Proposals must identify the specific political, cultural or geographic border to be bridged and explain how the proposed mix of participating individuals/countries and the proposed exchange activities will accomplish that goal.

Audience: Historians of art, architecture, decorative arts (textiles, faience), ethno-musicology, philosophers, writers, cultural journalists, curators and conservators, museum professionals, educators.

Eligible Countries:
AF: Mali, Niger, Kenya (single or multi-country)
EAP: China (cross-straits)
EUR: Turkey (if included in multi-country project with NEA countries)
NEA: Algeria, Egypt, Morocco, Tunisia, Iran*, Syria (single or multi-country projects; projects may include Turkey).
SCA: **Afghanistan and Uzbekistan; may be combined with other Central Asian countries if applicant can present evidence that doing so would strengthen the project outcome; SCA: Pakistan and India.

***Note:** Applicants planning to include Iranian participants must meet specific additional eligibility requirements. To assure that planning for the inclusion of Iran complies with guidelines, please contact Mark Larsen, 202–453–8154, or e-mail *larsenm@state.gov.*

**For projects in Afghanistan, proposals must include a description of plans for an alternate location for the in-country portion of the program given the security situation in Afghanistan.

Possible Program Model:

• Applicants should develop a multi-phased, two-way exchange of participants designed to meet the stated objectives of the project and explain specifically how each phase of the proposed exchange will contribute to the overall objective.

Participant Selection:

Proposals should clearly describe the types of persons that will participate in the program as well as the participant recruitment and selection processes. For programs that include U.S. internships, applicants should submit letters of support from host institutions. In the selection of foreign participants, the Bureau and U.S. embassies retain the right to review all participant nominations and to accept or refuse participants recommended by grantee institutions. When U.S. participants are selected, grantee institutions must provide their names and brief biographical data to the Office of Citizen Exchanges. Priority in two-way exchange proposals will be given to foreign participants who have not previously traveled to the United States.

Security Considerations:

With regard to projects focusing on Afghanistan, Pakistan, and Iraq, applicants should be aware of security concerns that will affect the ability of the grantee organization to arrange for the travel of U.S. citizens to these countries or to conduct site visits, participant interviews, seminars, workshops, or training sessions there. All travel to, and activities conducted in, these countries will be subject to consultation with and approval of official U.S. security personnel in country. The applicant organization should be prepared to modify timing or to reconfigure project implementation plans as required by security considerations.

II. Award Information

Fiscal Year Funds: 2007, pending availability of funds

Approximate Total Funding: $5,000,000–$10,000,000 or more, pending availability of funds and the quality of submissions.

Estimated funding, Regional Programs: $5,000,000 or more.

Estimated funding Arts Programs: $1,000,000–$3,500,000 or more.

Approximate Number of Awards: 30 or more, pending availability of funds and the quality of submissions.

Anticipated Award Date: Pending availability of funds, September 1, 2007.

III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal

Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:*

(a.) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

(b.) Technical Eligibility: In addition to the requirements outlined in the Proposal Submission Instructions (PSI) technical format and instruction document, all proposals must comply with the following requirements or they will result in your proposal being declared technically ineligible and given no further consideration in the review process:

1. The Office does not support proposals limited to conferences or seminars (*i.e.*, one- to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition.

2. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

3. The Office of Citizen Exchanges does not support academic research or faculty or student fellowships.

4. Applicants may not submit more than four (4) proposals total for this competition. Organizations that submit proposals that exceed these limits will result in having all of their proposals declared technically ineligible, and none of the submissions will be reviewed by a State Department panel.

5. Proposals that target countries/regions or themes not listed in the RFGP will be deemed technically ineligible.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 *Contact Information to Request an Application Package:* Please contact Cathy Jenkins-Smith, Program Coordinator, the Office of Citizen Exchanges, ECA/PE/C Room 220 U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 453–8177 fax: (202) 453–8169, *JenkinsCA@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C–07–01 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

Please specify and refer to the Funding Opportunity Number ECA/PE/C–07–01 located at the top of this announcement on all other inquiries and correspondence.

IV.2. *To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*. Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent per the instructions under IV.3f. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the solicitation package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. *Adherence to all Regulations Governing the J Visa*

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2. *Adherence To All Regulations Governing The J Visa*

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3d.3. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.4. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Depending upon an organization's responsiveness to the published review criteria, listed under ''V.1 Review Process'' section below, and the final level of funding available to support this competition, the office reserves the right to increase or decrease budgets for final grant awards to meet the overall needs of the program.

IV.3e.2. Allowable costs for the program include the following:

1. *Travel.* International and domestic airfare; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs.

2. *Per Diem.* For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. Domestic per diem rates may be accessed at: *http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/perd03d.html.* ECA requests applicants to budget realistic costs that reflect the local economy and do not exceed Federal per diem rates. Foreign per diem rates can be accessed at: *http://www.state.gov/m/a/als/prdm/html.*

3. *Interpreters.* For U.S.-based activities, ECA strongly encourages applicants to hire their own locally based interpreters. However, applicants may ask ECA to assign State Department interpreters. One interpreter is typically needed for every four participants who require interpretation. When an applicant proposes to use State Department interpreters, the following expenses should be included in the budget: Published Federal per diem rates (both ''lodging'' and ''M&IE'') and ''home-program-home'' transportation in the amount of $400 per interpreter. Salary expenses for State Department interpreters will be covered by the Bureau and should not be part of an applicant's proposed budget. Bureau funds cannot support interpreters who accompany delegations from their home country or travel internationally.

4. *Book and Cultural Allowances.* Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. *Consultants.* Consultants may be used to provide specialized expertise or to make presentations. Honoraria rates should not exceed $300 per day. Organizations are encouraged to cost-share rates that would exceed that figure. Subcontracting organizations may also be employed, in which case the written agreement between the prospective grantee and sub-grantee should be included in the proposal. Such sub-grants should detail the division of responsibilities and proposed costs, and subcontracts should be itemized in the budget.

6. *Room rental.* The rental of meeting space should not exceed $250 per day. Any rates that exceed this amount should be cost shared.

7. *Materials.* Proposals may contain costs to purchase, develop and translate materials for participants. Costs for high quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to ECA, and ECA support should be acknowledged on all materials developed with its funding.

8. *Equipment.* Applicants may propose to use grant funds to purchase equipment, such as computers and printers; these costs should be justified in the budget narrative. Costs for furniture are not allowed.

9. *Working meal.* Normally, no more than one working meal may be provided during the program. Per capita costs may not exceed $15–$25 for lunch and $20–$35 for dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. When setting up a budget, interpreters should be considered ''participants.''

10. *Return travel allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. This allowance would cover incidental expenses incurred during international travel.

11. *Health Insurance.* Foreign participants will be covered during their participation in the program by the ECA-sponsored Accident and Sickness Program for Exchanges (ASPE), for which the grantee must enroll them. Details of that policy can be provided by the contact officers identified in this solicitation. The premium is paid by ECA and should not be included in the grant proposal budget. However, applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. *Wire transfer fees.* When necessary, applicants may include costs to transfer funds to partner organizations overseas. Grantees are urged to research applicable taxes that may be imposed on these transfers by host governments.

13. *In-country travel costs* for visa processing purposes. Given the requirements associated with obtaining J–1 visas for ECA-supported participants, applicants should include costs for any travel associated with visa interviews or DS–2019 pick-up.

14. *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive under the cost effectiveness and cost sharing criterion, per item V.1 below. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country partner and other sources.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. *Submission Dates and Times:*

Application Deadline Date: February 16, 2007.

Explanation of Deadlines: Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of

proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–07–01, Program Management, ECA/EX/PM, Room 534, 01 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

V. Application Review Information

V.1. *Review Process* The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance award grants resides with the Bureau's Grants Officer.

Review Criteria

1. *Program Planning and Ability to Achieve Objectives:* Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the topics in this announcement and should relate to the current conditions in the target country/countries. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample training schedules should be outlined. Responsibilities of proposed in-country partners should be clearly described. A discussion of how the applicant intends to address language issues should be included, if needed.

2. *Institutional Capacity:* Proposals should include (1) The institution's mission and date of establishment; (2) detailed information about proposed in-country partner(s) and the history of the partnership; (3) an outline of prior awards-U.S. government and/or private support received for the target theme/country/region; and (4) descriptions of experienced staff members who will implement the program. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the target country/countries. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The Bureau strongly encourages applicants to submit letters of support from proposed in-country partners.

3. *Cost Effectiveness and Cost Sharing:* Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. *Proposals whose administrative costs are less than twenty-five (25) per cent of the total funds requested from the Bureau will be deemed more competitive under this criterion.* Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, proposed in-country partner(s), and other sources should be included in the budget request. Proposal budgets that do not reflect cost sharing will be deemed not competitive in this category.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI) and the Diversity, Freedom and Democracy Guidelines section, Item IV.3d.2, above for additional guidance.

5. *Post-Grant Activities:* Applicants should provide a plan to conduct activities after the Bureau-funded project has concluded in order to ensure that Bureau-supported programs are not isolated events. Funds for all post-grant activities must be in the form of contributions from the applicant or sources outside of the Bureau. Costs for these activities must not appear in the proposal budget, but should be outlined in the narrative.

6. *Program Monitoring and Evaluation:* Proposals should include a detailed plan to monitor and evaluate the program. Program objectives should target clearly defined results in quantitative terms. Competitive evaluation plans will describe how applicant organizations would measure these results, and proposals should include draft data collection instruments (surveys, questionnaires, etc.) in Tab E. See the ''Program Management/Evaluation'' section, item IV.3d.3 above for more information on the components of a competitive evaluation plan. Successful applicants (grantee institutions) will be expected to submit a report after each program component concludes or on a quarterly basis, whichever is less frequent. The Bureau also requires that grantee institutions submit a final narrative and financial report no more than 90 days after the expiration of a grant. Please refer to the ''Program Management/Evaluation'' section, item IV.3d.3 above for more guidance.

VI. Award Administration Information

VI.1a. *Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications

(if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 *Administrative and National Policy Requirements:* Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants* or *http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI*.

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus 1 copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Any interim report(s) required in the Bureau grant agreement document.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. *Program Data Requirements:*

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: The Office of Citizen Exchanges, ECA/PE/C, 301 4th Street, SW., Room 220, Washington DC 20547. Program Contacts Are:

Africa

Program Contact: Curtis Huff, tel: (202) 453–8159, e-mail: *HuffCE@state.gov*.

East Asia and the Pacific

Program Contact: Clint Wright, tel: (202) 453–8164, e-mail: *WrightHC@state.gov*.

Europe

Program Contact: Brent Beemer, tel: (202) 453–8147, e-mail: *BeemerBT@state.gov*.

Near East and North Africa (NEA)

Program Contact: Thomas Johnston, tel: (202) 453–8162, e-mail: *JohnstonTJ@state.gov*.

South Central Asia (SCA)

Program Contact: Adam Meier, tel: (202) 453–8151, e-mail: *MeierAW@state.gov*.

Western Hemisphere (WHA)

Program Contact: Laverne Johnson, tel: (202) 453–8160, e-mail: *JohnsonLV@state.gov*.

Cultural Programs (SCU)

Program Contact: Mark Larsen, tel: (202) 453–8154, e-mail: *LarsenM@state.gov* or Jill Staggs, tel: (202) 203–7500, e-mail: *StaggsJJ@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C–07–01.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 28, 2006.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–20918 Filed 12–11–06; 8:45 am]

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Federal Register

Tuesday,
December 12, 2006

Part VI

Securities and Exchange Commission

17 CFR Parts 232, 239, et al.
Electronic Filing of Transfer Agent Forms; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 239, 240, 249, 249b, 269, and 274

[Release No. 34–54864; File No. S7–14–06]

RIN 3235–AJ68

Electronic Filing of Transfer Agent Forms

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to the rules and forms under Section 17A of the Securities Exchange Act of 1934 (''Act'') to require that the forms filed with respect to transfer agent registration, annual reporting, and withdrawal from registration be filed with the Commission electronically. The forms will be filed on the Commission's EDGAR database in XML format and will be accessible to Commission staff and the public for search and retrieval. The amendments will improve the Commission's ability to utilize the information reported on the forms in performing its oversight function of transfer agent operations and to publicly disseminate the information on the forms.

DATES: *Effective Date:* January 11, 2007.

FOR FURTHER INFORMATION CONTACT: Jerry Carpenter, Assistant Director, or Catherine Moore, Special Counsel, Office of Clearance and Settlement, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628 or at (202) 551–5710. For assistance with technical questions about EDGAR, call the EDGAR Filer Support Office at (202) 551–8900.

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 11, 2006, the Commission published a proposed rulemaking in the **Federal Register** to require transfer agents to file Form TA–1, Form TA–2, and Form TA–W (''transfer agent forms'')[1] electronically through the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'')[2] system.[3] The Commission has developed a new application in EDGAR (''EDGARLite'') that enables filers to prepare an electronic version of transfer agent forms using a commercial software package, Microsoft InfoPath 2003 (''MS InfoPath'') ™, and to submit the forms to EDGAR over an Internet connection.[4] Transfer agents will not be required to use the EDGARLite application to prepare the forms, although it is likely that most will choose to do so.

An electronic filing system for transfer agent forms will streamline the filing process, improve the Commission's ability to register and monitor transfer agents, and facilitate the retrieval and public dissemination of the data collected on the forms. The purpose of the amendments is to change the manner in which the forms are submitted to the Commission; the substance of the information reported will not change. We are adopting the amendments to the rules and forms to implement the new filing system and to require that Forms TA–1, TA–2, and TA–W be filed electronically. To comply with an electronic filing requirement, transfer agents will need to have a computer that meets the system requirements in the EDGAR Filer Manual and Internet access and a web browser to download the forms from an EDGAR Web site and transmit the completed forms. Transfer agents will also have to apply for and obtain access to EDGAR prior to filing the forms electronically in EDGAR.

We received six comments from five commenters.[5] One commenter strongly supported the proposal. Three of the commenters objected to the proposal on the grounds that an electronic filing requirement would be more burdensome than the current requirement that the forms be filed in paper format. Two commenters suggested we make minor changes or clarifications to Form TA–2. For the reasons discussed below, we are adopting the amendments substantially as proposed.

II. Background

A. Transfer Agent Forms

Section 17A(c)(1) of the Act requires an entity that performs the function of a transfer agent with respect to a security registered under Section 12 of the Act to register with that entity's appropriate regulatory agency (''ARA'').[6] Depending on the type of entity that is registered as a transfer agent, the ARA is either the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Commission.[7] There are currently 785 registered transfer agents, of which 519 are registered with the Commission and 266 are registered with the other ARAs.

There are three transfer agent forms filed with the Commission: (1) Form TA–1, Uniform Form for Registration as a Transfer Agent and for Amendment to Registration Pursuant to Section 17A of the Securities Exchange Act of 1934; (2) Form TA–2, Form for Reporting Activities of Transfer Agents Registered Pursuant to Section 17A of the Securities Exchange Act of 1934; and (3) Form TA–W, Notice of Withdrawal From Registration as a Transfer Agent. Only transfer agents that are registered with the Commission file Form TA–1 and Form TA–W with the Commission. All transfer agents, however, whether they are registered with the Commission or another ARA, file Form TA–2 with the Commission. The Commission uses the information on the transfer agent forms to review and approve an entity's

[1] 17 CFR 249b.100, 249b.101, and 249b.102, respectively.

[2] EDGAR is the Commission's computer system for the receipt, acceptance, review, and dissemination of documents submitted in electronic format. The term electronic format means the computerized format of a document prepared in accordance with the EDGAR Filer Manual. 17 CFR 232.11.

[3] Securities Exchange Act Release No. 54356 (August 24, 2006), 71 FR 53494 [File No. S7–14–06].

[4] The application will produce an Extensible Markup Language (''XML'') version of the filing with all data elements identified through XML tags. A ''tag'' is an identifier that highlights specific information to EDGAR that is in the format required by the EDGAR Filer Manual. 17 CFR 232.11

[5] Kevin Kopaunik, Fidelity Transfer Company, dated August 31, 2006; Loren K. Hanson, Director, Investor Relations, Otter Tail Corporation, dated August 31, 2006; Loren K. Hanson, Assistant Secretary, Otter Tail Corporation, dated October 4, 2006; Angie Orr, Senior Legal Assistant, American Century Services, LLC, dated October 19, 2006; Diane M. Butler, Director of Transfer Agency & International Operations, Investment Company Institute, dated October 26, 2006; and Christeena G. Naser, Senior Counsel for Regulatory and Trust Affairs, American Banker Association, dated November 2, 2006.

[6] 15 U.S.C. 78q–1(c)(1).

[7] 15 U.S.C. 78c(a)(34)(B). When used with respect to a clearing agency or transfer agent, the term ''appropriate regulatory agency'' means: (i) The Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia, or a subsidiary of any such bank; (ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (ii) of this subparagraph; (iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), or a subsidiary thereof; and (iv) the Commission in the case of all other clearing agencies and transfer agents.

application for registration as a transfer agent, maintain current information about transfer agents, and monitor the operations performed by and the services provided by transfer agents. The information filed on the Form TA–1, Form TA–2, and Form TA–W is publicly available.

Over 1,000 transfer agent forms are filed with the Commission each year. The Commission receives new or amended transfer agent registrations on Form TA–1 and withdrawals from registration on Form TA–W; however, most of the transfer agent forms received by the Commission are the annual reports filed by transfer agents on Form TA–2, which are required to be filed with the Commission during the three-month period between January 1 and March 31.[8] Although all registered transfer agents are required to file a Form TA–2, the Commission receives fewer Forms TA–2 than there are registered transfer agents. This may be because some registered transfer agents have dissolved without filing a Form TA–W, the paper Form TA–2 was lost or misdirected, or some transfer agents are not meeting the Form TA–2 filing requirement.

To facilitate public dissemination of the information, the Commission staff enters basic information from the forms into EDGAR, including the name and address of the transfer agent, the transfer agent's registration number, and the date the form was filed with the Commission. This data is then disseminated on the EDGAR section of the Commission's Web site.[9] In order to view all of the information on a form, however, members of the public must request a hard copy of the form from the Commission's public reference room or obtain the information from a third party information service company for a fee.

B. Electronic Filing of Transfer Agent Forms

The electronic filing system for transfer agent forms will be beneficial for transfer agents, investors, and the Commission. Under the new electronic filing requirement, each answer provided by the transfer agent will be formatted as an XML data tag. XML is a widely used text format that allows for the flexible use and exchange of data. The Commission designed the filing system to use XML data tags so that all of the information filed by transfer agents could be used by Commission staff and the public for searches, retrievals, and data analysis. To facilitate the filing of the information as XML data tags, the Commission developed EDGARLite to provide filers with an easy to use, form-driven tool that can gather information and convert it to XML. EDGARLite uses form templates created by the Commission with a commercial ''off the shelf'' software package, MS InfoPath.™ Transfer agents would need to have MS InfoPath™ installed on their computers in order to use EDGARLite.

As an alternative to purchasing the software, transfer agents could prepare the forms outside of EDGARLite by creating an XML tagged version of the filing as an ASCII document using technical specifications that would be available on the Commission's Web site.[10] This is a permissible means of filing because the amendments require only that the information reported on the forms be submitted in the electronic format set forth in the EDGAR Filer Manual and do not require that transfer agents use EDGARLite. Preparing XML data tags in ASCII text language would require some technical expertise on the part of the filer, however, and the Commission expects that most transfer agents would choose to purchase the software and prepare the forms using EDGARLite.[11] As another alternative, transfer agents could hire a third party to prepare and submit the electronic forms for them; however, this filing method would likely cost the transfer agent more than purchasing the MS InfoPath™ software.

Regulation S–T sets forth the rules governing electronic filing in EDGAR. The EDGAR Filer Manual, which is promulgated by the Commission under Rule 301 of Regulation S–T,[12] provides the instructions and technical requirements for submitting filings to EDGAR. In preparation for electronic filing, transfer agents should review Regulation S–T and the relevant portions of the EDGAR Filer Manual, Volume I (General Information).[13] In particular, transfer agents should review Section 2.5 of Volume I, which provides the EDGAR hardware and software requirements, Section 3 of Volume I, which provides instructions on becoming an EDGAR filer, and Section 6 of Volume I, which provides instructions for filing on EDGAR.

The Commission has drafted a new section of Volume II (EDGAR Filing) of the EDGAR Filer Manual which provides detailed instructions for preparing forms using EDGARLite. The updates to Volume II have not yet been adopted; however, the Commission, has posted a draft on its Web site[14] so that filers and other third parties may review and comment on the draft section. Any EDGAR Filer Manual draft is subject to Commission approval and may be revised prior to approval or not approved at all.[15] The new section will be adopted and effective prior to the January 1, 2007 effective date of these amendments.

The Commission is amending Regulation S–T, Rules 17Ac2–1, 17Ac2–2, and 17Ac3–1, and Form TA–1, Form TA–2, and Form TA–W to mandate that all transfer agent forms filed with the Commission be filed in electronic format.[16] However, transfer agents that believe filing in electronic format is unduly burdensome will be able to apply for a continuing hardship exemption from the electronic filing requirement pursuant to Rule 202 of Regulation S–T.[17] Rule 202 provides that an electronic filer may apply in writing for a continuing hardship exemption if the filing cannot be submitted to the Commission in electronic format without undue burden or expense. The Commission determines whether to grant or to deny the application based on whether the exemption is appropriate and is consistent with the public interest and the protection of investors.

For the first year of electronic filing only, transfer agents that are registered with the Commission will be required to

[8] 17 CFR 240.17Ac2–2. For the years 2003 through 2005, the Commission received an average of 1,069 transfer agent forms each year, including 41 Forms TA–1, 247 amended Forms TA–1, 709 Forms TA–2, 31 amended Forms TA–2, and 39 Forms TA–W.

[9] *http://www.sec.gov/edgar.shtml.*

[10] An ASCII document is an electronic text document that has contents limited to American Standard Code for Information Interchange (''ASCII'') characters. 17 CFR 232.11

[11] Third party software developers may also use the technical specifications to create a software product to compete with or enhance the EDGARLite application.

[12] 17 CFR 232.301.

[13] Transfer agents may download the latest version of the Filer Manual from the Commission's Web site *http://www.sec.gov* under the section ''Information for EDGAR Filers.''

[14] *http://www.sec.gov/info/edgar/edmanuals95_d.htm*

[15] Any draft of the EDGAR Filer Manual that is posted before Commission approval of potential regulatory changes is provided as a service to the filing community to assist filers, agents, and software developers prepare for potential changes Commission staff anticipates. The Commission retains the right to change any part of the manual before the new system release is made final and the posting of the draft manual does not indicate Commission approval of any pending proposed changes relating to the potential changes reflected in the draft manual.

[16] A paper copy version of the forms and instructions will be available from the Commission Publications Office and on the Commission's Web site for information purposes and for use by transfer agents that were granted a hardship exemption from electronic filing under Rule 202 of Regulation S–T.

[17] 17 CFR 232.202.

file an amended Form TA–1 before they file a Form TA–2.[18] By so requiring, the Commission will be able to establish a complete and current record of registration information for transfer agents registered with the Commission in a single, centralized, and searchable database. Form TA–1 collects important information regarding transfer agents, such as name, address, organizational structure, and control persons. The requirement to file an amended Form TA–1 when the electronic filing system first becomes effective will make the data previously reported on the paper form readily available electronically for Commission use and public dissemination. Additionally, the requirement is designed to ensure that transfer agents have a complete electronic version of the form to use as a template for future amendments. It will provide an opportunity for transfer agents to make sure that their Form TA–1 is current and that all amendments to correct inaccurate, misleading, or incomplete information are made. Because transfer agents are required to maintain a copy of Form TA–1 and any amendments to Form TA–1 with their records,[19] they should have all the information necessary to complete and electronically file an amended Form TA–1.

The amendments will be effective January 11, 2007. Accordingly, registered transfer agents should be prepared to file their Forms TA–2 for the 2006 reporting period, which are due to be filed by March 31, 2007, and an amended Form TA–1 for those transfer agents registered with the Commission, electronically on EDGAR.

III. Amendments

The amendments make the following changes to Rules 17Ac2–1, 17Ac2–2, and 17Ac3–1, Regulation S–T, and to Form TA–1, Form TA–2, and Form TA–W and the instructions to the forms as well as to Form ID.

A. Changes to Rules 17Ac2–1, 17Ac2–2, and 17Ac3–1 To Require Electronic Filing

The amendments add a paragraph to each of Rules 17Ac2–1, 17Ac2–2, and 17Ac3–1 to require electronic filing of Form TA–1, Form TA–2, and Form TA–W, respectively, on the Commission's EDGAR system. The amendments require transfer agents to file their forms according to the instructions on the forms and in the EDGAR Filer Manual. Although the amendments to Rules 17Ac2–1, 17Ac2–2, and 17Ac3–1 mandate electronic filing, transfer agents will still be able to apply for a hardship exemption under Rule 202 of Regulation S–T which would allow them to continue to file the forms in paper format. The Commission will review each application on a case by case basis and in its discretion may grant an exemption if the transfer agent is able to show that electronic filing is unduly burdensome and that granting the exemption would benefit the public interest and protection of investors. Because transfer agents cannot rely on receiving a hardship exemption, we recommend that all transfer agents review the system requirements and EDGAR Filer Manual and be prepared to submit the forms on EDGAR.

The Commission received six comment letters on the proposal from five commenters.[20] One commenter strongly supports the proposal[21] and three of the commenters oppose the proposal on the grounds that it requires computer software and systems as well as experience with EDGAR that the transfer agent or its staff may not have.[22] The fifth commenter requested changes that relate only to Form TA–2 which is discussed in Section III.D. of this release.[23] The commenters who object to the proposal stated that the expense of meeting the new requirement competitively disadvantages small transfer agents and that these transfer agents should not have to bear the expense of a proposal which they believe serves primarily to benefit the Commission. One commenter stated that the public does not have any need to access the information reported on the transfer agent forms because transfer agents are not public companies and do not solicit investments and that a person interested in obtaining such information may acquire it directly from the transfer agent.[24] This filer also suggested that electronic filing be optional and not mandatory. Two of the commenters also stated that although they find electronic filing on EDGAR to be burdensome, a PDF attachment or an internet based form that does not require special software would be feasible.[25] One commenter also expressed concerns about necessary software upgrades and any associated costs.[26]

The Commission is very sensitive to the cost concerns of small transfer agents. The EDGARLite program was designed to keep the costs to filers low and, while electronic filing may require EDGAR skills and computer systems that all transfer agents do not currently have, we believe any costs transfer agents may be required to incur are reasonable. The amendments to mandate electronic filing are necessary to ensure that the information reported by transfer agents is complete, accurate, and stored in a single, centralized database and that the information is publicly available in an easily searchable format. To achieve this goal, electronic submissions must be formatted as XML data tags and submitted on EDGAR. Forms submitted as PDF attachments are not usable for analytical tools such as data aggregation, statistical analysis, and report generation. The Commission designed EDGARLite to utilize commercial software because it was the most cost-efficient way to allow information reported on a relatively small number of forms to be filed on EDGAR as tagged data in XML format. It would not be economically feasible for the Commission to develop an EDGAR application for transfer agent forms without using commercial software or for the Commission to develop more than one electronic filing system for transfer agent forms. The Commission considered the costs of the commercial software very carefully and chose software that we believed would best meet our needs for the EDGARLite functionality, including ease of use and data validation, and that we believed would be affordable for all filers. There may occasionally be upgrades to the

[18] Transfer agents registered with an ARA other than the Commission do not file Form TA–1 or Form TA–W with the Commission and accordingly would not be subject to this requirement.

[19] Instruction I.D. to Form TA–1.

[20] Kevin Kopaunik, Fidelity Transfer Company, dated August 31, 2006; Loren K. Hanson, Director, Investor Relations, Otter Tail Corporation, dated August 31, 2006; Loren K. Hanson, Assistant Secretary, Otter Tail Corporation, dated October 4, 2006; Angie Orr, Senior Legal Assistant, American Century Services, LLC, dated October 19, 2006; Diane M. Butler, Director of Transfer Agency & International Operations, Investment Company Institute, dated October 26, 2006; and Christeena G. Naser, Senior Counsel for Regulatory and Trust Affairs, American Banker Association, dated November 2, 2006.

[21] Diane M. Butler, Director of Transfer Agency & International Operations, Investment Company Institute, dated October 26, 2006.

[22] Kevin Kopaunik, Fidelity Transfer Company, dated August 31, 2006; Loren K. Hanson, Director, Investor Relations, Otter Tail Corporation, dated August 31, 2006; Loren K. Hanson, Assistant Secretary, Otter Tail Corporation, dated October 4, 2006; and Christeena G. Naser, Senior Counsel for Regulatory and Trust Affairs, American Banker Association, dated November 2, 2006.

[23] Christeena G. Naser, Senior Counsel for Regulatory and Trust Affairs, American Banker Association, dated November 2, 2006.

[24] Kevin Kopaunik, Fidelity Transfer Company, dated August 31, 2006.

[25] Loren K. Hanson, Assistant Secretary, Otter Tail Corporation, dated October 4, 2006 and Christeena G. Naser, Senior Counsel for Regulatory and Trust Affairs, American Banker Association, dated November 2, 2006.

[26] Christeena G. Naser, Senior Counsel for Regulatory and Trust Affairs, American Banker Association, dated November 2, 2006.

software; however, transfer agents would only have to purchase upgraded software if the Commission makes changes to the EDGARLite application that use the features of the upgraded version of the software. Transfer agents who have not filed on EDGAR before will have to train staff to file the transfer agent forms on EDGAR; however, the EDGAR Filer Manual provides detailed instructions for each step of the filing process. Transfer agents will also have the option of applying for a continuing hardship exemption under Rule 202 of Regulation S–T to file in paper format if they believe the electronic filing requirement would cause them undue burden or expense.

For these reasons, we believe that any additional costs the electronic filing requirement may impose on transfer agents are necessary and reasonable in order to improve and modernize the Commission's filing program for transfer agent forms. Furthermore, we believe that the proposal benefits the investing public and transfer agents and not just to the Commission. Transfer agents act as the agents of issuers of securities and oversee such functions as stock transfers and dividend payments. With respect to the comment that the public does not need access to the information on the forms, we note that the Commission frequently receives requests for transfer agent data from issuers, who may be interested in hiring a transfer agent, and from investors, who may be seeking to contact the transfer agent or who want assurance that the transfer agent is registered and is current in all its filings with the Commission. Additionally, electronic filing will substantially improve the Commission's ability to monitor and regulate transfer agent activities. This benefit to the Commission will benefit the investing public as a whole because it will help to ensure that transfer agents are registered and are operating in conformance with the requirements under Section 17A of the Act.

For these reasons, we are adopting the amendments to Rules 17Ac2–1, 17Ac2–2, and 17Ac3–1 to require electronic filing substantially as proposed.

B. Amendments to Regulation S–T

The Commission proposed to amend Regulation S–T to mandate the submission of the transfer agent forms in electronic format and to exclude the transfer agent forms from the applicability of Rule 104, and Rule 201. The Commission did not receive any comments on the proposed amendments to Regulation S–T and we are adopting them as proposed.

1. Rule 101(a), Mandated Electronic Submissions

Rule 101(a) of Regulation S–T lists the filings that must be submitted to the Commission in electronic format.[27] The Commission is amending Rule 101(a) to mandate that Form TA–1, Form TA–2, and Form TA–W be submitted to the Commission in electronic format.

2. Rule 104, Unofficial PDF Copies Included in an Electronic Submission

Rule 104 of Regulation S–T provides that an electronic submission may include one unofficial portable document format (''PDF'') copy of each electronic document contained within a submission, tagged in the format required by the EDGAR Filer Manual.[28] The purpose of this rule is to allow filers to provide a copy of their submission in a format that creates a structured, easy to read document for public dissemination.

The electronic transfer agent forms are easy to read in the format in which they are submitted, and it will be unnecessary to have a PDF version of the forms submitted. Additionally, we do not believe transfer agents will find any need to submit an unofficial copy of their filings in PDF format. Therefore, the Commission is amending Rule 104(a) to prohibit filers from including an unofficial PDF copy of Form TA–1, Form TA–2, or Form TA–3 in an electronic submission.

3. Rule 201, Temporary Hardship Exemption

Rule 201 of Regulation S-T provides procedures for a temporary exemption from mandated electronic filing when, due to unanticipated technical difficulties, an electronic filer cannot submit its filing in electronic format by the filing date.[29] The filer may submit the filing in paper format no later than one business day after the filing was to be made with the Commission, and the filer must submit an electronic format copy of the form within six business days of filing the paper format document. Form TA–1 and Form TA-W do not have specified filing dates, and Form TA–2 may be filed any time between January 1 and March 31.[30] As a result, the Commission does not believe that there would be many cases where transfer agents would need the temporary hardship exemption.

If it is necessary that a transfer agent form be filed with the Commission on a date certain, there are two means by which the Commission typically would adjust the effective or filing date of a transfer agent form. First, the Commission has the authority under Section 17A(c) of the Act to accelerate, delay, or postpone the effective date of Form TA–1 and Form TA–W.[31] Second, Rule 13(b) of Regulation S–T provides that the Commission may adjust the filing date of an electronic filing, which would include Form TA–1, Form TA–2, or Form TA–W, if the filer in good faith attempts to file with the Commission in a timely manner but the filing is delayed due to technical difficulties beyond the filer's control.[32] Accordingly, the Commission is amending Rule 201(a) to exclude the transfer agent forms from the applicability of Rule 201.

C. Miscellaneous Amendments

The Commission proposed miscellaneous amendments to Rules 17Ac2–1, 17A2–2, and 17Ac3–1 to remove outdated information. We did not receive any comments on the proposed amendments and are adopting them as proposed.

1. Revision to Rule 17Ac2–1

The amendments will integrate the SEC Supplement to Form TA–1 into the body of the form as Questions 8 through 10. As a result, there will no longer be a separate SEC Supplement. Consequently, the Commission is deleting the reference in Rule 17Ac2–1 to the SEC Supplement.

2. Deletion of Paragraph (c) in Rule 17Ac2–2

Paragraph (c) was added to Rule 17Ac2–2 as an amendment in June 2000.[33] The amendment changed the end of the annual reporting period for transfer agents from June 30 to December 31 of the calendar year. Paragraph (c) was added to Rule 17Ac2–2 to provide that transfer agents would not be required to file the annual report for the period ending June 30, 2000. Because this provision is no longer necessary, the Commission is removing it from the rule.

3. Reference to 17A(c)(3)(C) in Rule 17Ac3–1

Rule 17Ac3–1 implements the section of the Act that permits a transfer agent to withdraw from registration. The rule

[27] 17 CFR 232.101(a).

[28] 17 CFR 232.104(a).

[29] 17 CFR 232.201.

[30] 17 CFR 240.17Ac2–2(a).

[31] 15 U.S.C. 78q–1(c)(2), (c)(4)(A) and (B), and 17 CFR 240.17Ac2–1(a) and 240.17Ac3–1(b).

[32] 17 CFR 232.13(b). The filer must request an adjustment of the filing date, and the Commission or its staff, pursuant to delegated authority, may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors.

[33] Securities Exchange Act Release No. 42892 (June 2, 2000), 65 FR 36602 (June 9, 2000).

currently cites that section as 17A(c)(3)(C) of the Act; however, when the Act was amended in 1987, section 17A(c)(3)(C) was redesignated as 17A(c)(4).[34] The Commission is amending Rule 17Ac3–1 to reflect the change.

D. Amendments to Form TA–1, Form TA–2, and Form TA–W

The Commission proposed a number of amendments to the forms and instructions to reflect the requirement that they be submitted to EDGAR in electronic format and to amend outdated requests for information. We received two comment letters requesting that we make a minor changes or clarifications to Form TA–2.[35] Both commenters requested a change to Questions 8(c) and 9(a) in Form TA–2 to allow a ''Not Applicable'' response. Questions 8(c) and 9(a) currently allow only a ''Yes'' or ''No'' response and the commenter stated that there are some cases where a ''Not Applicable'' response is appropriate. After reviewing Questions 8(c) and 9(a), we have determined that the change is appropriate and will have it made to the form.[36] One commenter also asked two interpretative questions with respect to Questions 4(a) and 10(a) of Form TA–2.[37] That commenter asked if Question 4(a), which requests the number of items received for transfer during the reported period, should include transfers of ownership (*e.g.*, a transfer from an individual to a trust) involving open-end fund shares. After reviewing the comment we have determined that such transfers of ownership should be disclosed in Question 4(a). The commenter also asked if Question 10(a), which requests the number of open-end investment company transactions processed, should include ownership changes (*e.g.*, individual to trust). After reviewing the comment we have determined that such ownership changes should be disclosed in Question 10(a) as transactions processed.

We are adopting the amendments to the forms and instructions substantially as proposed. Listed below is a summary of the amendments.

1. Amendments to All Forms and Instructions

The Commission is making the following amendments to Forms TA–1, TA–2, and TA–W:

i. Amend the instructions to require the forms to be filed electronically in EDGAR.

ii. Replace current instructions regarding how and where to file the forms with instructions for filing through EDGAR.

iii. Amend Question 1 to require information about the filer that is required for EDGAR filing.[38]

iv. Amend the forms to allow the transfer agent to include a cover letter or other correspondence as an attachment to the form.

v. Amend the forms and instructions to provide that the forms must be executed with an electronic signature pursuant to Rule 302, Signatures, of Regulation S–T.[39]

The amendments to the forms and instructions will also include nonsubstantive format changes that are related to electronic filing using the EDGARLite templates. Such format changes include drop down data blocks that allow the filer to insert additional information to a question (instead of using attached sheets, schedules, or supplements), data fields that are designated as required fields, radio buttons that limit the filer to specific answers to a question, and hidden data fields for questions that are not applicable to the filer.[40] Filers that submit the information reported on the forms without using EDGARLite will not be affected by these amendments.

2. Amendments to Form TA–1 and Instructions

i. The instructions are amended to require a registered transfer agent to file an amended Form TA–1 in electronic format before it can file a Form TA–2 or Form TA–W in electronic format.

ii. A feature is added to allow the transfer agent to designate a filing as an amended filing. The instructions are amended to reflect this feature.

iii. Question 2, ''Filing Status,'' is deleted because the question is moved to the top section of the form.

iv. Question 6, ''Service Companies Engaged by the Filer,'' is amended to request the file number of the service company. The purpose of this amendment is to enable the Commission or other interested parties to confirm the identity of the service company engaged by the filer.

v. Question 7, ''Filer Engaged as a Service Company by a Named Transfer Agent,'' is amended to request the file number of the named transfer agent. The purpose of this amendment is to enable the Commission or other interested parties to confirm the identity of the named transfer agent.

vi. Form TA–1 Supplement, ''Control Person Information'' for Corporations (Schedule A), Partnerships (Schedule B), and Other Entities (Schedule C), is integrated into the form as Questions 8 through 10.

vii. Form TA–1 Supplement, ''Control Person Information,'' is amended to delete Schedule D because Schedule D is a blank sheet that provides additional space for responses and is not necessary in the electronic form.

viii. Form TA–1 Supplement, ''Control Person Information'' for Corporations (Schedule A), Partnerships (Schedule B), and Other Entities (Schedule C) currently requests the social security number of control persons. We are amending this question to delete the request for the social security number because of privacy concerns in light of the fact that the forms will be available for public dissemination through EDGAR.

ix. Form TA–1 Supplement, ''Control Person Information'' for Corporations (Schedule A), Partnerships (Schedule B), and Other Entities (Schedule C), is amended to delete the ADD, AMEND, and DELETE Columns. Transfer agents will instead provide the beginning date of the relationship with the control person and the ending date of the relationship.

x. Instruction II, Special Instructions for Filing and Amending Form TA–1, currently provides that the Financial Industry Number Standard (''FINS'') number assigned by The Depository Trust Company (''DTC'') may be obtained free of charge by submitting a request to DTC's New York city mailing address. We are amending this instruction to reflect that the FINS number is now provided through DTC's

[34] Pub. L. 100–181 (S 1452), § 322(3), 101 Stat 1249, December 4, 1987.

[35] Diane M. Butler, Director of Transfer Agency & International Operations, Investment Company Institute, dated October 26, 2006; and Christeena G. Naser, Senior Counsel for Regulatory and Trust Affairs, American Banker Association, dated November 2, 2006.

[36] The changes to Questions 8(c) and 9(a) of Form TA–2 will be made in the EDGAR Release scheduled for February 2007.

[37] Diane M. Butler, Director of Transfer Agency & International Operations, Investment Company Institute, dated October 26, 2006.

[38] See EDGAR Filer Manual, Volume I (General Information).

[39] 17 CFR 232.302. Rule 302 provides that a signature to any electronic submission must be provided in typed rather than manual format. Each signatory is required to manually sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic filing before or at the time the electronic filing is made. Such document must be retained by the filer for a period of five years and must be furnished to the Commission or its staff upon request.

[40] Filers can view the blank form in its entirety by checking the box at the top of the form that expands the form to show all fields. Filers can also print the blank form using this mechanism.

Web site *http://www.dtc.org* for a nominal fee.

xi. Instruction II.A.4, the instruction regarding marking items as deleted is removed because the DELETE Column in the TA–1 Supplement has been removed.

xii. Instruction II.B, Amending Registration, is revised to provide instructions on filing an amended Form TA–1 in EDGAR. All required items on the electronic form, not just those fields being amended, must be completed.

xiii. Instruction III, SEC Supplement, Amending the Supplement, is deleted because the supplement has been integrated with the rest of the form.

3. Amendments to Form TA–2 and Instructions

i. Question 4, ''Number of Items Received for Transfer During the Reporting Period,'' is amended to add a paragraph (b) to request the number of individual securityholder accounts for which the transfer agent maintained master securityholder accounts. The purpose of this amendment is to provide information as to whether Questions 6–10 are required to be answered under Instruction II.B of Form TA–2. A corresponding change is being made to Instruction II.B.

ii. The response ''Not Applicable'' will be added to Questions 8(c) and 9(a) because, in response to requests from commenters, the Commission has determined that for some transfer agents a ''Yes'' or ''No'' response is not appropriate.

iii. A feature is added to allow the transfer agent to designate a filing as an amended filing. The instructions are amended to reflect this feature. All required items on the electronic form, not just those answers that are being amended, must be completed.

4. Amendments to Form TA–W and Instructions

i. Question 7. The reference to ''out of proof conditions'' is deleted because the Commission no longer uses the term.

ii. Questions 9 and 10. The reference to Schedule B on Form TA–1 is deleted because Form TA–1 was previously amended and Schedule B no longer requires the referenced information.[41] Accordingly, the phrase ''each issue shown on Schedule B of registrants Form TA–1, as amended,'' is deleted and replaced with the phrase ''each issue for which registrant acted as transfer agent.''

iii. Instruction 1. The reference to ''Section 17A(c)(3)(C)'' is revised to ''Section 17A(c)(4)(B).''

5. Amendment to Form ID

The Commission proposed to amend Form ID, Uniform Application for Access Codes to File on EDGAR, to add ''transfer agent'' to the check-the-box list of applicant types (the form currently has boxes for ''filer,'' ''filing agent,'' ''trainer,'' or ''individual'').[42] The purpose of this change is to allow the Commission to identify a new filer as a transfer agent for purposes of utilizing the special instructions in EDGARLite for the TA forms (for example, a TA–2 will be blocked if the transfer agent hasn't previously filed an electronic Form TA–1 or amended Form TA–1).[43]

The Commission did not receive any comments to the proposed amendments to Form ID and is adopting them as proposed.

IV. Paperwork Reduction Act

Certain provisions of the amendments to the rules and forms contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[44] We published a notice requesting comment on the collection of information requirements in the proposing release and submitted these requirements to the Office of Management and Budget (''OMB'') for review.[45] These requests are pending before the OMB. When we receive OMB clearance, we will publish notice in the **Federal Register**. We did not receive any comments on the Paperwork Reduction Act analysis contained in the proposing release.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The amendments would require Form TA–1, Form TA–2, and Form TA–W, which are currently filed with the Commission in paper form, to be filed electronically on EDGAR. The Commission collects this information pursuant to its authority under Section 17A of the Act and uses the information collected on the forms in determining whether to allow a transfer agent to register or to withdraw from registration and also uses the information in monitoring the annual activities of transfer agents. The information filed on the Form TA–1, Form TA–2, and Form TA–W is publicly available and is used by the public to locate, research, and confirm the registration of transfer agents.

The respondents to the collection of information are the registered transfer agents that file Form TA–1, Form TA–2, and Form TA–W with the Commission. Only transfer agents for whom the Commission is the ARA file Form TA–1 and Form TA–W with the Commission; however, all registered transfer agents, whether they are registered with the Commission or another ARA, must file the annual Form TA–2 with the Commission. Compliance with the proposed amendments would be mandatory. The information required by the proposed amendments would not be kept confidential by the Commission. The Commission's regulations that implement Section 17A of the Act are at 17 CFR 200.80 *et seq.*

The amendments modify an existing collection of information by changing the format of a required filing from paper to electronic format and modify the text of the forms and the instructions to the forms to conform to the electronic filing requirement.

The Commission does not estimate that the hour burdens for Form TA–1, Form TA–2, and Form TA–W will change as a result of the proposed amendments because completing an electronic form template and submitting it electronically on EDGAR should not take longer than completing a paper form and mailing the original and two copies to the Commission. The Commission believes, however, that the estimated hour burdens of Form TA–1 and for Form TA–2 should be increased for the first year to reflect the initial burden associated with filing electronically on EDGAR and the initial burden associated with the proposed requirement for each transfer agent registered with the Commission to refile the information on its Form TA–1 electronically as an amended Form TA–1. We estimate that the one time burden associated with electronic filing of transfer agent forms is two hours. This increased burden would be incurred with respect to the first transfer agent form the transfer agent files with the Commission electronically. For transfer agents registered with the Commission, this would be Form TA–1, because the proposal would require transfer agents registered with the Commission to file an electronic amended Form TA–1 before they could file any other transfer agent forms electronically. For all other transfer agents, this would be Form TA–2 because that is the only form those transfer agents file with the Commission.

There are 519 transfer agents registered with the Commission. Accordingly, the increase in collection of information burden associated with filing electronically for Form TA–1

[41] Securities Exchange Act Release No. 23084 (March 27, 1986), 51 FR 12124 (April 9, 1986).

[42] 17 CFR 239.63, 249.446, 269.7, and 274.402.

[43] Transfer agents that have previously filed a transfer agent form with the Commission are currently in the system. Only those transfer agents that are filing a transfer agent form with the Commission for the first time would be required to complete and file a Form ID.

[44] U.S.C. 3501 *et seq.*

[45] Publication and submission were in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.1.

would be 1038 hours. There are 266 transfer agents registered with an ARA other than the Commission. Accordingly, the collection of information burden associated with filing electronically for Form TA–2 is 532 hours.

Additionally, we believe that the estimated hour burden for Form TA–1 will increase for the first year of electronic filing because the amendments require that transfer agents registered with the Commission refile the information on Form TA–1 electronically in EDGAR as an amended Form TA–1. The requirement to file an amended Form TA–1 would apply to the 519 transfer agents for which the Commission is the ARA and would create a one time collection of information burden. We estimate that each transfer agent that is required to refile the information on Form TA–1 wouls need approximately two hours to do so, for an increase to the total burden for the first year of 1,038 hours.

In sum, we estimate that the amendments will increase the collection of information hour burden for Form TA–1 by a total of 2,076 hours and for Form TA–2 of a total of 532 hours for the first electronic filing only.[46] After the first electronic filing, the estimated burden will return to its current level.

V. Costs and Benefits of the Proposed Rulemaking

The Commission is sensitive to the costs and benefits of our rule implementing an electronic filing system for transfer agent forms. We believe that the amendments will benefit transfer agents and investors by improving the efficiency and quality of the information filed with the Commission, which is available to the public. We also believe that the amendments will result in certain costs to most transfer agents because they may need to purchase computer software and possibly hardware and will need to train personnel to create forms in the EDGARLite™ application and to file the forms on EDGAR. The Commission received three comment letters which discuss the costs and benefits of the proposal.[47] These commenters believed the benefits of the proposal are mainly to the Commission and that the costs of the proposal to small transfer agents are too high. One commenter also stated that the information on the forms does not need to be disseminated on EDGAR because the public does not have use for the information reported on the forms.[48]

A. Benefits

An electronic filing system will improve the efficiency of the filing process for transfer agents and would also improve the public dissemination of the information on the forms. The electronic filing system will eliminate the burdens associated with the paper forms and the possibility of the forms being lost or misdirected. By performing data validation checks, the EDGARLite application will help to ensure that transfer agents fill the forms out completely and in the appropriate format. It will also provide transfer agents with e-mail notification that a form has been accepted or suspended by the Commission.

The rule will benefit the public because it will make the information on transfer agent forms, which is publicly available information, more easily accessible and available in a more timely manner in EDGAR than it currently is through the Commission's public reference room. The new system would also improve the Commission's ability to maintain, review, and analyze transfer agent forms by collecting and storing all of the information on the forms in a single, centralized database. The database will be updated immediately upon the receipt of new filings and will help the Commission identify delinquent filers. It will also allow for analytic tools such as data aggregation, statistical analysis, and report generation. Additionally, the information will be disseminated as submitted by filers so there will be no risk of transcription error as there is with information that is submitted in hardcopy and manually entered into the database.

The Commission received one comment letter that discusses the benefits of the proposal. The commenter stated that it believes the proposal will not be beneficial to any entity other than the Commission.[49] First, the commenter stated that much of the investing public does not have an interest in transfer agent data and that the few people who would like the data can request it directly from the transfer agents themselves. Second, the commenter stated that electronic filing will cause a lot of expense and labor for the transfer agents but will only benefit the Commission. The commenter recommended that electronic filing should therefore be optional and not mandatory.

While we appreciate the commenter's concerns, we believe that the proposal does benefit the investing public and transfer agents. Transfer agents act as the agents of issuers of securities and oversee such functions as stock transfers and dividend payments. We frequently receive requests for transfer agent data from issuers, who may be interested in hiring a transfer agent, and from investors, who may be seeking to contact the transfer agent or who want assurance that the transfer agent is registered and is current in all its filings with the Commission. Additionally, although electronic filing will substantially improve the Commission's ability to monitor and regulate transfer agent activities, this benefit to the Commission will benefit the investing public as a whole because it will help to ensure that they are registered and are operating in conformance with the requirements under Section 17A of the Act.

B. Costs

Transfer agents will incur initial and ongoing costs with respect to the electronic filing system. The Commission believes that most of the cost burden will be in terms of initial costs and will be in terms of using the electronic filing system. The Commission does not believe that transfer agents will incur additional costs in the first year as a result of completing the forms in electronic format versus in paper format because, other than amendments to Question 4 of Form TA–2 to request the number of individual securityholder accounts and to Questions 6 and 7 of Form TA–1 to request the file number of service companies and named transfer agents, the substance of the transfer agent forms is not changing. However, transfer agents that are registered with the Commission will incur additional costs with respect to completing the forms because they will be required to prepare and file an electronic amendment to their original registration on Form TA–1 and submit it to EDGAR for the first year of electronic filing before they can submit their annual report on Form TA–2.

In order to file electronic transfer agent forms in EDGAR, transfer agents will need the computer system requirements necessary to access EDGAR and will have to train personnel

[46] Based on an estimated average administrative labor cost of $31.50 per hour, the Commission's staff estimates that the total labor cost to the transfer agent industry for complying with the proposed amendments would be $98,910.

[47] Kevin Kopaunik, Fidelity Transfer Company, dated August 31, 2006; Loren K. Hanson, Director, Investor Relations, Otter Tail Corporation, dated August 31, 2006; and Loren K. Hanson, Assistant Secretary, Otter Tail Corporation, dated October 4, 2006.

[48] Kevin Kopaunik, Fidelity Transfer Company, dated August 31, 2006.

[49] Kevin Kopaunik, Fidelity Transfer Company, dated August 31, 2006.

to prepare forms using EDGARLite. We believe that most transfer agents currently have the necessary computer system requirements as well as access to the Internet as part of their current businesses. However, the Commission believes that many transfer agents will choose to purchase MS Infopath™ which is needed to view and enter data in EDGARLite forms.

To estimate the impact of the proposal on transfer agents, the Commission staff reviewed the filings submitted by transfer agents to the Commission and communicated with several small and mid-size transfer agents regarding their computer systems, personnel, and familiarity with EDGAR. Many transfer agents are entities or are affiliated with entities, such as publicly traded companies or investment companies, which submit filings to the Commission electronically in EDGAR. These transfer agents have the necessary computer system requirements and personnel to file the transfer agent forms in EDGAR, but many do not have the MS InfoPath™ software necessary to construct forms in EDGARLite. Transfer agents that have purchased Microsoft Office 2000 Professional Enterprise Edition™ have MS InfoPath™ included as part of their operating system; however, most of these transfer agents are not familiar with MS InfoPath™ and would have to train their personnel to use the software. Of the transfer agents that do not currently file forms electronically in EDGAR, most have the computer system requirements to file in EDGAR, but would need to purchase MS InfoPath™, train personnel to construct forms using EDGARLite, and submit forms electronically to EDGAR. In addition, some transfer agents may not have the necessary system requirements to file in EDGAR and will need to purchase upgrades to their computer systems as well as incur the costs related to purchasing the MS InfoPath™ software and training personnel to file forms in EDGAR using EDGARLite.

From the above information, the Commission believes that the cost to transfer agents of the electronic filing could range from only the cost of training personnel to create forms in EDGARLite to the cost of upgrading systems, purchasing MS InfoPath™ and training personnel to use the EDGAR system and EDGARLite. The EDGARLite application is designed to be easy to use and the MS InfoPath™ software is a relatively low-cost software package that is readily available. The EDGAR Filer Manual will provide instructions for installing MS InfoPath™ and for using EDGARLite. Based on this, the Commission believes that any training for personnel with respect to electronic filing will be two hours for each registered transfer agent. Additionally, the Commission believes that transfer agents registered with the Commission will require an additional two hours to refile the information on Form TA–1 as an amended Form TA–1. The Commission believes a cost of $31.50 per hour and that the total labor cost to the transfer agent industry for complying with the proposed amendments will be $98,910.[50]

Alternatively, transfer agents or a third party could prepare the forms without MS InfoPath™ by creating an XML tagged version of the filing as an ASCII document using technical specifications that will be available on the Commission s public Web site.[51] The Commission will integrate the XML tags with the form template to create a structured form that is identical to the form created in EDGARLite for the purpose of viewing the form in EDGAR. This filing method would require some technical expertise on the part of the filer, however. Transfer agents could also hire a third party filer to prepare and submit the forms on their behalf using MS InfoPath™. Third parties generally charge separate fees for preparation and submission of EDGAR filings, and they either charge a fee per page of a filing or, for some forms, offer a flat rate per form. Based on the published cost structures of some of the larger third party filers, we estimate that the cost of hiring a third party filer to fill out a single transfer agent form would be in the range of $150 to $200.

The Commission believes that transfer agents will incur a small amount of ongoing costs with respect to the amendments, such as purchasing upgrades to MS InfoPath™ software and maintaining access to the Internet. Additionally, transfer agents will have to have personnel that are familiar with the EDGAR system to file Form TA–2 each year and amendments to Form TA–1 whenever the information on the form becomes inaccurate, misleading, or incomplete.

The Commission received four comment letters from three commenters that discussed the costs of the proposal.[52] The commenters stated that the proposal requires skills and computer software that they do not have and could require additional software upgrades. One commenter stated that small in-house transfer agents cannot pass their expenses on to investors and that any additional expenses, such as the one in the current proposal, could lead them to outsource their functions to large, commercial transfer agents.[53]

The Commission is aware that the proposal will impose some level of cost on many transfer agents and that those transfer agents that are small entities may be more affected than other transfer agents. Therefore, we are allowing transfer agents to apply for a hardship exemption under Rule 202 of Regulation S–T. This would allow them to continue to file the forms in paper format. The Commission will review each application on a case by case basis and in its discretion may grant an exemption if it determines that electronic filing is unduly burdensome and that granting the exemption is appropriate and consistent with the public interest and protection of investors.

VI. Consideration of the Burden on Competition, Promotion of Efficiency, and Capital Formation

Section 3(f) of the Act[54] requires the Commission, whenever it engages in rulemaking and is required to consider or to determine whether an action is necessary or appropriate in the pubic interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Act[55] requires the Commission, when promulgating rules under the Act, to consider the impact any such rules would have on competition. Section 23(a)(2) further provides that the Commission may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

A transfer agent is any entity that engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in: (1) Countersigning such securities upon issuance; (2) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (3) registering the transfer of such securities; (4) exchanging or converting such

[50] The cost per hour is based on the estimated per hour salary of a senior computer operator using the Securities Industry Association's Office Salary Data for 2003, adjusted for inflation.

[51] *See* note 10.

[52] Kevin Kopaunik, Fidelity Transfer Company, dated August 31, 2006; Loren K. Hanson, Director, Investor Relations, Otter Tail Corporation, dated August 31, 2006; Loren K. Hanson, Assistant Secretary, Otter Tail Corporation, dated October 4, 2006; and Christeena G. Naser, Senior Counsel for Regulatory and Trust Affairs, American Banker Association, dated November 2, 2006.

[53] Loren K. Hanson, Assistant Secretary, Otter Tail Corporation, dated October 4, 2006.

[54] 15 U.S.C. 78c(f).

[55] 15 U.S.C. 78w(a)(2).

securities; and (5) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates.[56] Transfer agents are regulated by the Commission pursuant to Section 17A of the Act. All transfer agents file an annual report with the Commission on Form TA–2. Non-bank transfer agents file registrations on Form TA–1 and withdrawals from registration on Form TA–W with the Commission. These forms are currently filed with the Commission in paper format.

The amendments to Regulation S–T, Rules 17Ac2–1, 17Ac2–2, and 17Ac3–1 and to Forms TA–1, TA–2, and TA–W and the instructions to the forms will require that transfer agent forms be filed electronically using the Commission's EDGAR system. The Commission has designed a new application in EDGAR, EDGARLite, that uses form templates with a commercial off-the-shelf software package, MS InfoPath™, to allow filers to easily complete electronic forms for submission to the Commission. However, filers will not be required to use EDGARLite and could submit the information reported on the forms to the Commission in ASCII text characters.[57]

An electronic filing system will eliminate the burdens associated with the paper forms and the possibility of the forms being lost or misdirected. The EDGARLite application will perform data validation checks, which will help to ensure that transfer agents fill the forms out completely and in the appropriate format. It will also provide transfer agents with e-mail notification that a form has been accepted or suspended by the Commission. Accordingly, the implementation of the electronic filing system should promote efficiency. The electronic filing system should also promote accuracy because the information reported on the forms will be submitted in electronic format by transfer agents so there will be no risk of transcription error as there is with information that is submitted in hardcopy and is manually entered into EDGAR or another Commission database. The amendments will apply to all transfer agents and the EDGARLite application is intended to be a program that is easy to use at a reasonable cost. Most transfer agents will be able to comply with an electronic filing requirement without difficulty; however, the amendments will allow transfer agents to apply for a continuing hardship exemption under Rule 202 of Regulation S–T if the electronic filing requirement would cause undue burden or cost and the Commission determines that such exemption is appropriate and consistent with the public interest and the protection of investors. As a result, the amendments are not expected to adversely impact a transfer agent's ability to file transfer agent forms and, accordingly, likely will not have an adverse impact on competition. The amendments are not expected to affect the operations of transfer agents and will not materially change the information that is required to be reported to the Commission on the forms. The amendments will change the filing method of the forms from paper format to electronic format. Accordingly, the amendments are not expected to have an impact on capital formation.

We received one comment letter that stated the proposal could have an adverse impact on competition because the expense of meeting the electronic filing requirement could lead in-house transfer agents, which cannot pass regulatory expenses on to issuer clients, to outsource their functions to large, commercial transfer agents.[58] While we appreciate the commenter's concerns, we do not believe the costs to transfer agents as a result of the proposal will rise to that level. Additionally, as noted above, transfer agents may apply for a hardship exemption under Rule 202 of Regulation S–T which would allow them to continue filing in paper format.

VII. Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') pursuant to the Regulatory Flexibility Act[59] regarding the amendments to Regulation S–T, Rules 17Ac2–1, 17Ac2–2, and 17Ac3–1 and to Form TA–1, Form TA–2, and Form TA–W and the instructions to the forms.

A. Need for the Amendments

The Commission receives over a thousand transfer agent forms year. An electronic filing system will eliminate the burdens associated with paper forms and streamline the filing process. It will help to ensure that transfer agents fill the forms out completely and in the appropriate format. It will also provide transfer agents with email notification that a form has been accepted or suspended by the Commission.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Act Analysis (''IRFA'') appeared in the proposing release. We requested comment on any aspect of the IRFA and we received two comment letters from persons who object to the amendments because the expense of meeting an electronic filing requirement competitively disadvantages small transfer agents.[60] These commenters also stated that although they find electronic filing on EDGAR to be burdensome, a PDF attachment or an internet based form that does not require special software would be feasible. One commenter also expressed concerns about necessary software upgrades and any associated costs.[61]

The Commission is very sensitive to the cost concerns of small transfer agents. The EDGARLite program was designed to keep the costs to filers low and, while electronic filing may require EDGAR skills and computer systems that all transfer agents do not currently have, we believe any costs transfer agents may be required to incur are reasonable. The amendments to mandate electronic filing are necessary to ensure that the information reported by transfer agents is complete, accurate, and stored in a single, centralized database and that the information is publicly available in an easily searchable format. To achieve this goal, electronic submissions must be formatted as XML data tags and submitted on EDGAR. Forms submitted as PDF attachments are not usable for analytical tools such as data aggregation, statistical analysis, and report generation. The Commission designed EDGARLite to utilize commercial software because it was the most cost-efficient way to allow information reported on a relatively small number of forms to be filed on EDGAR as tagged data in XML format. It would not be economically feasible for the Commission to develop an EDGAR application for transfer agent forms without using commercial software or for the Commission to develop more than one electronic filing system for transfer agent forms. The Commission considered the costs of the commercial software very carefully and chose software that we believed would best meet our needs for the EDGARLite

[56] 15 U.S.C. 78c(a)(25).

[57] *See* note 10.

[58] Loren K. Hanson, Assistant Secretary, Otter Tail Corporation, dated October 4, 2006.

[59] 5 U.S.C. 603(a).

[60] Loren K. Hanson, Assistant Secretary, Otter Tail Corporation, dated October 4, 2006 and Christeena G. Naser, Senior Counsel for Regulatory and Trust Affairs, American Banker Association, dated November 2, 2006.

[61] Christeena G. Naser, Senior Counsel for Regulatory and Trust Affairs, American Banker Association, dated November 2, 2006.

functionality, including ease of use and data validation, and that we believed would be affordable for all filers. There may occasionally be upgrades to the software; however, transfer agents would only have to purchase upgraded software if the Commission makes changes to the EDGARLite application that use the features of the upgraded version of the software. Transfer agents who have not filed on EDGAR before will have to train staff to file the transfer agent forms on EDGAR; however, the EDGAR Filer Manual provides detailed instructions for each step of the filing process. Transfer agents will also have the option of applying for a continuing hardship exemption under Rule 202 of Regulation S–T to file in paper format if they believe the electronic filing requirement would cause them undue burden or expense.

For these reasons, we believe that any additional costs the electronic filing requirement may impose on transfer agents are necessary and reasonable in order to improve and modernize the Commission's filing program for transfer agent forms.

C. Small Entities Subject to the Amendments

The FRFA also discusses the effect of the proposal on transfer agents that are small entities under Rule 0–10(h) under the Act.[62] Rule 0–10(h) defines the term ''small business'' or ''small organization'' to include any transfer agent that: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) transferred items only of issuers that would be deemed ''small businesses'' or ''small organizations'' as defined in this section; (3) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or the time that it has been in business, if shorter); and (4) is not affiliated with any person, other than a natural person, that is not a small business or small organization under Rule 0–10.

The Commission estimates that there are 310 registered transfer agents that are ''small entities'' under Rule 0–10. Of these, 170 are registered with the Commission and 140 are registered with the other ARAs.

[62] 17 CFR 240.0–10(h).

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments require that all transfer agents apply for access to the EDGAR system and file all transfer agent forms that they file with the Commission electronically on EDGAR. The amendments also amend Form ID, Uniform Application for Access Codes to File on EDGAR, to add ''transfer agent'' to the check-the-box list of applicant types (the form currently has boxes for ''filer,'' ''filing agent,'' ''trainer,'' or ''individual''). Transfer agents are expected, but not required, to complete the electronic forms by using the EDGARLite application. All transfer agents filing electronically will need a computer system that meets the EDGAR software and hardware requirements. Additionally, all transfer agents that have previously filed a Form TA–1 with the Commission will have to file an amended Form TA–1 electronically, of which approximately 170 are small entities within the definition in Rule 0–10. The FRFA states that the incremental burden on all ''small entities'' is approximately 960 hours and $30,240 for all entities. The FRFA also states that the proposed amendments will not impose any other reporting, recordkeeping, or compliance requirements, and that the Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed amendments.

E. Agency Action To Minimize Effect on Small Entities

The FRFA discusses the alternatives considered by the Commission in connection with the proposed amendments to Regulation S–T, Rules 17Ac2–1, 17Ac2–2, and 17Ac3–1 and to Forms TA–1, TA–2, and TA–W and the instructions to the forms. The purpose of electronic filing is to have all filings required to be filed with the Commission received in a timely and efficient manner and for the data filed on the forms to be stored in a single, centralized database. Any forms filed on paper could be subject to loss, inaccuracies, and delayed reporting, which would affect the integrity of the database and affect the Commission's ability to perform its oversight role with respect to transfer agents. Accordingly, we have determined that it would not be appropriate to allow any transfer agents to continue to file the forms in paper form unless the Commission were to grant the transfer agent a continuing hardship exemption under Rule 202 of Regulation S–T.

As an alternative to creating the electronic forms in EDGARLite, which requires the filer to purchase MS InfoPath ™ software, transfer agents or a third party can prepare the forms outside of EDGARLite by creating an XML tagged version of the filing as an ASCII document using technical specifications that will be available on the Commission's public Web site.[63] It should be noted that this filing method requires some technical expertise on the part of the filer and the Commission does not anticipate that transfer agents or third parties will find it worth the cost savings to develop the transfer agent forms outside of EDGARLite.

The Commission also considered whether entities can file the forms with the Commission by using public computer services, such as an internet cafe or a public library, and therefore avoid the expense of any required hardware, software, or internet access. Commission staff contacted public computer service providers in 2004 and determined that it was unlikely that these facilities would have the necessary MS Infopath™ software requirement for using the EDGARLite templates. However, transfer agents will be free to use a public facility if the facility has the necessary computer system requirements. Additionally, filers can prepare their filings by creating an ASCII document as described above, which should be possible on many public computer service facilities.

Finally, the Commission can grant a transfer agent a continuing hardship exemption from the electronic filing requirement under Rule 202 of Regulation S–T if the transfer agent demonstrates that the electronic filing requirement would cause it undue burden or expense and the Commission determines that a grant of the exemption is appropriate and consistent with the public interest and the protection of investors. A transfer agent that was granted such an exemption would continue to file the forms in paper and thus would not be economically impacted by the electronic filing requirement.

VIII. Statutory Basis and Text of the Amendments

We are adopting the amendments to Regulation S–T and Form ID under the authority in Section 19(a)[64] of the Securities Act of 1933, Sections 13(a),[65] 23(a),[66] and 35A[67] of the Exchange Act,

[63] *See* note 10.

[64] 15 U.S.C. 77s(a).

[65] 15 U.S.C. 78m(a).

[66] 15 U.S.C. 78w(a).

[67] 15 U.S.C. 78*ll*.

Section 319[68] of the Trust Indenture Act of 1939, and Sections 30[69] and 38[70] of the Investment Company Act of 1940. We are adopting the amendments to Rule 17Ac2–1, Rule 17Ac2–2, and Rule 17Ac3–1, and to Forms TA–1, TA–2, and TA–W under the authority in Section 19(a) of the Securities Act and Sections 17(a),[71] 17A(c),[72] 23(a), and 35A of the Act.

Text Rule Amendments

List of Subjects in 17 CFR Parts 232, 239, 240, 249, 249b, 269, and 274

Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The general authority citation for part 232 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Amend § 232.101 by:

■ a. Removing the word ''and'' at the end of paragraph (a)(1)(x);

■ b. Removing the period at the end of paragraph (a)(1)(xi) and in its place adding ''; and''; and

■ c. Adding paragraph (a)(1)(xii).

The addition reads as follows.

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xii) Form TA–1 (§ 249.100 of this chapter), Form TA–2 (§ 249.102 of this chapter), and Form TA–W (§ 249.101 of this chapter).

* * * * *

■ 3. Revise § 232.104 paragraph (a) to read as follows.

§ 232.104 Unofficial PDF copies included in an electronic submission.

(a) An electronic submission, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA–1 (§ 249.100 of this chapter), a Form TA–2 (§ 249.102 of this chapter), or a Form TA–W (§ 249.101 of this chapter), may include one unofficial PDF copy of each electronic document contained within that submission, tagged in the format required by the EDGAR Filer Manual.

* * * * *

■ 4. Section 232.201 is amended by revising the introductory text of paragraph (a) to read as follows.

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA–1 (§ 249.100 of this chapter), a Form TA–2 (§ 249.102 of this chapter), or a Form TA–W (§ 249.101 of this chapter), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 5. The general authority citation for part 239 is revised to read as follows.

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80–37, unless otherwise noted.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 6. The general authority citation for part 240 is revised to read as follows.

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 7. Amend § 240.17Ac2–1 by:

■ a. Revising paragraph (c);

■ b. Redesignating paragraph (d) as paragraph (e); and

■ c. Adding new paragraph (d).

The revision and addition reads as follows.

§ 240.17Ac2–1 Application for registration of transfer agents.

* * * * *

(c) If any of the information reported on Form TA–1 (§ 249b.100 of this chapter) becomes inaccurate, misleading, or incomplete, the registrant shall correct the information by filing an amendment within sixty days following the date on which the information becomes inaccurate, misleading, or incomplete.

(d) Every registration and amendment filed pursuant to this section shall be filed with the Commission electronically in the Commission's EDGAR system. Transfer agents should refer to Form TA–1 and the instructions to the form (§ 249b.100 of this chapter) and to the EDGAR Filer Manual (§ 232.301 of this chapter) for the technical requirements and instructions for electronic filing. Transfer agents that have previously filed a Form TA –1 with the Commission must refile the information on their Form TA–1, as amended, in electronic format in EDGAR as an amended Form TA–1.

* * * * *

■ 8. Amend § 240.17Ac2–2 by:

■ a. Adding two sentences to the end of the introductory text of paragraph (a); and

■ b. Revising paragraph (c).

The addition and revision reads as follows.

§ 240.17Ac2–2 Annual reporting requirement for registered transfer agents.

(a) * * * A transfer agent may file an amendment to Form TA–2 pursuant to the instructions on the form to correct information that has become inaccurate, incomplete, or misleading. A transfer agent may file an amendment at any time; however, in order to be timely filed, all required portions of the form must be completed and filed in accordance with this section and the instructions to the form by the date the form is required to be filed with the Commission.

* * * * *

(c) Every annual report and amendment filed pursuant to this section shall be filed with the Commission electronically in the Commission's EDGAR system. Transfer agents should refer to Form TA–2 and the instructions to the form (§ 249b.102 of this chapter) and the EDGAR Filer Manual (§ 232.301 of this chapter) for further information regarding electronic filing. Every registered transfer agent must file an electronic Form TA–1 with the Commission, or an electronic amendment to its Form TA–1 if the transfer agent previously filed a paper

[68] 15 U.S.C. 77sss.

[69] 15 U.S.C. 80a–29.

[70] 15 U.S.C. 80a–37.

[71] 15 U.S.C. 78q.

[72] 15 U.S.C. 78q–1(c).

Form TA–1 with the Commission, before it may file an electronic Form TA–2 or Form TA–W with the Commission.

■ 9. Amend § 240.17Ac3–1 by:

■ a. Removing the authority citations at the end of the section;

■ b. Removing from paragraph (a) and the first sentence of paragraph (b) the term ''17A(c)(3)(C)'' and in its place adding ''17A(c)(4)'';

■ c. Removing from paragraph (b) the term ''17A(c)(3)(A)'' and in its place adding ''17A(c)(3)'';

■ d. Redesignating paragraph (c) as paragraph (d); and

■ e. Adding new paragraph (c).

The addition reads as follows.

§ 240.17Ac3–1 Withdrawal from registration with the Commission.

* * * * *

(c) Every withdrawal from registration filed pursuant to this section shall be filed with the Commission electronically in the Commission's EDGAR system. Transfer agents should refer to Form TA–W and the instructions to the form (§ 249b.101 of this chapter) and the EDGAR Filer Manual (§ 232.301 of this chapter) for further information regarding electronic filing.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 10. The authority citation for Part 249 continues to read in part as follows.

Authority: 15 U.S.C. 78a *et seq*., and 7201 *et seq*.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

PART 249b—FURTHER FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 11. The authority citation for Part 249b continues to read in part as follows.

Authority: 15 U.S.C. 78a *et seq*., unless otherwise noted;

* * * * *

■ 12. Form TA–1 (referenced in § 249b.100), Form TA–W (referenced in § 249b.101), and Form TA–2 (referenced in § 249b.102) are revised to read as set forth in the attached Appendices B, C, and D.

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

■ 13. The authority citation for Part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78*ll*(d), unless otherwise noted.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 14. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 15. Form ID (referenced in § 239.63, § 249.446, § 269.7, and § 274.402) is revised as set forth in Appendix A.

Dated: December 4, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

Note: The following Appendices A, B, C, and D will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

APPENDIX A

United States
Securities and Exchange Commission
Washington, D.C. 20549

OMB APPROVAL
OMB Number: 3235-0328
Expires: April 30, 2009
Estimated average burden
hours per response: . .0.15

FORM ID

UNIFORM APPLICATION FOR ACCESS CODES TO FILE ON EDGAR

PART I — APPLICATION FOR ACCESS CODES TO FILE ON EDGAR

Name of applicant (applicant's name as specified in its charter, except, if individual, last name, first name, middle name, suffix (e.g., "Jr.")

Mailing Address or Post Office Box No.

City State or Country Zip

Telephone number (Include Area and, if Foreign, Country Code) ( )

Applicant is (see definitions in the General Instructions)

□ Filer □ Filing Agent □ Training Agent □ Transfer Agent □ Individual (if you check this box, you must also check either Filer, Filing Agent, Training Agent or Transfer Agent box)

PART II — FILER INFORMATION (To be completed only by filers that are not individuals)

Filer's Tax Number or Federal Identification Number (Do Not Enter a Social Security Number)

Doing Business As

Foreign Name (if Foreign Issuer Filer and applicable)

Primary Business Address or Post Office Box No. (if different from mailing address)

City | State or County | Zip

State of Incorporation | Fiscal Year End (mm/yy)

PART III — CONTACT INFORMATION (To be completed by all applicants)

Person to receive EDGAR Information, Inquiries and Access Codes

Telephone Number (Include Area and, if foreign, Country Code) ( )

Mailing Address or Post Office Box No. (if different from applicant's mailing address)

City | State or Country | Zip

E-Mail Address

PART IV — ACCOUNT INFORMATION (To be completed by filers and filing agents only)

Person to receive SEC Account Information and Billing Invoices | Telephone Number (Include Area and, if Foreign, Country Code) ( )

Mailing Address or Post Office Box No. (if different from applicant's mailing address)

City | State or Country | Zip

PART V — SIGNATURE (To be Completed by all Applicants)

Signature: | Type or Print Name:

Position or Title: | Date:

Intentional misstatements or omissions of facts constitute federal criminal violations. See 18 U.S.C. 1001.

Section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), sections 13(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) and 78w(a)), section 319 of the Trust

Indenture Act of 1939 (15 U.S.C. 77sss), and sections 30 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-29 and 80a-37) authorize solicitation of this information. We will use this information to assign system identification to filers, filing agents, and training agents. This will allow the Commission to identify persons sending electronic submissions and grant secure access to the EDGAR system.

SEC 2084 (05-06)
Previous form
obsolete

Persons who potentially are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

FORM ID
GENERAL INSTRUCTIONS

USING AND PREPARING FORM ID

Form ID must be filed by registrants, third party filers, or their agents, to whom the Commission previously has not assigned a Central Index Key (CIK) code, to request the following access codes to permit filing on EDGAR:

- Central Index Key (CIK) - The CIK uniquely identifies each filer, filing agent, and training agent. We assign the CIK at the time you make an initial application. You may not change this code. The CIK is a public number.

- CIK Confirmation Code (CCC) - You will use the CCC in the header of your filings in conjunction with your CIK to ensure that you authorized the filing.

• Password (PW) - The PW allows you to log onto the EDGAR system, submit filings, and change your CCC.

• Password Modification Authorization Code (PMAC) - The PMAC allows you to change your password.

An applicant must file this Form in electronic format via the Commission's EDGAR Filer Management Web site. Please see Regulation S-T (17 CFR Part 232) and the EDGAR Filer Manual for instructions on how to file electronically, including how to use the access codes.

An applicant also must file in paper by fax within two business days before or after filing electronically Form ID the notarized document, manually signed by the applicant over the applicant's typed signature, required by Regulation S-T Rule 10(b)(2) that includes the information contained in the Form ID filed or to be filed, confirms the authenticity of the Form ID and, if filed after electronically filing the Form ID, includes the accession number assigned to the electronically filed Form ID as a result of its filing. The applicant must fax the authenticating document to the Branch of Filer Support of the Office of Filings and Information Services at (202) 504-2474 or (703) 914-4240. If the fax is not received timely, the application for access codes will not be processed. The applicant will receive an e-mail message at the contact's e-mail address informing the applicant of the staff's response to the application and providing further guidance. If the application is not processed, the message will state why.

For assistance with technical questions about electronic filing, call the Branch of Filer Support at (202) 551-8900 or see the EDGAR Filer Manual Volume I, Section 2.6, Getting Help with EDGAR.

You must complete all items in any parts that apply to you. If any item in any part does not apply to you, please leave it blank.

PART I - APPLICANT INFORMATION (to be completed by all applicants)

Provide the applicant's name in English.

Please check one of the boxes to indicate whether you will be sending electronic submissions as a filer, filing agent, or training agent. Mark only one of these boxes per application. If you are an individual, however, also mark the "Individual" box.

- "Filer" - Any individual or entity on whose behalf an electronic filing is made.
- "Filing Agent" - A financial printer, law firm, or other party, which will be using these access codes to send a filing or portion of a filing on behalf of a filer.
- "Training Agent" - Any individual or entity that will be sending only test filings in conjunction with training other persons.
- "Transfer Agent" - Any individual or entity planning to register as a Transfer Agent on whose behalf an electronic filing is made.
- "Individual" – A natural person.

PART II - FILER INFORMATION (to be completed only by filers that are not individuals)

The filer's tax or federal identification number is the number issued by the Internal Revenue Service. This section does not apply to individuals. Accordingly, do not enter a Social Security number. If an investment company filer is organized as a series company, the investment company may use the tax or federal identification number of any one of its constituent series. Issuers that have applied for but not yet received their tax or federal identification number and foreign issuers that do not have a tax or federal identification number must include all zeroes. A "foreign issuer" is an entity so defined by the Securities

Act of 1933 (15 U.S.C. 77a et seq.) Rule 405 (17 CFR 230.405) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) Rule 3b-4(b) (17 CFR 240.3b-4(b)). Foreign issuers should include their country of organization.

A foreign issuer filer must provide its "doing business as" name in the language of the name under which it does business and must provide its foreign language name, if any, in the space so marked.

If the filer's fiscal year does not end on the same date each year (e.g., falls on the last Saturday in December), the filer must enter the date the current fiscal year will end.

PART III - CONTACT INFORMATION (to be completed by all applicants)

In this section, identify the individual who should receive the access codes and other EDGAR-related information. Please include an e-mail address that will become your default notification address for EDGAR filings; it will be stored in the Company Contact Information on the EDGAR Database. EDGAR will send all subsequent filing notifications automatically to that address. You can have one e-mail address in the EDGAR Company Contact Information. For information on including additional e-mail addresses on a per filing basis, refer to Volume 1, Section 3.2.2 of the EDGAR Filer Manual.

PART IV - ACCOUNT INFORMATION (to be completed by filers and filing agents only)

Identify in this section the individual who should receive account information and/or billing invoices from us. We will use this information to process electronically fee payments and billings. If the address changes, update it via the EDGAR filing Web site, or your account statements may be returned to us as undeliverable.

PART V - SIGNATURE (to be completed by all applicants)

If the applicant is a corporation, partnership, trust or other entity, state the capacity in which the representative individual, who must be duly authorized, signs the Form on behalf of the applicant.

If the applicant is an individual, the applicant must sign the Form.

If another person signs on behalf of the representative individual or the individual applicant, confirm the authority of the other person to sign in writing in an electronic attachment to the Form. The confirming statement need only indicate that the representative individual or individual applicant authorizes and designates the named person or persons to file the Form on behalf of the applicant and state the duration of the authorization.

APPENDIX B

OMB Approval	
OMB Number:	3235-0084
Expires:	June 30, 2009
Estimated average burden hours per response	2.00

UNITED STATES
SECURITIES AND
EXCHANGE COMMISSION
Washington, D.C. 20549

FORM TA-1

UNIFORM FORM FOR REGISTRATION AS A TRANSFER AGENT AND FOR AMENDMENT TO REGISTRATION PURSUANT TO SECTION 17A OF THE SECURITIES EXCHANGE ACT OF 1934

GENERAL: Form TA-1 is to be used to register or amend registration as a transfer agent with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation or the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934.
Read all instructions before completing this form. Please print or type all responses.

Form Version: 1.0.0 ☑Check to show blank form for printing

1(a). Filer CIK: **1(b).**Filer CCC:

1(c). Live/Test Filing? ○ Live ○ Test

1(d). Return Copy ☐ Yes

1(e). Is this filing an amendment to a previous filing? ☐ Yes

1(e)(i). File Number: 084-

1(f)(i). Contact Name: **1(f)(ii).** Contact Phone Number: **1(f)(iii).** Contact E-mail Address:

1(g). Notification E-mail Address:

2. Appropriate regulatory agency (check one):

- ⊙ Securities and Exchange Commission
- ○ Board of Governors of the Federal Reserve System
- ○ Federal Deposit Insurance Corporation
- ○ Comptroller of the Currency

3(a). Full Name of Registrant:

3(a)(i). Previous name, if being amended:

3(b). Financial Industry Number Standard (FINS) number:

3(c). Address of principal office where transfer agent activities are, or will be, performed:

3(c)(i). Address 1

3(c)(ii). Address 2

3(c)(iii). City

3(c)(iv). State or Country

3(c)(v). Postal Code

3(d). Is mailing address different from response to Question 3(c)? If "yes," provide address(es):	Yes	No
	○	○

3(d)(i). Address 1

3(d)(ii). Address 2

3(d)(iii). City

3(d)(iv). State or Country

3(d)(v). Postal Code

3(e). Telephone Number (Include Area Code)

	Yes	No
4. Does registrant conduct, or will it conduct, transfer agent activities at any location other than that given in Question 3(c) above?	○	○

If "yes," provide address(es):

4(a)(i). Address #1

4(a)(ii). Address #2

4(a)(iii). City

4(a)(iv). State or Country

4(a)(v). Postal Code

	Yes	No
5. Does registrant act, or will it act, as a transfer agent solely for its own securities and/or securities of an affiliate(s)?	○	○

	Yes	No
6. Has registrant, as a named transfer agent, engaged, or will it engage, a service company to perform any transfer agent functions?	○	○

If "yes," provide the name(s) and address(es) of all service companies engaged, or that will be engaged, by the registrant to perform its transfer agent functions:

6(a). Name:

6(b). File Number: -

6(c)(i). Address 1

6(c)(ii). Address 2

6(c)(iii). City

6(c)(iv). State or Country

6(c)(v). Postal Code

7. Has registrant been engaged, or will it be engaged, as a service company by a named transfer agent to perform transfer agent functions? Yes ○ No ○

If "yes," provide the name(s) and File Number(s) of the named transfer agent(s) for which the registrant has been engaged, or will be engaged, as a service company to perform transfer agent functions:

7(a). Name:

7(b). File Number: -

7(c)(i). Address 1

7(c)(ii). Address 2

7(c)(iii). City

7(c)(iv). State or Country

7(c)(v). Postal Code

Completion of Question 8 on this form is required by all independent, non-issuer registrants whose appropriate regulatory authority is the Securities and Exchange Commission. Those registrants who are not required to complete Question 8 should select "Not Applicable."

8. Is registrant a:

- ○ Corporation
- ○ Partnership
- ○ Sole Proprietorship
- ○ Other
- ○ Not Applicable

Section for Initial Registration and for Amendments Reporting Additional Persons. (Corporation or Partnership)

8(a)(i). Full Name

8(a)(ii). Relationship Start Date

8(a)(iii). Title or Status

8(a)(iv). Ownership Code

- ○ NA - 0 to 5%
- ○ A - 5% up to 10%
- ○ B - 10% up to 25%
- ○ C - 25% up to 50%
- ○ D - 50% up to 75%
- ○ E - 75% up to 100%

8(a)(v). Control Person ☐

8(a)(vi). Relationship End Date

Section for Initial Registration and for Amendments Reporting Additional Persons. (Sole Proprietorship or Other)

8(a)(i). Full Name

8(a)(ii). Relationship Start Date

8(a)(iii). Title or Status

8(a)(iv). Description of Authority

8(a)(v). Relationship End Date

9. Does any person or entity not named in the answer to Question 8:

	Yes	No
9(a). directly or indirectly, through agreement or otherwise exercise or have the power to exercise control over the management or policies of applicant; or	○	○

9(a)(i). Exact name of each person or entity

9(a)(ii). Description of the Agreement or other basis

	Yes	No
9(b). wholly or partially finance the business of applicant, directly or indirectly, in any manner other than by a public offering of securities made pursuant to the Securities Act of 1933 or by credit extended in the ordinary course of business by suppliers, banks and others ?	○	○

9(b)(i). Exact name of each person or entity

9(b)(ii). Description of the Agreement or other basis

10. Applicant and Control Affiliate Disciplinary History:

The following definitions apply for purposes of answering this Question 10

Control affiliate	- An individual or firm that directly or indirectly controls, is under common control with, or is controlled by applicant. Included are any employees identified in 8(a), 8(b), 8(c) of this form as exercising control. Excluded are any employees who perform solely clerical, administrative support of similar functions, or who, regardless of title, perform no executive duties or have no senior policy making authority.
Investment or investment related	- Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).
Involved	- Doing an act of aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

10(a). In the past ten years has the applicant or a control affiliate been convicted of or plead guilty or nolo contender ("no contest") to:

	Yes	No
10(a)(1). a felony or misdemeanor involving: investments or an investment-related business, fraud, false statements or omissions, wrongful taking of property, or bribery, forgery, counterfeiting or extortion?	○	○

10(a)(1)(i). The individuals named in the Action

10(a)(1)(ii). Title of Action	**10(a)(1)(iii).** Date of Action

10(a)(1)(iv). The Court or body taking the Action and its location

10(a)(1)(v). Description of the Action

10(a)(1)(vi). The disposition of the proceeding

	Yes	No
10(a)(2). any other felony?	○	○

10(a)(2)(i). The individuals named in the Action

10(a)(2)(ii). Title of Action	**10(a)(2)(iii).** Date of Action

10(a)(2)(iv). The Court or body taking the Action and its location

10(a)(2)(v). Description of the Action

10(a)(2)(vi). The disposition of the proceeding

10(b). Has any court in the past ten years:

	Yes	No
10(b)(1). enjoined the applicant or a control affiliate in connection with any investment-related activity?	○	○

10(b)(1)(i). The individuals named in the Action

10(b)(1)(ii). Title of Action	**10(b)(1)(iii).** Date of Action

10(b)(1)(iv). The Court or body taking the Action and its location

10(b)(1)(v). Description of the Action

10(b)(1)(vi). The disposition of the proceeding

	Yes	No
10(b)(2). found that the applicant or a control affiliate was involved in a violation of investment-related statutes or regulations?	○	○

10(b)(2)(i). The individuals named in the Action

10(b)(2)(ii). Title of Action	**10(b)(2)(iii).** Date of Action

10(b)(2)(iv). The Court or body taking the Action and its location

10(b)(2)(v). Description of the Action

10(b)(2)(vi). The disposition of the proceeding

10(c). Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

10(c)(1). found the applicant or a control affiliate to have made a false statement or omission? . . . . . Yes ○ No ○

10(c)(1)(i). The individuals named in the Action

10(c)(1)(ii). Title of Action

10(c)(1)(iii). Date of Action

10(c)(1)(iv). The Court or body taking the Action and its location

10(c)(1)(v). Description of the Action

10(c)(1)(vi). The disposition of the proceeding

10(c)(2). found the applicant or a control affiliate to have been involved in a violation of its regulations or statutes? . . . . . Yes ○ No ○

10(c)(2)(i). The individuals named in the Action

10(c)(2)(ii). Title of Action

10(c)(2)(iii). Date of Action

10(c)(2)(iv). The Court or body taking the Action and its location

10(c)(2)(v). Description of the Action

10(c)(2)(vi). The disposition of the proceeding

10(c)(3). found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted? . . . . . Yes ○ No ○

10(c)(3)(i). The individuals named in the Action

10(c)(3)(ii). Title of Action

10(c)(3)(iii). Date of Action

10(c)(3)(iv). The Court or body taking the Action and its location

10(c)(3)(v). Description of the Action

10(c)(3)(vi). The disposition of the proceeding

	Yes	No
10(c)(4). entered an order denying, suspending or revoking the applicant's or a control affiliate's registration or otherwise disciplined it by restricting its activities?	○	○

10(c)(4)(i). The individuals named in the Action

10(c)(4)(ii). Title of Action

10(c)(4)(iii). Date of Action

10(c)(4)(iv). The Court or body taking the Action and its location

10(c)(4)(v). Description of the Action

10(c)(4)(vi). The disposition of the proceeding

10(d). Has any other Federal regulatory agency or any state regulatory agency:

	Yes	No
10(d)(1). ever found the applicant or a control affiliate to have made a false statement or omission or to have been dishonest, unfair, or unethical?	○	○

10(d)(1)(i). The individuals named in the Action

10(d)(1)(ii). Title of Action

10(d)(1)(iii). Date of Action

10(d)(1)(iv). The Court or body taking the Action and its location

10(d)(1)(v). Description of the Action

10(d)(1)(vi). The disposition of the proceeding

	Yes	No
10(d)(2). ever found the applicant or a control affiliate to have been involved in a violation of investment-related regulations or statutes?	○	○

10(d)(2)(i). The individuals named in the Action

10(d)(2)(ii). Title of Action	**10(d)(2)(iii).** Date of Action

10(d)(2)(iv). The Court or body taking the Action and its location

10(d)(2)(v). Description of the Action

10(d)(2)(vi). The disposition of the proceeding

10(d)(3). ever found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?	Yes ○	No ○

10(d)(3)(i). The individuals named in the Action

10(d)(3)(ii). Title of Action	**10(d)(3)(iii).** Date of Action

10(d)(3)(iv). The Court or body taking the Action and its location

10(d)(3)(v). Description of the Action

10(d)(3)(vi). The disposition of the proceeding

10(d)(4). in the past ten years entered an order against the applicant or a control affiliate in connection with investment-related activity?	Yes ○	No ○

10(d)(4)(i). The individuals named in the Action

10(d)(4)(ii). Title of Action	**10(d)(4)(iii).** Date of Action

10(d)(4)(iv). The Court or body taking the Action and its location

10(d)(4)(v). Description of the Action

10(d)(4)(vi). The disposition of the proceeding

10(d)(5). ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license, or prevented it from associating with an investment-related business, or otherwise disciplined it by restricting its activities?	Yes ○	No ○

10(d)(5)(i). The individuals named in the Action

10(d)(5)(ii). Title of Action	**10(d)(5)(iii).** Date of Action

10(d)(5)(iv). The Court or body taking the Action and its location

10(d)(5)(v). Description of the Action

10(d)(5)(vi). The disposition of the proceeding

10(d)(6). ever revoked or suspended the applicant's or a control affiliate's license as an attorney or accountant?	Yes ○	No ○

10(d)(6)(i). The individuals named in the Action

10(d)(6)(ii). Title of Action	**10(d)(6)(iii).** Date of Action

10(d)(6)(iv). The Court or body taking the Action and its location

10(d)(6)(v). Description of the Action

10(d)(6)(vi). The disposition of the proceeding

10(e). Has any self-regulatory organization or commodities exchange ever:

10(e)(1). found the applicant or a control affiliate to have made a	Yes ○	No ○

10(e)(1)(i). The individuals named in the Action

10(e)(1)(ii). Title of Action

10(e)(1)(iii). Date of Action

10(e)(1)(iv). The Court or body taking the Action and its location

10(e)(1)(v). Description of the Action

10(e)(1)(vi). The disposition of the proceeding

10(e)(2). found the applicant or a control affiliate to have been — Yes ○ No ○

10(e)(2)(i). The individuals named in the Action

10(e)(2)(ii). Title of Action

10(e)(2)(iii). Date of Action

10(e)(2)(iv). The Court or body taking the Action and its location

10(e)(2)(v). Description of the Action

10(e)(2)(vi). The disposition of the proceeding

10(e)(3). found the applicant or a control affiliate to have been the cause of an investment-related business losing its authorization to do business? . . . . . — Yes ○ No ○

10(e)(3)(i). The individuals named in the Action

10(e)(3)(ii). Title of Action

10(e)(3)(iii). Date of Action

10(e)(3)(iv). The Court or body taking the Action and its location

10(e)(3)(v). Description of the Action

10(e)(3)(vi). The disposition of the proceeding

	Yes	No
10(e)(4). disciplined the applicant or a control affiliate by expelling or suspending it from membership, by barring or suspending its association with other members, or by otherwise restricting its activities?	○	○

10(e)(4)(i). The individuals named in the Action

10(e)(4)(ii). Title of Action

10(e)(4)(iii). Date of Action

10(e)(4)(iv). The Court or body taking the Action and its location

10(e)(4)(v). Description of the Action

10(e)(4)(vi). The disposition of the proceeding

	Yes	No
10(f). Has any foreign government, court, regulatory agency, or exchange ever entered an order against the applicant or a control affiliate related to investments or fraud?	○	○

10(f)(1)(i). The individuals named in the Action

10(f)(1)(ii). Title of Action

10(f)(1)(iii). Date of Action

10(f)(1)(iv). The Court or body taking the Action and its location

10(f)(1)(v). Description of the Action

10(f)(1)(vi). The disposition of the proceeding

	Yes	No
10(g). Is the applicant or a control affiliate now the subject of any proceeding that could result in a yes answer to questions 10(a) - 10(f)?	○	○

10(g)(1)(i). The individuals named in the Action

10(g)(1)(ii). Title of Action

10(g)(1)(iii). Date of Action

10(g)(1)(iv). The Court or body taking the Action and its location

10(g)(1)(v). Description of the Action

10(g)(1)(vi). The disposition of the Proceeding

10(h). Has a bonding company denied, paid out on, or revoked a bond for the applicant or a control affiliate? . . . . . Yes ○ No ○

10(h)(1)(i). The individuals named in the Action

10(h)(1)(ii). Title of Action

10(h)(1)(iii). Date of Action

10(h)(1)(iv). The Court or body taking the Action and its location

10(h)(1)(v). Description of the Action

10(h)(1)(vi). The disposition of the Proceeding

10(i). Does the applicant or a control affiliate have any unsatisfied judgments or liens against it? . . . . . Yes ○ No ○

10(i)(1)(i). The individuals named in the Action

10(i)(1)(ii). Title of Action

10(i)(1)(iii). Date of Action

10(i)(1)(iv). The Court or body taking the Action and its location

10(i)(1)(v). Description of the Action

10(i)(1)(vi). The disposition of the proceeding

ATTENTION: INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT CONSTITUTE FEDERAL CRIMINAL VIOLATIONS. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)

SIGNATURE: The registrant submitting this form, and as required, the SEC supplement and Schedules A-D,
And the executing official hereby represent that all the information contained herein is true, correct and complete.

11(a). Signature of Official responsible for Form:	**11(b).** Telephone Number:
11(c). Title of Signing Officer:	**11(d).** Date Signed (Month/Day/Year):

12. Related Documents/Attachments

12(a). File Name:	
12(b). Type of Attachment:	○ COVER ○ CORRESP ○ GRAPHIC
12(c). Type of Attachment Additional Description:	
12(d). Attachment Description:	
12(e). File:	

BILLING CODE 8011–01–C

UNITED STATES

Securities and Exchange Commission

Washington, DC 20549

Instructions for Use of Form TA–1

Application for Registration and Amendment to Registration as a Transfer Agent Pursuant to Section 17A of the Securities Exchange Act of 1934

ATTENTION: This electronic Form TA–1 is to be filed only by SEC registrants. All other registrants file Form TA–1 in paper format with their Appropriate Regulatory Authority and should obtain the form from such authority.

Certain sections of the Securities Exchange Act of 1934 applicable to transfer agents are referenced or summarized below. Registrants are urged to review all applicable provisions of the Securities Exchange Act of 1934, the Securities Act of 1933 and the Investment Company Act of 1940, as well as the applicable rules promulgated by the SEC under those Acts.

I. General Instructions for Filing and Amending Form TA–1

A. *Terms and Abbreviations.* The following terms and abbreviations are used throughout these instructions:

1. *Act* refers to the Securities Exchange Act of 1934.

2. *ARA* refers to the appropriate regulatory agency, as defined in Section 3(a)(34)(B) of the Act. See General Instruction D below.

3. *Form TA–1* is the Form filed as a registration and includes the Form and any attachments to that Form.

4. *Registrant* refers to the entity on whose behalf Form TA–1 is filed.

5. *SEC* or *Commission* refers to the U.S. Securities and Exchange Commission.

6. *Transfer agent* is defined in Section 3(a)(25) of the Act as any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer in at least one of the functions enumerated therein.

7. *Independent, Non-Issuer Transfer Agent* refers to an entity which acts as a transfer agent for other than its own securities or securities of an affiliate.

8. *Regulation S–T* is the SEC's regulation containing the rules related to filing electronic documents in EDGAR. 17 CFR 232 *et seq.*

9. *EDGAR* (Electronic Data Gathering, Analysis, and Retrieval) is the computer system for the receipt, acceptance, review, and dissemination of documents submitted to the Commission in electronic format.

10. *EDGAR Filer Manual* is the manual prepared by the SEC setting out the technical format requirements for an electronic submission to EDGAR.

11. *EDGARLite* is an application in EDGAR that registrants may use to create the electronic Form TA–1 for submission to EDGAR.

B. *Who Must File.* Pursuant to Section 17A(c)(1) of the Act, it is unlawful for a transfer agent to perform any transfer agent function with respect to any qualifying security unless that transfer agent is registered with its ARA. A qualifying security is any security registered under Section 12 of the Act. Thus, qualifying securities including securities registered on a national securities exchange pursuant to Section 12(b) of the Act as well as equity securities registered pursuant to Section 12(g)(1) of the Act for issuers that have total assets exceeding $3,000,000 and a class of equity securities (other than exempted securities) held of record by 500 or more persons. In addition, qualifying securities include equity securities of registered investment companies and certain insurance companies that would be required to be registered under Section 12(g) except for the exemptions provided by paragraphs (g)(2)(B) and (g)(2)(G), respectively, of Section 12, *i.e.*, when the asset and shareholder criteria of Section 12(g)(1)(B) are met.

C. *When to File.* Before a transfer agent may perform any transfer agent function for a qualifying security, it must apply for registration on Form TA–1 with its ARA and its registration must become effective. Instructions for amending Form TA–1 appear at General Instruction H.

D. *How to File.* Registrants file electronically in EDGAR. Registrants should refer to the EDGAR Filer Manual, which is available on the SEC's Web site, *www.sec.gov*, for the instructions for preparing forms in EDGARLite™ and filing forms in EDGAR as well as for the computer hardware and software requirements for electronic filing. A Form TA–1 or an amended Form TA–1 which is not completed properly may be suspended as not acceptable for filing. Acceptance of this form, however, does not mean that the Commission has found that it has been filed as required or that the information submitted therein is true, correct or complete.

Registrants that are granted a hardship exemption from electronic filing under Rule 202 of Regulation S–T, 17 CFR 232.202, will be provided with instructions on how and where to file a paper Form TA–1.

A registrant that wishes to include a cover letter or other correspondence may do so by including the document as an attachment to the Form.

E. *EDGAR Access.* Before registrants may prepare the Form in EDGARLite ™ or file the Form in EDGAR they must apply for access to EDGAR. Registrants should refer to the EDGAR Filer Manual, Volume I (General Instructions) for information on accessing EDGAR.

F. *Records.* Each registrant must keep an exact copy of any filing for its records. Registrants should refer to 17 CFR 240.17Ad–6 and 240.17Ad–7 for information regarding the recordkeeping rules for transfer agents.

G. *Effective Date.* Registration of a transfer agent becomes effective thirty days after receipt by the ARA of the application for registration unless the filing does not comply with applicable requirements or the ARA takes affirmative action to accelerate, deny, or postpone registration in accordance with the provisions of Section 17A(c) of the Act.

H. *Amending Registration.* Each registrant must amend Form TA–1 within sixty calendar days following the date on which information reported therein becomes inaccurate, incomplete, or misleading.

1. Registrants amend Form TA–1 by responding ''Yes'' to Question 1(e).

2. All fields that are required to be completed on the registrant's Form TA–1 must be completed on the amended Form TA–1. The transfer agent may use a saved electronic version of a previously filed Form TA–1 or amended Form TA–1 as a template for the amended filing and create the amended form by revising the responses for which the information has become inaccurate, incomplete, or misleading. (For instructions on using a saved form as a template for an amended filing, registrants should refer to the EDGAR Filer Manual.)

II. Special Instructions for Filing and Amending Form TA–1

A. *Electronic Filing.* Beginning [effective date of the proposed rule], all transfer agent forms (Form TA–1, Form TA–2, and Form TA–W) filed with the SEC must be filed electronically in EDGAR. Transfer agents that are registered with the SEC must refile electronically the information on their Form TA–1, as amended, with the SEC on an amended Form TA–1. The SEC will not accept any other transfer agent form from such transfer agents until they have filed an electronic amended Form TA–1.

B. *Exemptions from Electronic Filing.* The SEC may in limited cases grant an exemption from electronic filing where the filer can show that an electronic filing requirement creates an unreasonable burden or expense. Registrants should refer to Rule 202 of Regulation S–T, 17 CFR 232.202, and the SEC's Web site, *http://www.sec.gov,* for information on applying for a hardship exemption.

C. *Registration.* Registrants must provide full and complete responses in the appropriate format.

1. Information relating to electronic filing. As an EDGAR filer, a registrant is required to provide the following:

a. Whether the form is a ''live'' or ''test'' filing submission;

b. Whether the registrant would like a Return Copy of the filing;

c. The registrant's CIK;

d. The registrant's CCC; and

e. The contact e-mail address for the registrant;

f. The notification e-mail address(es) for the registrant regarding the status of the submission.

Detailed instructions regarding the above are provided in the EDGAR Filer Manual, Volume I (General Requirements). A registrant that is granted a continuing hardship exemption from electronic filing pursuant to Rule 202 of Regulation S–T, 17 CFR 232.202, need only to provide its CIK.

2. In answering Question 3.b. of Form TA–1, the term Financial Industry Number Standard (FINS number) means a six digit number assigned by The Depository Trust Company (DTC) upon request to financial institutions engaged in activities involving securities. Registrants that do not have a FINS number may obtain one by requesting it following the steps described on the DTC Web site (*http://www.dtc.org*).

3. State in Question 3.c. the full address of the registrant's principal office where transfer agent activities are, or will be, performed; a post office box number is not acceptable. State in response to Question 3.d. the registrant's mailing address if different from the response to Question 3.c. You may provide a post office box number in response to Question 3.d.

4. For the purpose of answering Question 5, a transfer agent is an affiliate of, or affiliated with, a person, if the transfer agent directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, that person.

5. In answering Questions 6 and 7, a ''named transfer agent'' is a transfer agent engaged by the issuer to perform transfer agent functions for an issue of securities. There may be more than one named transfer agent for a given security issue (*e.g.*, principal transfer agent, co-transfer agent or outside registrar).

D. *Questions 8 through 10.* Only independent, non-issuer registrants are required to complete Questions 8 through 10.

E. *Execution of Form TA–1 and Amendments Thereto.* A duly authorized official or a principal of the registrant must execute Form TA–1 and any amendments thereto on behalf of that registrant. For a corporate registrant, the term official includes the chairman or vice-chairman of the board of directors, the chairman of the executive committee, or any officer of the corporation who is authorized by the corporation to sign Form TA–1 on its behalf. For a non-corporate registrant, duly authorized principal means a principal of the registrant who is authorized to sign Form TA–1 on its behalf. The official or principal of the registrant shall execute Form TA–1 by providing an electronic signature pursuant to Rule 301, Signatures, of Regulation S–T, 17 CFR 232.301. The official or principal of the registrant must provide his or her full name in typed format in the signature box of the form and must manually sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic filing. The signature page or other such document shall be signed at or before the time the electronic filing is made, shall be retained by the transfer agent for a period of five years, and shall be made available to the Commission or its staff upon request.

By executing Form TA–1, the registrant agrees and consents that notice of any proceeding under the Act by the SEC involving the registrant may be given by sending such notice by registered or certified mail to the registrant, ''Attention Officer in Charge of Transfer Agent Activities,'' at its principal office for transfer agent activities as given in response to Question 3.c. of Form TA–1.

III. Notice

Under Sections 17, 17A(c) and 23(a) of the Act and the rules and regulations thereunder, the SEC is authorized to solicit from applicants for registration as a transfer agent and from registered transfer agents the information required to be supplied by Form TA–1. Disclosure to the SEC of the information requested in Form TA–1 is a prerequisite to the processing of Form TA–1. The information will be used for the principal purpose of determining whether the SEC should permit an application for registration to become effective or should deny, accelerate or postpone registration of an applicant. The information supplied herein may also be used for all routine uses of the SEC. Information supplied on this Form will be included routinely in the public files of the SEC and will be available for inspection by any interested person.

BILLING CODE 8011–01–P

APPENDIX C

OMB Approval
OMB Number: 3235-0151
Expires: July 31, 2008
Estimated average burden hours per response 0.5

UNITED STATES
SECURITIES AND
EXCHANGE COMMISSION
Washington, D.C. 20549

FORM TA-W

NOTICE OF WITHDRAWAL FROM REGISTRATION AS TRANSFER AGENT PURSUANT TO SECTION 17A OF THE SECURITIES EXCHANGE ACT OF 1934

Form Version: 1.0.0

☑ Check to show blank box for printing

1(a). Filer CIK: **1(b).**Filer CCC:

1(c). Live/Test Filing? ○ Live ○ Test

1(d). Return Copy? ☐ Yes

The registrant may provide a single e-mail address for contact purposes.

1(e)(i). Contact Name: **1(e)(ii).**Contact phone Number: **1(e)(iii).**Contact E-mail Address:

The registrant may provide additional e-mail addresses for those persons the filer would like to receive notification e-mails regarding the filing.

1(f). Notification E-mail Address:

2. Transfer Agent File No.: 084 -

3. Full name of registrant:

4. Name under which transfer agent activities are conducted, if different from above:

5. Address of registrants principle place of business:

5(a). Address1

5(b). Address2

5(c). City

5(d). State or Country

5(e). Postal Code

6. Furnish registrant's reasons for ceasing the performance of transfer agent functions or for otherwise requesting withdrawal of its registration:

7. Furnish the last date registrant performed transfer agent functions as defined by Section 3(a)(25) of the Act for any security, including debt and equity, registered under Section 12 of the Act or which would be required to be registered except for the exemption from registration provided by paragraph (g)(2)(B) or (g)(2)(G) of that section.

7(a). Does registrant have any intention of performing in the near future a transfer agent function for any such security?

○ Yes ○ No

8. Is registrant directly or indirectly involved in any legal actions or proceedings or aware of any potential claims against it in connection with its performance of transfer agent functions for any security?

○ Yes ○ No

8(a). If so, furnish complete information with respect to each:

8(a)(i). Individual named in the action or claim:

8(a)(ii). Title of the action or claim:

8(a)(iii). Action date:

8(a)(iv). Court or body name and location:

8(a)(v). Description of the action or claim:

8(a)(vi). Disposition of action or claim:

9. Are there any unsatisfied judgments or liens against registrant arising out of its performance of transfer agent functions for any security?

○ Yes ○ No

9(a). If so, furnish complete information regarding each judgment or lien.
9(a)(i). Individual named in the action or claim:

9(a)(ii). Title of the action or claim: **9(a)(iii).**Action date:

9(a)(iv). Court or body name and location:

9(a)(v). Description of the action or claim:

9(a)(vi). Disposition of action or claim:

10. For each issue for which registrant acted as transfer agent and for any issues for which registrant assumed transfer agent functions since the last amendment to Form TA-1, furnish:

10(a). Is there a successor transfer agent?

○ Yes ○ No

10(b). Name of successor transfer agents:

10(c). Address:
10(c)(i).Address 1

10(c)(ii).Address 2

10(c)(iii).City

10(c)(iv).State or Country

10(c)(v).Postal Code

10(d). Is the successor transfer agent registered as a transfer agent pursuant to the Act?

○ Yes ○ No

11. For each issue for which registrant acted as transfer agent and for any issues for which registrant assumed transfer agent functions since the last amendment to Form TA-1, furnish: name(s) and address(es) of the person(s) who has or will have custody or possession of the books and records which the registrant maintained in connection with its performance of transfer agent functions.

11(a). Name of Custodian

11(b). Address:

11(b)(i).Address 1

11(b)(ii).Address 2

11(b)(iii).City

11(b)(iv).State or Country

11(b)(v).Postal Code

12. Furnish the name(s) and address(es), if different from Item 11, where such books and records will be located.

12(a). Name of Custodian

12(b). Address:

12(b)(i).Address 1

12(b)(ii).Address 2

12(b)(iii).City

12(b)(iv). State or Country

12(b)(v). Postal Code

SIGNATURE: The registrant submitting this Form and its attachments and the person executing it represent that it and all materials filed in connection with it contain a true, correct and complete statement of all required information. Registrant also consents to make the books and records it is required to preserve by Rules 17Ad-6 and 17Ad-7 under the Securities Exchange Act of 1934 (17 CFR 240.17Ad-6 and 240.17Ad-7) available for examination by authorized representatives of the Commission during the period the rules require registrant to preserve such books and records and authorizes the person having custody of such books and records to make them available to such representatives.

13(a). Signature of Official responsible for Form:	**13(b).**Telephone number:
13(c). Title of Signing Officer:	**13(d).**Date signed (Month/Day/Year):

BILLING CODE 8011–01–C

UNITED STATES

Securities and Exchange Commission

Washington, D.C. 20549

FORM TA–W

Instructions for Use of Form TA–W

Notice of Withdrawal from Registration as a Transfer Agent Pursuant to Section 17A of the Securities Exchange Act of 1934

ATTENTION: This electronic Form TA–W is to be filed only by SEC registrants. All other registrants withdraw from registration as a transfer agent with their appropriate regulatory authority and should obtain instructions on withdrawal from registration as a transfer agent from such authority.

Certain sections of the Securities Exchange Act of 1934 applicable to transfer agents are referenced or summarized below. Registrants are urged to review all applicable provisions of the Securities Exchange Act of 1934, the Securities Act of 1933, and the Investment Company Act of 1940, as well as the applicable rules promulgated by the SEC under those Acts.

I. General Instructions for Filing Form TA–W

A. *Terms and Abbreviations.* The following terms and abbreviations are used throughout these instructions:

1. *Act* refers to the Securities Exchange Act of 1934.

2. *ARA* refers to the appropriate regulatory agency, as defined in Section 3(a)(34)(B) of the Act. See General Instruction D below.

3. *Form TA–1* is the Form filed as a registration and includes the Form and any attachments to that Form.

4. *Registrant* refers to the entity on whose behalf Form TA–1 is filed.

5. *SEC* or *Commission* refers to the U.S. Securities and Exchange Commission.

6. *Transfer agent* is defined in Section 3(a)(25) of the Act as any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer in at least one of the functions enumerated therein.

7. *Independent, Non-Issuer Transfer Agent* refers to an entity which acts as a transfer agent for other than its own securities or securities of an affiliate.

8. *Regulation S–T* is the SEC's regulation containing the rules related to filing electronic documents in EDGAR. 17 CFR 232 *et seq.*

9. *EDGAR* (Electronic Data Gathering, Analysis, and Retrieval) is defined in Rule 11 of Regulation S–T, 17 CFR 232.11, as the computer system for the receipt, acceptance, review, and dissemination of documents submitted to the Commission in electronic format.

10. *EDGAR Filer Manual,* is the manual prepared by the SEC setting out the technical format requirements for an electronic submission to EDGAR.

11. *EDGARLite* is an application in EDGAR that registrants may use to create the electronic Form TA–W for submission to EDGAR.

B. *Who Must File.* Pursuant to Section 17A(c)(4)(B) of the Act, a registered transfer agent may, upon such terms and conditions as the ARA for such transfer agent deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A the Act, withdraw from registration by filing a written notice of withdrawal with such ARA.

C. *When to File.* Before a registrant may withdraw from registration as a transfer agent, it must file a notice of withdrawal from registration as a transfer agent with the Commission on Form TA–W.

D. *How to File.* Registrants file electronically in EDGAR. Registrants may prepare the Form using EDGARLite and should refer to the EDGAR Filer Manual, which is available on the SEC's Web site at *http://www.sec.gov* for instructions for preparing and submitting electronic forms as well as for the technical requirements for filing in EDGAR. A Form TA–W which is not completed properly may be suspended as not acceptable for filing. Acceptance of this Form, however, does not mean that the Commission has found that it has been filed

as required or that the information submitted therein is true, correct or complete. Registrants that are granted a hardship exemption from electronic filing under Rule 202 of Regulation S–T, 17 CFR 232.202, will be provided with instructions on how and where to file a paper Form TA–W.

E. *Records.* Each registrant must keep an exact copy of any filing for its records. Registrants should refer to 17 CFR 240.17Ad–6 and 240.17Ad–7 for information regarding the recordkeeping rules for transfer agents.

F. *Effective Date.* In accordance with the rules adopted by the Commission, notice to withdraw from registration filed by a transfer agent shall become effective on the 60th day after the filing thereof with the Commission or within such shorter period of time as the Commission may determine. If a notice to withdraw from registration is filed with the Commission any time subsequent to the date of issuance of an order instituting proceedings pursuant to Section 17A(c)(3)(A), or if prior to the effective date of the notice of withdrawal the Commission institutes such a proceeding or a proceeding to impose terms and conditions upon such withdrawal, the notice of withdrawal shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A.

II. Special Instructions for Filing Form TA–W

A. *Electronic Filing.* Beginning January 11, 2007, all transfer agent forms (Form TA–1, Form TA–2, and Form TA–W) filed with the SEC must be filed electronically in EDGAR.

B. *Exemptions from Electronic Filing.* The SEC may, in limited cases, grant an exemption from electronic filing where the filer can show that an electronic filing requirement creates an unreasonable burden or expense. Registrants should refer to Rule 202 of Regulation S–T, 17 CFR 232.202, and to the SEC's Web site, *http://www.sec.gov,* for information on applying for a hardship exemption.

C. *Withdrawal from Registration.* Registrants must provide full and complete responses in the appropriate format.

1. Information relating to electronic filing. As EDGAR filers, registrants are required to provide the following:

a. Whether the Form is a ''live'' or ''test'' filing submission;

b. Whether the registrant would like a Return Copy of the filing;

c. The registrant's CIK;

d. The registrant's CCC;

e. The contact e-mail address for the registrant; and

f. The notification e-mail address(es) for the registrant regarding the status of the submission.

For more information regarding the above requirements see the EDGAR Filer Manual, Volume I (General Requirements). A registrant that is granted a continuing hardship exemption pursuant to Rule 202 of Regulation S–T, 17 CFR 232.202, need only provide its CIK.

2. All items on the Form must be answered in full. Individuals' names must be given in full.

D. *Execution of Form TA–W.* A duly authorized official or a principal of the registrant must execute Form TA–W and any amendments thereto on behalf of that registrant. For a corporate registrant, the term official includes the chairman or vice-chairman of the board of directors, the chairman of the executive committee, or any officer of the corporation who is authorized by the corporation to sign Form TA–W on its behalf. For a non-corporate registrant, duly authorized principal means a principal of the registrant who is authorized to sign Form TA–W on its behalf.

The official or principal of the registrant shall execute Form TA–W by providing an electronic signature pursuant to Rule 302, Signatures, of Regulation S–T, 17 CFR 232.302. The official or principal of the registrant must provide his or her full name in typed format in the signature box of the Form and must manually sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed Form within the electronic filing. The signature page or other such document shall be signed at or before the time the electronic filing is made, shall be retained by the transfer agent for a period of five years, and shall be made available to the Commission or its staff upon request.

By executing Form TA–W, the registrant agrees and consents that notice of any proceeding under the Act by the SEC involving the registrant may be given by sending such notice by registered or certified mail to the registrant, ''Attention Officer in Charge of Transfer Agent Activities,'' at its principal office for transfer agent activities as given in response to Question 3.c. of Form TA–1.

III. Notice

Under Sections 17, 17A(c) and (23)(a) of the Act and the rules and regulations thereunder, the Commission is authorized to solicit from registered transfer agents the information required to be supplied by this Form. Disclosure to the Commission of the information requested in Form TA–W is a prerequisite to the processing of a notice of withdrawal of registration as a transfer agent. The information will be used for the principal purpose of enabling the Commission to determine whether it is necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A of the Act that the withdrawal be denied, postponed or subject to specific terms and conditions. Information supplied on this Form will be included routinely in the public files of the Commission and will be available for inspection by any interested person.

BILLING CODE 8011–01–P

APPENDIX D

OMB Approval
OMB Number: 3235-0337 Expires: September 30, 2006 Estimated average burden hours per response ..... 6.00 Estimated average burden hours per intermediate response... 1.50 Estimated average burden hours per minimum response..... .50

File Number:
[ ] - [ ]
For the reporting period ended December 31, [ ]

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM TA-2

FORM FOR REPORTING ACTIVITIES OF TRANSFER AGENTS REGISTERED PURSUANT TO SECTION 17A OF THE SECURITIES EXCHANGE ACT OF 1934

ATTENTION: INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT CONSTITUTE FEDERAL CRIMINAL VIOLATIONS. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)

Form Version: 1.0.0 ☑ Check to show blank form for printing

1(a). Filer CIK: [ ] **1(b).** Filer CCC: [ ]

1(c). Live/Test Filing? ○ Live ○ Test

1(d). Return Copy ☐ Yes

1(e). Is this filing an amendment to a previous filing? ☐ Yes

The registrant may provide a single e-mail address for contact purposes.

1(f)(i). Contact Name: [ ] **1(f)(ii).** Contact Phone Number: [ ] **1(f)(iii).** Contact E-mail Address: [ ]

The registrant may provide additional e-mail addresses for those persons the filer would like to receive notification e-mails regarding the filing.

1(g). Notification E-mail Address:

1(h). Full Name of Registrant as stated in Question 3 of Form TA-1:

2(a). During the reporting period, has the Registrant engaged a service company to perform any of its transfer agent functions?

○All ○Some ○None

2(b). If the answer to subsection (a) is all or some, provide the name(s) and transfer agent file number(s) of all service company(ies) engaged:

Name of Transfer Agent(s):	File Number:
	-
	-
	-
	-
	-

2(c). During the reporting period, has the Registrant been engaged as a service company by a named transfer agent to perform transfer agent functions?

○ Yes ○ No

2(d). If the answer to subsection (c) is yes, provide the name(s) and file number(s) of the named transfer agent(s) for which the Registrant has been engaged as a service company to perform transfer agent functions:

Name of Transfer Agent(s):	File Number:
	-
	-
	-
	-
	-

3(a). Registrant's appropriate regulatory agency (ARA):

3(b). During the reporting period, has the Registrant amended Form TA-1 within 60 calendar days following the date on which information reported therein became inaccurate, incomplete, or misleading?

- ○ Yes, filed amendment(s)
- ○ No, failed to file amendment(s)
- ○ Not applicable

3(c). If the answer to subsection (b) is no, provide an explanation:

If the response to any of questions 4-11 below is none or zero, enter "0."

4(a). Number of items received for transfer during the reporting period:

4(b). Number of individual securityholder accounts for which the TA maintained master securityholder filings:

5(a). Total number of individual securityholder accounts, including accounts in the Direct Registration System (DRS), dividend reinvestment plans and/or direct purchase plans as of December 31:

5(b). Number of individual securityholder dividend reinvestment plan and/or direct purchase plan accounts as of December 31:

5(c). Number of individual securityholder DRS accounts as of December 31:

5(d). Approximate percentage of individual securityholder accounts from subsection (a) in the following categories as of December 31:

5(d)(i) Corporate Equity Securities	**5(d)(ii)** Corporate Debt Securities	**5(d)(iii)** Open-End Investment Company Securities	**5(d)(iv)** Limited Partnership Securities	**5(d)(v)** Municipal Debt Securities	**5(d)(vi)** Other Securities

6. Number of securities issues for which Registrant acted in the following capacities, as of December 31:

Corporate Securities		Open-End Investment Company Securities	Limited Partnership Securities	Municipal Debt Securities	Other Securities
Equity	Debt				

6(a). Receives items for transfer and maintains the master securityholder files:	**6(a)(i)**	**6(a)(ii)**	**6(a)(iii)**	**6(a)(iv)**	**6(a)(v)**	**6(a)(vi)**
6(b). Receives items for transfer but does not maintain the master securityholder files:	**6(b)(i)**	**6(b)(ii)**	**6(b)(iii)**	**6(b)(iv)**	**6(b)(v)**	**6(b)(vi)**
6(c). Does not receive items for transfer but maintains the master securityholder files:	**6(c)(i)**	**6(c)(ii)**	**6(c)(iii)**	**6(c)(iv)**	**6(c)(v)**	**6(c)(vi)**

7. Scope of certain additional types of activities performed:

7(a). Number of issues for which dividend reinvestment plan and/or direct purchase plan services were provided, as of December 31:	
7(b). Number of issues for which DRS services were provided, as of December 31:	

7(c). Dividend disbursement and interest paying agent activities conducted during the reporting period:

7(c)(i). number of issues	
7(c)(ii). amount (in dollars)	

8(a). Number and aggregate market value of securities aged record differences, existing for more than 30 days, as of December 31:

	Prior Transfer Agent(s) (If applicable)	Current Transfer Agent
8(a)(i). Number of issues		
8(a)(ii). Market value (in dollars)		

8(b). Number of quarterly reports regarding buy-ins filed by the registrant with its ARA (including the SEC) during the reporting period pursuant to Rule 17Ad-11(c)(2) of the Act:	

8(c). During the reporting period, did the Registrant file all quarterly reports regarding buy-ins with its ARA (including the SEC) required by Rule 17Ad-11(c)(2) of the Act?

O Yes O No

8(d). If the answers to subsection (c) is no, provide an explanation for each failure to file:

9(a). During the reporting period, has the Registrant always been in compliance with the turnaround time for routine items as set forth in Rule 17Ad-2 of the Act?

O Yes O No

If the answer to subsection (a) is no, complete subsections (i) through (ii).

9(a)(i). Provide the number of months during the reporting period in which the Registrant was not in compliance with the turnaround time for routine items according to Rule 17Ad-2 of the Act:

9(a)(ii). Provide the number of written notices Registrant filed during the reporting period with the SEC and with its ARA that reported its noncompliance with turnaround time for routine items according to Rule 17Ad-2 of the Act:

10. Number of open-end investment company securities purchases and redemptions (transactions) excluding dividend, interest and distribution postings, and address changes processed during the reporting period:

10(a). Total number of transactions processed:

10(b). Number of transactions processed on a date other than date of receipt of order (as ofs):

11(a). During the reporting period, provide the date of all database searches conducted for lost securityholder accounts listed on the transfer agent's master securityholder files, the number of lost securityholder accounts for which a database search has been conducted, and the number of lost securityholder accounts for which a different address has been obtained as a result of a database search:

11(a)(i) Date of Database Search	11(a)(ii) Number of Lost Securityholder Accounts Submitted for Database Search	11(a)(iii) Addresses Obtained from Database Search

11(b). Number of lost securityholder accounts that have been remitted to states during the reporting period:

SIGNATURE: The Registrant submitting this Form, and the person signing the Form, hereby represent that all the information contained in the Form is true, correct, and complete.

12(a). Signature of Official responsible for Form:	**12(b).** Telephone Number:
12(c). Title of Signing Officer:	**12(d).** Date Signed (Month/Day/Year):

13. Related Documents/Attachments

13(a). File Name:		
13(b). Type of Attachment:	○ COVER ○ CORRESP ○ GRAPHIC	
13(c). Type of Attachment Additional Description:		
13(d). Attachment Description:		
13(e). File:		

BILLING CODE 8011–01–C

UNITED STATES

Securities and Exchange Commission

Washington, DC 20549

Instructions for Use of Form TA–2

Form for Reporting Transfer Agent Activities Pursuant to Section 17A of the Securities Exchange Act of 1934

ATTENTION: All transfer agents, whether they are registered with the SEC or with another regulatory authority, must file an annual report on Form TA–2 in electronic format with the SEC.

Certain sections of the Securities Exchange Act of 1934 applicable to transfer agents are referenced below. Transfer agents are urged to review all applicable provisions of the Securities Exchange Act of 1934, the Securities Act of 1933, and the Investment Company Act of 1940, as well as the applicable rules promulgated by the SEC under those Acts.

I. General Instructions for Filing and Amending Form TA–2

A. *Terms and Abbreviations.* The following terms and abbreviations are used throughout these instructions:

1. *Act* means the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*

2. *Aged record difference,* as defined in Rule 17Ad–11(a)(2), 17 CFR 240.17Ad–11(a)(2), means a record difference that has existed for more than 30 calendar days.

3. *ARA,* as defined in Section 3(a)(34)(B) of the Act, 15 U.S.C. 78c(a)(34)(B), means the appropriate regulatory agency.

4. *Direct Registration System* or *DRS* means the system, as administered by The Depository Trust Company, that allows investors to hold their securities in electronic book-entry form directly on the books of the issuer or its transfer agent.

5. *Form TA–2* includes the Form TA–2 and any attachments.

6. *Lost securityholder,* as defined in Rule 17Ad–17, 17 CFR 240.17Ad–17, means a securityholder: (i) To whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent's master securityholder file has been returned as undeliverable; provided, however, that if such item is re-sent within one month to the lost securityholder, the transfer agent may deem the securityholder to be a lost securityholder as of the day the re-sent item is returned as undeliverable; and (ii) for whom the transfer agent has not received information regarding the securityholder's new address.

7. *Named transfer agent,* as defined in Rule 17Ad–9(j), 17 CFR 240.17Ad–9(j), means a registered transfer agent that has been engaged by an issuer to perform transfer agent functions for an issue of securities but has engaged a service company (another registered transfer agent) to perform some or all of those functions.

8. *Record difference* means any of the imbalances described in Rule 17Ad–9(g), 17 CFR 240.17Ad–9(g).

9. *Reporting period* means the calendar year ending December 31 of the year for which Form TA–2 is being filed.

10. *SEC* or *Commission* means the United States Securities and Exchange Commission.

11. *Service company,* as defined in Rule 17Ad–9(k), 17 CFR 240.17Ad–9(k), means the registered transfer agent engaged by a named transfer agent to perform transfer agent functions for that named transfer agent.

12. *Transfer agent,* as defined in Section 3(a)(25) of the Act, 15 U.S.C. 78c(a)(25), means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer in at least one of the functions enumerated therein.

13. *Regulation S–T,* 17 CFR 232, is the SEC's regulation that sets forth the rules related to filing electronic documents in EDGAR.

14. *EDGAR,* Electronic Data Gathering, Analysis, and Retrieval, is defined in Rule 11 of Regulation S–T, 17 CFR 232.11, as the computer system for the receipt, acceptance, review, and dissemination of documents submitted in electronic format.

15. *EDGAR Filer Manual,* as defined in Rule 11 of Regulation S–T, 17 CFR 232.11, is the manual prepared by the SEC setting out the technical format requirements for an electronic submission to EDGAR.

16. *EDGARLite* is an EDGAR application described in the EDGAR Filer Manual that transfer agents may use to create the electronic Form TA–2 for submission to EDGAR.

B. Who Must File; When to File.

1. Every transfer agent that is registered on December 31 must file Form TA–2 in accordance with the instructions contained therein by the following March 31. Before an SEC registered transfer agent may file a Form TA–2 on EDGAR, it must have filed a Form TA–1 or an amended Form TA–1 on EDGAR. SEC transfer agents should refer to the instructions to 240 CFR 17Ac2–1 and Form TA–1 for more information.

a. A registered transfer agent that received fewer than 1,000 items for transfer during the reporting period *and* that did not maintain master securityholder files for more than 1,000 individual securityholder accounts as of December 31 of the reporting period is required to complete Questions 1 through 5, 11, and the signature section of Form TA–2.

b. A named transfer agent that engaged a service company to perform *all* of its transfer agent functions during the reporting period is required to complete Questions 1 through 3 and the signature section of Form TA–2.

c. A named transfer agent that engaged a service company to perform *some but not all* of its transfer agent functions during the reporting period must complete all of Form TA–2 but should enter zero (0) for those questions that relate to functions performed by the service company on behalf of the named transfer agent.

2. The date on which any filing is actually received by the SEC is the transfer agent's filing date provided that the filing complies with all applicable requirements. A Form TA–2 or an amended Form TA–2 which is not completed properly may be suspended as not acceptable for filing. Acceptance of this Form, however, does not mean that the Commission has found that it has been filed as required or that the information submitted therein is true, correct or complete.

C. *How to File.* Transfer agents file Form TA–2 electronically on EDGAR. Transfer agents should refer to the EDGAR Filer Manual, which is available on the SEC's Web site *http://www.sec.gov*, for the technical instructions for preparing forms using EDGARLite™ and for filing on EDGAR as well as for the computer hardware and software requirements.

Transfer agents that are granted a hardship exemption from electronic filing under Rule 202 of Regulation S–T, 17 CFR 232.202, will be provided with instructions on how and where to file a paper Form TA–2.

A transfer agent that wishes to include a cover letter or other correspondence may do so by including the document as an electronic attachment to the form.

D. *EDGAR Access.* Before transfer agents file on EDGAR they must obtain access to EDGAR. Transfer agents should refer to the EDGAR Filer Manual, Volume I (General Instructions) for information on accessing EDGAR.

E. *Amending Form TA–2.* Transfer agents may amend Form TA–2 at any time to correct errors in the information reported therein.

1. A transfer agent may amend Form TA–2 by selecting the submission type ''Amendment'' on Form TA–2. The transfer agent may use a saved electronic version of a previously filed Form TA–2 or an amended Form TA–2 as a template for the amended filing. For instructions on using a saved form as a template for an amended filing transfer agents should refer to the EDGAR Filer Manual.

2. All fields that are required to be completed on the transfer agent's Form TA–2 must be completed on the amended Form TA–2 with the transfer agent amending only those answers for which it needs to correct an error.

F. *Records.* Each transfer agent must keep an exact copy of any filing for its records. Transfer agents should refer to 17 CFR 240.17Ad–6 and 240.17Ad–7 for information regarding the recordkeeping rules for transfer agents.

G. *Execution of Form TA–2 and Amendments Thereto.* A duly authorized official or a principal of the transfer agent shall execute Form TA–2 by providing an electronic signature pursuant to Rule 301, Signatures, of Regulation S–T, 17 CFR 301. The official or principal of the transfer agent must provide his or her full name in typed format in the signature box of the form and must manually sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic filing. The signature page or other such document shall be signed at or before the time the electronic filing is made, shall be retained by the transfer agent for a period of five years, and shall be made available to the Commission or its staff upon request.

II. Special Instructions for Filing Form TA–2

A. *Electronic Filing.* Beginning January 11, 2007, all transfer agent forms (Form TA–1, Form TA–2, and Form TA–W) filed with the SEC must be filed electronically on EDGAR. Transfer agents that are registered with the SEC must refile electronically the information on their Form TA–1, as amended, with the SEC on an amended Form TA–1. The SEC will not accept a Form TA–2 from transfer agents that are registered with the SEC until such transfer agents have filed an electronic amended Form TA–1.

B. *Exemptions from Electronic Filing.* The SEC may in limited cases grant an exemption from electronic filing where the filer can show that an electronic filing requirement creates an unreasonable burden or expense. Transfer agents should refer to Rule 202 of Regulation S–T, 17 CFR 232.202, and to the SEC's Web site for information on applying for a hardship exemption.

C. *Report of Transfer Agent Activities.* Transfer agents must provide full and complete responses in the appropriate format.

1. *Information relating to electronic filing.* As an EDGAR filer, the transfer agent is required to provide the following:

a. Whether the form is a ''live'' or ''test'' filing submission;

b. Whether the transfer agent would like a Return Copy of the filing;

c. The transfer agent's CIK;

d. The transfer agent's CCC;

e. The contact e-mail address for the transfer agent; and

f. The notification e-mail address(es) for the transfer agent regarding the status of the submission.

For more information regarding the above requirements see the EDGAR Filer Manual, Volume I (General Requirements). A transfer agent that is granted a continuing hardship exemption pursuant to Rule 202 of Regulation S–T, 17 CFR 232.202, need only provide its CIK.

2. Indicate the calendar year for which Form TA–2 is filed. A transfer agent registered on December 31 shall file Form TA–2 by the following March 31 even if the

transfer agent conducted business for less than the entire reporting period.

3. In answering Question 4.a., indicate the number of items received for transfer during the reporting period. Omit the purchase and redemption of open-end investment company shares. Report those items in response to Question 10.

4. In answering Questions 5 and 6, include closed-end investment company securities in the corporate equity securities category.

a. In answering Question 5.a., include Direct Registration System, dividend reinvestment plan and/or direct purchase plan accounts in the total number of individual securityholder accounts maintained.

b. In answering Question 5.b., include dividend reinvestment plan and/or direct purchase plan accounts only.

c. In answering Question 5.c., include Direct Registration System accounts only.

d. In answering Question 5.d., include American Depositary Receipts (ADRs) in the corporate equity or corporate debt category, as appropriate, and include dividend reinvestment plan and/or direct purchase plan accounts in the corporate equity or open-end investment company securities category.

e. In answering Question 6, debt securities are to be counted as one issue per CUSIP number. Open-end investment company securities portfolios are to be counted as one issue per CUSIP number.

5. In answering Question 7.c., exclude coupon payments and transfers of record ownership as a result of corporate actions.

6. In answering Question 10, exclude non-value transactions such as name or address changes.

7. In answering Question 11.b., include only those accounts held by securityholders that are defined as lost by Rule 17Ad–17, 17 CFR 240.17Ad–17, when the underlying securities (*i.e.*, not just dividends and interest) have been remitted to the states.

III. Notice

SEC's Collection of Information: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Under Sections 17, 17A(c) and 23(a) of the Act and the rules and regulations thereunder, the SEC is authorized to solicit from registered transfer agents the information required to be supplied on Form TA–2. The filing of this Form is mandatory for all registered transfer agents. The information will be used for the principal purpose of regulating registered transfer agents but may be used for all routine uses of the SEC or of the ARAs. Information supplied on this Form will be included routinely in the public files of the ARAs and will be available for inspection by any interested person. Any member of the public may direct to the SEC any comments concerning the accuracy of the burden estimate on the application facing page of this Form, and any suggestions for reducing this burden. The Office of Management and Budget has reviewed this collection of information in accordance with the clearance requirements of 44 U.S.C. 3507.

[FR Doc. 06–9600 Filed 12–11–06; 8:45 am]

BILLING CODE 8011–01–P

Federal Register

Tuesday,
December 12, 2006

Part VII

Department of Housing and Urban Development

Use of Census Data in the IHBG Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5055–N–01]

Use of Census Data in the IHBG Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: Senate Report 109–109, which accompanied HUD's Fiscal Year (FY) 2006 appropriations act, provides for HUD to reassess through notice and comment rulemaking its use of multi-race data in the computation of the Need component of the Indian Housing Block Grant (IHBG) program allocation formula. Through the IHBG program, HUD provides Federal housing assistance to Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. Consistent with the language of Senate Report 109–109, this notice solicits public comment on HUD's use of multi-race data in the computation of the IHBG program allocation formula. Following HUD's review and consideration of the comments received, HUD may proceed with additional rulemaking as necessary.

DATES: *Comment Due Date:* February 12, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons may also submit comments electronically through the Federal electronic rulemaking portal at: *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically in order to make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. All communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Divisions at (202) 708–3055 (this is not a toll-free number). Copies of the public comments submitted are also available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW., Room 4126, Washington, DC 20410–5000; telephone 202–401–7914 (this telephone number is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Senate Report 109–109, which accompanied the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115; approved November 30, 2005), provides for HUD to reassess through ''notice and comment rulemaking'' its use of multi-race data in the computation of the Need component of the IHBG program allocation formula. Through the IHBG program, HUD provides Federal housing assistance to Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. HUD's regulations for the IHBG program, which were developed with active tribal participation using negotiated rulemaking procedures, are located at 24 CFR part 1000.

As authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), this program provides an allocation of funds on a formula basis to Indian tribes or their tribally designated housing entities to help them address the housing needs within their communities. The formula, which was developed as part of the negotiated rulemaking process, consists of two components—Need and Formula Current Assisted Stock (FCAS). A regulatory description of the formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301–1000.340).

Generally, the amount of funding for a tribe is the sum of the formula's Need component and the Formula Current Assisted Stock (FCAS) component, subject to a minimum funding amount authorized by § 1000.328. Based on the amount of funding appropriated annually for the IHBG program, HUD calculates the annual grant for each tribe and conveys this information to Indian tribes. HUD's current regulations at § 1000.330 describe the sources of data HUD will use to determine the Need component variables. The regulations state that the data shall be ''data available that is collected in a uniform manner that can be confirmed and verified for all AIAN [American Indian Alaska Native] households and persons living in an identified area. Initially, the data used are U.S. Decennial Census data.''

The most recent Decennial Census in 2000, for the first time, allowed respondents to claim that they are ''American Indian Alaska Native (AIAN) in combination with other racial groups'' (multi-race), or to report their race as ''AIAN only'' (single race). The current regulation does not specify the use of single race or multi-race data. Accordingly, HUD exercised the discretion provided by the regulation to determine that the 2000 Census categories of ''AIAN alone'' and ''AIAN in combination with other racial groups'' represented the best available data to accomplish the statutory purposes of the IHBG program. HUD concluded that it is the most inclusive definition of AIAN persons and ensures that no such persons are excluded. Accordingly, in Fiscal Years (FY) 2004 and 2005, HUD issued its IHBG funding by using multi-race census data for making funding allocations.

For FY2006, Congress directed the Department to calculate funding allocations under the need component of the IHBG formula using multi-race and single race Census data, and to award each tribe the higher of the two calculations. Title III of the FY2006 Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act provided that, ''notwithstanding the Native American Housing Assistance and Self-Determination Act of 1996, to determine the amount of the allocation under title I of such Act for each Indian tribe, the Secretary shall apply the formula under section 302 of such Act with the need component based on single-race Census data and with the need component based on multi-race Census data, and the amount of the allocation for each Indian tribe shall be the greater of the two resulting allocation amounts:''.

The IHBG Formula Negotiated Rulemaking Committee (Committee) discussed the use of multi-race data during its 2003–2005 negotiations. HUD established the Committee, consisting of tribal and HUD representatives, to negotiate and develop proposed regulatory changes to the IHBG

allocation formula regulations. The Committee was unable to reach consensus on changes to current regulatory language at § 1000.330 regarding the use of census data. The proposed rule negotiated by the Committee was published on February 25, 2005 (70 FR 9489), and is currently in the process of being made final. Additional information regarding the Committee's discussion on the use of multi-race census data can be found in the preamble of the proposed rule (*see* 70 FR 9496).

II. This Notice

Consistent with the language of Senate Report 109–109, this notice invites public comment on HUD's use of multi-race data in the computation of the IHBG program allocation formula. Specifically, HUD invites public comments on the feasibility of using either single race or multi-race data to determine funding for the Need component of the IHBG formula. As noted above, the regulations at 1000.330 do not address the use of multi-race or single race census data. Accordingly, at this time, HUD is not proposing a regulatory change. Following HUD's review and consideration of the comments received on this notice, HUD may proceed with rulemaking as necessary.

Dated: December 1, 2006.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E6–20939 Filed 12–11–06; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Tuesday,
December 12, 2006

Part VIII

The President

Memorandum of December 8, 2006—Designation of Officers of the Department of Justice

Federal Register
Vol. 71, No. 238
Tuesday, December 12, 2006

Presidential Documents

Title 3—

The President

Memorandum of December 8, 2006

Designation of Officers of the Department of Justice

Memorandum for the Attorney General

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, I hereby order that:

Section 1. *Order of Succession.* During any period when the Attorney General, the Deputy Attorney General, the Associate Attorney General, and the officers designated by the Attorney General pursuant to 28 U.S.C. 508 to act as Attorney General have died, resigned, or otherwise become unable to perform the functions and duties of the office of Attorney General, the following officers of the Department of Justice, in the order listed, shall perform the functions and duties of the office of Attorney General, if they are eligible to act as Attorney General under the Federal Vacancies Reform Act of 1998, until such time as at least one of the officers mentioned above is able to perform the functions and duties of the office of Attorney General:

United States Attorney for the Southern District of New York;

United States Attorney for the Eastern District of Virginia; and

United States Attorney for the Western District of Texas.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Attorney General pursuant to this memorandum.

(b) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to depart from this memorandum in designating an acting Attorney General.

Sec. 3. The Memorandum for the Attorney General of March 19, 2002, entitled ''Designation of Officers of the Department of Justice,'' is hereby revoked.

Sec. 4. The Attorney General is authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, December 8, 2006.

[FR Doc. 06–9691
Filed 12–11–06; 10:31 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Suisun thistle and soft bird's-beak; comments due by 12-20-06; published 11-20-06 [FR E6-19572]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.J. Res. 102/P.L. 109–383

Making further continuing appropriations for the fiscal year 2007, and for other purposes. (Dec. 9, 2006; 120 Stat. 2678)

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